

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Ronald Hamilton, Jr.,
Petitioner,

-v-

Texas,
Respondent.

On petition for writ of certiorari to the
Texas Court of Criminal Appeals

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Appendix A – Texas Court of Criminal Appeals Order



**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

NO. WR-78,114-02

EX PARTE RONALD JAMES HAMILTON, JR.

**ON APPLICATION FOR WRIT OF HABEAS CORPUS
CAUSE NO. 0901049-A IN THE 180TH DISTRICT COURT
HARRIS COUNTY**

***Per curiam.* YEARY and NEWELL, JJ., concur.**

ORDER

This is a subsequent application for writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071, § 5.

On November 6, 2002, applicant entered a plea of guilty to the November 7, 2001 murder of Ismail Matlkah during the commission of a convenience store robbery (the “Yellowstone murder.”) The trial court instructed the jury to find applicant guilty of the

offense of capital murder committed in the course of committing or attempting to commit a robbery. At punishment, the jury answered the special issues submitted pursuant to Article 37.071, and the trial court, accordingly, set applicant's punishment at death. This Court affirmed applicant's conviction and sentence on direct appeal. *Hamilton v. State*, No. AP-74,523 (Tex. Crim. App. Oct. 13, 2004)(not designated for publication).

This Court denied applicant's initial post-conviction application for writ of habeas corpus. *Ex parte Hamilton*, No. WR-78,114-01 (Tex. Crim. App. June 25, 2015)(not designated for publication). Applicant's instant post-conviction application for writ of habeas corpus was received in this Court on December 11, 2017.

Applicant presents three allegations in his subsequent application. On September 12, 2018, we found that one allegation satisfied the requirements for consideration of a subsequent application under Texas Code of Criminal Procedure Article 11.071, § 5. We remanded claim number one, that recently tested fingerprint evidence establishes Applicant's innocence of an extraneous capital murder introduced at punishment, to the trial court for consideration.¹

¹ Applicant's Claim No. 1 set out in full:

Recently tested fingerprint evidence establishes Applicant's innocence of an extraneous capital murder. Applicant's Eighth Amendment and Due Process rights were violated because the jury was presented with materially inaccurate, false, and misleading evidence regard that extraneous capital murder. Additionally, the prosecution's misleading statements regarding the existence of a plea deal with a co-defendant Shawon Smith allowed the inaccurate, misleading, and false evidence to go uncorrected.

On remand, the trial court held an evidentiary hearing. The trial court adopted Applicant's proposed findings of fact and conclusions of law recommending that the relief sought be granted.

On post-conviction habeas review, the convicting court is the "original factfinder," and this Court is the "ultimate factfinder." *Ex parte Chavez*, 371 S.W.3d 200, 207 (Tex. Crim. App. 2012). This Court ordinarily defers to the habeas court's fact findings, particularly those related to credibility and demeanor, when those findings are supported by the record. *Ex parte Navarajo*, 433 S.W.3d 558, 567 (Tex. Crim. App. 2014) (citing *Ex parte Weinstein*, 421 S.W.3d 656, 664 (Tex. Crim. App. 2014)). We similarly defer to a habeas judge's ruling on mixed questions of law and fact if the resolution of those questions turns on an evaluation of credibility and demeanor. *Weinstein*, 421 S.W.3d at 664. However, "[w]hen our independent review of the record reveals that the trial judge's findings and conclusions are not supported by the record, we may exercise our authority to make contrary or alternative findings and conclusions." *Ex parte Reed*, 271 S.W.3d 698, 727 (Tex. Crim. App. 2008). We review de novo both pure questions of law and mixed questions of law and fact that do not depend upon credibility and demeanor. *Weinstein*, 421 S.W.3d at 664.

With respect to the substantive analysis of a due-process false-evidence claim, this Court has recognized that the use of material false evidence to procure a conviction

violates a defendant's due-process rights under the Fifth and Fourteenth amendments to the United States Constitution. *See Weinstein*, 421 S.W.3d at 665; *Chavez*, 371 S.W.3d at 207-210; *see also* U.S. CONST. amend. V, XIV; *Napue v. Illinois*, 360 U.S. 264, 269 (1959); *Mooney v. Holohan*, 294 U.S. 103, 112 (1935). A conviction based on such materially false evidence results in a due-process violation, regardless of whether the falsity of the evidence is known to the State at the time of trial. *Ex parte Ghahremani*, 332 S.W.3d 470, 478 (Tex. Crim. App. 2011); *Ex parte Robbins*, 360 S.W.3d 446, 460 (Tex. Crim. App. 2011).

However, in order to be entitled to post-conviction habeas relief on the basis of false evidence, an applicant must show that: (1) false evidence was presented at his trial and (2) the false evidence was material to the jury's verdict of guilt. *See Weinstein*, 421 S.W.3d at 659, 665. An applicant must prove both prongs of his false-evidence claim by a preponderance of the evidence. *See id.*

Applicant's instant habeas claim revolves around the 40-ounce Schlitz malt liquor bottle recovered from the "Holman murder" scene in 2002 (the complained-of extraneous capital murder used by the State as part of its future dangerousness case). He argues that because recent fingerprint testing in 2017 identified another person as having handled the bottled, the State presented false evidence, and, therefore, he is innocent of the Holman murder. But the State's trial evidence about the fingerprints was consistent with the fingerprint evidence developed at the habeas stage.

Investigating Houston Police Detective Connie Park testified at trial that the Holman fingerprint evidence—including that found on the 40-ounce bottle—did not “tie back” to applicant or his co-defendant in the Yellowstone murder, Shawon Smith. The habeas evidence merely confirmed Park’s testimony by specifying whose prints they were—not applicant’s or Smith’s. Since the jury heard the “essence” of the habeas evidence—that the prints on the bottle were not applicant’s or Smith’s—applicant has not established the falsity of the State’s trial evidence. *See Ex parte De La Cruz*, 466 S.W.3d 855, 866-67 (Tex. Crim. App. 2015) (because jury heard the first medical examiner’s opinion, which conflicted with the eyewitness’s testimony, and resolved the conflict against applicant, post-conviction evidence of an additional gunshot wound, viewed in light of the totality of the record, failed to demonstrate by a preponderance of the evidence the eyewitness’s testimony gave the jury a false impression, and this Court denied habeas relief).

Further, applicant fails to show that this bottle or the print recovered from it is material to the identity of the Holman shooter. *See U.S. v. Bagley*, 473 U.S. 667, 682 (1985) (evidence is material when there is a reasonable probability that, had the evidence been disclosed to the defense, the outcome of the trial would have been different); *Quinones v. State*, 592 S.W.2d 933 (Tex. Crim. App. 1980) (when determining materiality, any omission must be evaluated in the context of the entire record). No one identified the bottle in question as having been handled by the shooter. And the witness

who testified in the habeas hearing that the shooter handled a bottle just before the shooting equivocated about that assertion.

Regarding the existence of a plea deal with co-defendant Smith, because the prosecution's statements to the trial court about its plea deal with Smith were not testimony, nor heard by the jury, applicant is not entitled to relief on a claim that the State presented false testimony based on the prosecution's statements. See *Ex parte Ghahremani*, 332 S.W.3d 470,479 (Tex. Crim. App. 2011) (in determining whether particular piece of testimony has been demonstrated to be false, relevant question is whether the testimony, taken as a whole, gives the jury a false impression).

Notwithstanding that, applicant nevertheless still fails to show by a preponderance of the evidence that the State misled the trial court or misrepresented any information. See *Ex parte Kimes*, 872 S.W.2d 700, 703 (Tex. Crim. App. 1993) (applicant has burden of proof in post-conviction habeas proceeding).

Having reviewed the record in this case, we reject the convicting court's findings and conclusions as they are not supported by the record or law, and deny claim number one. Applicant's remaining claims regarding a conflict of interest between his and his co-defendant's counsel, and the ineffective assistance of his trial counsel are procedurally barred. We dismiss claims 2 and 3 as an abuse of the writ under Article 11.071 §5(a)(1) without reviewing the merits of the claims raised.

IT IS SO ORDERED THIS THE 11th DAY OF NOVEMBER, 2020.

Do Not Publish

Appendix B - Signed Trial Court Findings

Cause No. 0901049-B

ADDO
(982)

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
v.	§	180th JUDICIAL DISTRICT
	§	
RONALD HAMILTON, JR.	§	HARRIS COUNTY, TEXAS

**APPLICANT HAMILTON’S PROPOSED FINDING OF FACT AND CONCLUSIONS OF
LAW**

The Texas Court of Criminal Appeals remanded Claim One of Ronald Hamilton’s subsequent application for writ of habeas corpus to this Court for consideration. *See* September 12, 2018, Order. Claim One consists of three sub-claims which all relate to whether or not Hamilton committed an extraneous capital murder (hereinafter referred to as the “Holman Murder”) used against him at his punishment trial. Claim One alleges: (1) that the State presented materially inaccurate evidence that Hamilton had committed the Holman Murder in violation of the Eighth Amendment to the U.S. Constitution; (2) that the State presented false and misleading evidence that Hamilton had committed the Holman Murder in violation of the Federal Due Process Clause, and the Texas Constitution’s Due Course of Law provisions; and (3) that the State suppressed favorable evidence that was material to proving Hamilton did not commit the Holman Murder in violation of Due Process. Additionally, as part of sub-claims one and two, Hamilton presented that the State misled the trial court about the existence of a plea deal with Hamilton’s

co-defendant, Mr. Shawon Smith, allowing inaccurate, misleading, and false evidence to go uncorrected.

This Court finds that Mr. Hamilton has proven the constitutional violations alleged in Claim One, and each of its sub-claims, and recommends that the Texas Court of Criminal Appeals grant relief and order that a new punishment hearing be held in this matter.

FINDINGS OF FACT

I. EVIDENCE PRESENTED AT TRIAL.

Hamilton was indicted and charged with the offense of capital murder – for the shooting death of Ismail Matakah, a convenience store clerk, during the commission of a robbery (hereinafter the “Yellowstone Murder”). 16 RR at 10-18. Hamilton entered a guilty plea to the indicted capital murder charge and the case proceeded directly into the punishment phase. It was during this punishment phase that the State introduced evidence of an extraneous capital murder – the Holman Murder.

A. Evidence presented regarding the extraneous Holman Murder.

1. The trial prosecutors, Colleen Barnett and Luci Davidson, represented to both the Court and defense during a pretrial conference that there were no fingerprint comparisons, or other testing results in connection with either the Yellowstone or Holman Murders. 2 RR at 7-8, 13-14.
2. The Holman Murder became the focus of the prosecution’s case. The State discussed the Holman Murder in opening statements, referred to Yellowstone murder as the “first capital murder,” called three police officers to testify about the Holman murder, called three civilian witnesses to testify about the

murder, and called medical examiner Paul Shrode who testified that the Holman murder was similar to the Yellowstone murder. 16 RR at 22-25; 17 RR at 198-224, 224-299; 18 RR at 8-98, 98-102.

3. The first witness the State called concerning the Holman murder was inmate Joseph Montoyer. Montoyer testified that he cut Mr. Hamilton's hair in jail, and that he overheard Hamilton discussing a "Holman Street" robbery of an Asian or Chinese man. 17 RR at 182-88. Montoyer later explained the information about a "Chinese man" was not included in his statement to police, and that he used the term "Holman" as a reference to a general area of Houston, not the street in particular. *Id.* at 188, 193-95, 197.
4. Prior to Montoyer's testimony, trial prosecutor Luci Davidson told the defense that there had been no deals in exchange for Montoyer's cooperation. 17 RR at 179-80. It was later revealed that Montoyer's bond had been lowered in exchange for providing the information to the State. 19 RR at 113-17. Montoyer admitted that he had two convictions for forgery, and a prior felony conviction for possession of marijuana. 18 RR at 181, 19 RR at 128-29. Montoyer denied having any other felonies or crimes of moral turpitude besides the forgery. 17 RR at 195.
5. Houston Police Department Officer Dunn was dispatched to the murder scene, located at 3235 Holman, at 6 p.m., on December, 9, 2001. 17 RR at 201. Officer Dunn knew the store owner, Mr. Huynh, by his nickname "Tulson." Through Officer Dunn, the State entered dozens of pictures of the Holman crime scene, including gruesome pictures of Mr. Huynh lying in a pool of his own blood. *Id.* at 66-70.
6. Houston Police Department Officer Thomas testified that he was friends with Mr. Huynh, knew that Mr. Huynh's wife had passed away shortly before Mr.

Huynh's murder, and pointed out Mr. Huynh's family in the courtroom. 17 RR at 214-22. The prosecutors once again went over the pictures of Mr. Huynh lying in a puddle of his own blood. *Id.* at 218.

7. Charles Douglas was an eyewitness to the Holman murder. He and his friend Wanda Johnson walked to the Holman store on the night in question to purchase cigarettes and beer. 17 RR at 240. Douglas testified that he saw a man (he later identified in-court as Hamilton) at the counter of the store. *Id.* at 241, 259. Douglas took his beer and walked outside, looked back into the store, and saw the man and Mr. Huynh struggling. *Id.* at 243. The man then shot Mr. Huynh one time, after which Douglas walked back into the store as the man ran out. *Id.* at 247. Two days later Douglas met with a sketch artist and helped to produce a sketch of the man. *Id.* at 249-50. Douglas was given the sketch to take home with him. *Id.* at 254. Twenty days later, Douglas picked Hamilton out of a photo lineup. *Id.* at 256.
8. Mr. Douglas had originally identified the shooter as being a teenager weighing 140 pounds. 17 RR 254, 259. (Hamilton, who was born on April 21, 1977, was 24 years old at the time of the Holman Murder. Marshall Dwayne Knight, born on December 17, 1980, was 20 at the time of the murder). *See also* Defendant's Ex. 28 (District Clerk records showing that Knight weighed 150 lbs.).
9. Wanda Johnson walked to the store with Mr. Douglas. 17 RR at 276. It was dark when they arrived and she saw a dark two-door car parked on the side of the store, and a man urinating over a bench and a 40-ounce beer bottle. *Id.* at 277. A heavy-set black man was sitting in the driver seat of the car. *Id.* at 279. The man who was urinating walked into the store just before Ms. Johnson and approached the counter. *Id.* at 281-82. She made an in-court

identification that the man was Hamilton. *Id.* When she left the store, she heard a pop and saw Tulson (Mr. Huynh) fall to the floor. *Id.* at 283-85.

10. Wanda Johnson also believed the shooter was in his late teens. 17 RR at 269-70. When she first met with police, she also believed that the shooter had an “afro.” 18 RR at 56-57. She was given a copy of the police sketch just like Mr. Douglas, and she looked at the sketch every day until she picked Hamilton out of a photo lineup weeks after the shooting. 17 RR at 295.
11. Houston Police Department Detective Connie Park, one of the investigators for the Holman Murder, testified that the car and suspect descriptions in the Yellowstone and Holman murders were similar. 18 RR at 43-44. She never investigated whether the car used in the Yellowstone murder was available on the day of the Holman murder.¹ Park testified that prints had been found on the glass door of the store and on the 40 ounce bottle found outside of the store on a rail, and that none of the evidence tied back to Hamilton, or his Co-Defendant, Shawon Smith. 18 RR at 39-41. However, no testimony established the fingerprint evidence found at the scene had been compared to any suspects. *Id.*
12. To combat the idea that Shawon Smith’s car had not been used in the robbery, Detective Park falsely testified that Smith was not a suspect in this crime. 18 RR at 45-47.²

¹ The car used in the Yellowstone Murder was in a police impound lot on the day of the Holman murder. 18 RR at 110-12.

² We now know that Smith was a suspect in the Holman Murder, because he is listed as a suspect on the long-suppressed evidence envelopes containing the fingerprint lifts in this case. *See* Defense Ex. 3, 4.

13. Assistant Medical Examiner Paul Shrode testified that the Yellowstone and Holman murders were similar. 18 RR at 60-97. To prove the point, the State entered detailed photos of the autopsies of both complainant Matalakah and Huynh. *Id.* Prosecutor Barnett walked a picture of Mr. Huynh's brain in front of the jury to drive the point home. *Id.* at 82-95.
14. Immediately after showing the picture of Mr. Huynh's brain to the jury, the State called Mr. Huynh's daughter to testify and entered a nice picture of Huynh. 18 RR at 97; State's Trial Exhibit 96. The State then rested its punishment case.
15. Prosecutor Luci Davidson presented the State's initial closing arguments. 21 RR at 4-25. She argued that "on December 9th of 2001, a little over one month later, the defendant takes a gun, goes into the Tucson store and in a cold-blooded manner blows away Mr. Tucson." 21 RR at 11. The jury was told "on December 9th of 2001 he blew away Mr. Tucson with one of his guns, another unarmed man. That's how we know this defendant likes guns." *Id.* at 14. The jury was told Hamilton was frustrated he couldn't find a job so he killed Mr. Tucson. *Id.* at 16. Davidson spent four pages of closing argument explaining the reasons why the jury should believe Hamilton committed the Holman murder. *Id.* at 20-24. The prosecution noted the crimes were only a month apart, occurred in the same area of town, around the same time, and were at convenience stores. *Id.* at 21. The prosecutor also misled the jury by asking "[i]s it just a coincidence that there weren't any prints found at either scene?" *Id.* at 22.
16. Prosecutor Colleen Barnett made the State's final arguments. 21 RR at 69-91. Barnett repeatedly emphasized the two capital murders. *Id.* at 75, 77, 79, 84-88. ... Barnett argued: "[Hamilton] wanted to commit the two capital

murders,” “[h]e is standing trial on two capital murder cases,” “[W]e don’t know what car he and Shawn used on that second capital. We don’t know. I wish we did. We are doing everything we can to find it out. But we know he committed that second capital. And you know it, too.”; “Even, ladies and gentlemen, without that second capital, he is a future danger; but, with it, he is an absolute menace,” “[Hamilton] will just go in there and kill the clerk a second time,” “[T]here is not a thing that you can do to him that is as horrible as what he did to Mr. Tucson.” *Id.*

17. Prosecutor Barnett also misled the jury during her closing argument by suggesting there was no DNA to test in the Holman Murder. *Id.* at 85. The State explained that because the witnesses “didn’t come forward until two days later. Certainly, there was not any evidence there to collect at that time.” *Id.* at 86.

B. The prosecution’s other future dangerousness evidence.

18. The State presented evidence during the punishment trial to prove that Hamilton had committed the Yellowstone Murder, the offense to which Hamilton had plead guilty. The State called Officer Wofshohl, who arrived the scene of the crime shortly after the shooting; Ms. Miller, who witnessed the suspects fleeing from the scene; and Ronald’s friend Billy Norris to whom Hamilton had confessed after the murder. 16 RR at 28-116. Brooke Rogers, Hamilton’s child’s mother, also testified that Hamilton had confessed to her. *Id.* at 154-56. Officer Robertson testified about Hamilton’s arrest which was based upon the tip from Brooke Rogers. *Id.* at 116-135. Detective Straughter explained the complete investigation into the Yellowstone murder, and fellow

clerk Ahmad Naimi explained what happened during the robbery that resulted in Mr. Matalkah's death.

19. The State also presented evidence from Brooke Rogers (Hamilton's child's mother) about her various altercations with Mr. Hamilton -- specifically:
 - a. Mr. Hamilton was not a good father to their four-year-old son. 16 RR at 136-40.
 - b. Mr. Hamilton and Brooke had fought about a remark another man made to her shortly after the birth of their son. She claimed that Hamilton had kicked and pushed her, causing her to call the police. Hamilton took their child with him for the night, and did not bring him back till the next day. *Id.* at 161-62.
 - c. Hamilton and Brooke got into another fight where he assaulted her, causing her to spray him in the eyes with air freshener, which prompted him to throw a telephone at her. *Id.* at 170-73; 17 RR at 62-70.
 - d. When asked if "he ever tried to shoot you," Brooke replied "[a] while back. I mean, he shot at me, but, I mean." 16 RR at 182. Brooke could not remember the year, month, or date that this event allegedly took place. *Id.*
20. Mr. Hamilton had previously been arrested for various drug offenses:
 - a. When Hamilton was 17 years old, and while he was walking down the street with his mom, he was arrested for possession of cocaine. 17 RR at 26-29.
 - b. Hamilton was arrested in 1997 – after he was caught running from a house where marijuana was being sold. He was charged and plead guilty to felony possession of marijuana. 17 RR at 31-60.
 - c. In 1998, Hamilton was stopped by police in a truck found to contain five grams of cocaine and a gun under the front seat. 17 RR at 106-07.

Hamilton was only charged with possession of a controlled substance and was sentenced to two years in prison. *Id.* at 111-12.

21. Finally, the State offered evidence of Hamilton's misconduct while in the Harris County Jail. In 1997, Hamilton had been in a fight with a man named Ortiz in the county jail. 17 RR at 80. That same year, he admitted to putting hair remover in another inmate's shampoo bottle. 17 RR at 114-16. In June 2002, Hamilton received two food trays during a meal. 17 RR at 127-28. Also in 2002, Hamilton fought with another inmate, Jason Gurley, who was in jail for aggravated assault with a deadly weapon. 17 RR at 141-48.

C. Hamilton's dire upbringing and remorsefulness would provide a convincing mitigation case, were it not for the extraneous capital murder.

22. Billie Norris, a prosecution witness and friend of Hamilton's, explained that his own dad and Hamilton's dad had been in prison together, that Hamilton's family consisted of drug addicts, that his mother was "walking the streets" when they were growing up, and that Hamilton was "fried out"³ at the time of the Yellowstone Murder. 16 RR at 90-101.
23. Norris also testified regarding Hamilton's remorsefulness about the Yellowstone Murder. Norris testified that Hamilton said "he made a mistake," and that "he was sorry." 16 RR at 78-80. Norris testified that, following the Yellowstone Murder, Hamilton was remorseful, started attending church every Sunday, and confessed his sins to the Lord. 16 RR at 80, 102.
24. Brooke Rogers confirmed Billie Norris's testimony. She recalled that Mr. Hamilton's entire family was on drugs, and that he grew up in a crack house.

³ This means that Hamilton was smoking embalming fluid laced with PCP. *Id.* at 193, 199.

16 RR at 186-92. Hamilton's mother was prostituting herself and abusing drugs. *Id.* After the murder Hamilton had broken down and told her that he was trying to rob the store because he was broke (referring to the Yellowstone Murder). 16 RR at 155, 194-95.

25. Ronald Hamilton, Sr., is Hamilton's dad (hereinafter Hamilton, Sr.). While pregnant with Hamilton, Hamilton's mom smoked marijuana and drank beer every day. 18 RR at 124. When Hamilton was a child, both of his parents sold drugs out of the house, but soon thereafter, Hamilton's parents separated and he would rarely see his dad anymore. *Id.* at 124-27. Hamilton Sr. explained that the house where Hamilton grew up was in bad shape, and that the only stable person in the house was Hamilton's Aunt Viola. *Id.* at 132-33. When she died in the 1980's, young Hamilton was left to fend for himself. *Id.* at 135. Hamilton Sr. also explained that he had been a serious drug abuser himself, shooting drugs intravenously and smoking crack cocaine. *Id.* at 136-37. However, Hamilton Sr. emphasized that he never used "fry" (the drug Hamilton was using during the Yellowstone Murder) because that drug left its users "completely out of control." *Id.* Hamilton Sr. spent most of Hamilton's life either in prison or high on various drugs. *Id.* at 141. Hamilton Sr. also confirmed that Hamilton never learned to read and was socially promoted through school. *Id.* at 146-47.
26. Elsie Tippins, Hamilton's mom, verified Hamilton Sr.'s testimony. She had smoked marijuana and drank during her pregnancy with Hamilton, and confirmed that Hamilton grew up in a violent household. 18 RR at 182-86. Instead of caring for her boy, Elsie was engaged in prostitution and abusing cocaine. *Id.* at 186-193.

27. Hamilton's cousin Darius Graves testified that Hamilton had never been a violent person until he began smoking "fry." 19 RR at 15-24. He explained that Hamilton was a good person, but that when he smoked fry "his mind changed." *Id.* Graves recalled times when Hamilton would smoke fry and punch holes in the walls, or cry, or run naked in the streets. *Id.* at 25-26.
28. Finally, the defense called Deedee Halpin, an education diagnostician. She explained that Hamilton had always struggled in school, remaining in the 2nd grade when he should have been in the 4th grade. 19 RR at 53-54. Hamilton suffered from a disorder that made him unable to assign a meaning or sound to letters. *Id.* Hamilton was placed in special education classes and when he was thirteen, was still reading at the 1st grade level. *Id.* at 54. He was socially promoted in school. *Id.* at 56-58. His reading ability was in the bottom .1 percentile. *Id.* Halpin explained that Hamilton's disabilities severely hampered his ability to perform in the social settings of school. *Id.* at 61-67.
29. The record also shows the defense intended to call Shawon Smith to testify that "after the incident on Yellowstone, that Mr. Hamilton was very upset by what happened and very affected by what happened and very sorry for what happened." 19 RR at 118. Additionally, the defense intended to call Smith to testify: "that Mr. Smith was not present during the Holman Murder, that Mr. Smith's car was not used in that incident, and that, to Mr. Smith's knowledge, the defendant, Mr. Hamilton, was not involved in that incident, and Mr. Smith would also testify about his car being totaled by Mr. Hamilton several days prior to the Holman incident occurring." 19 RR at 118. This plan was thwarted by the State's representation that it was no longer planning to honor the plea deal that it originally had in place because they had "to check some things out." 19 RR at 101.

II. MR. HAMILTON DID NOT COMMIT THE HOLMAN MURDER.

The evidence presented at trial showing that Hamilton committed the Holman murder was false, misleading, and materially inaccurate. Hamilton has proven that he did not commit this extraneous murder. This Court makes the following findings related to the previously designated issues:

A. The evidence is clear: the Holman shooter sat down the 40-ounce bottle prior to shooting Mr. Huynh.

30. Wanda Johnson, the eyewitness to the Holman Murder, testified during the habeas proceedings. Ms. Johnson is credible. She recalled the night of the Holman Murder, and she identified the crime scene. 5 RR2019 at 5-7; Defense Exhibit 31.
31. Ms. Johnson recalled walking to the Holman store about 7 p.m., with her friend Charlie. She bought a beer and pack of cigarettes. 5 RR2019 at 8. After arriving at the store and making her purchase, Ms. Johnson was waiting outside of the store for Charlie. A car pulled up, and a guy drinking a 40-ounce beer got out. *Id.* at 9. He finished the 40-ounce and set it on the little iron bench outside the store, and then he urinated over it before walking into the store. *Id.* at 9.
32. Ms. Johnson describing the same 40-ounce bottle that HPD Fingerprint Examiner Debbie Benningfield found sitting outside of the Holman store while processing Mr. Huynh's murder scene. 5 RR2019 at 9.
33. After setting the bottle down and urinating the man walked into the store, waited in line, and eventually killed "Tulson" (Mr. Huynh). 5 RR2019 at 10. When Ms. Johnson saw this happen, she took off running. *Id.* at 11.

34. Ms. Johnson remembers telling the police about the bottle being sat down by the shooter, and she was also clear that the shooter never picked the bottle back up after it was sat down. 5 RR2019 at 12. She never told the police that shooter had not touched the bottle. *Id.* at 13.
35. Ms. Johnson has maintained that the shooter touched this 40-ounce bottle. Ms. Johnson told detectives this fact on the first day that she spoke with them. *See Hoffmaster Deposition* at 15-16; Defendant's Exhibit 8, at 11. Ms. Johnson was clear about this during her testimony before the Court. 5 RR2019 at 17. Her testimony meshes with the Houston Police Department Holman Murder offense report, which states that although it was not included in her written and sworn statement, Ms. Johnson told police she witnessed the shooter "sit down an empty 40 once (sic) beer bottle on the rail that runs along the Burkett side of the store." *See Hoffmaster Deposition* at 15-16; Defendant's Exhibit 8, at 11; see also Defendant's Exhibit 31 (showing the store and the metal rail/bench). Ms. Johnson does not recall ever telling any detectives that shooter did not set down the bottle. *Id.* at 19.
36. Ms. Johnson is so certain about the shooter setting down the bottle; she "would put [her] life on it." *Id.* at 29.

B. The fingerprints on the 40-ounce beer bottle belong to Marshall Knight.

37. Fingerprint Examiner Rachel Green, lead latent print examiner for the Houston Forensic Science Center (HFSC), is credible and is an expert in fingerprint analysis. She explained that fingerprints are unique to each individual. 2 RR2019 at 32.

38. Examiner Green explained that AFIS, the Automated Fingerprint Identification System, is a system which allows fingerprint labs to run unknown prints through a database of known prints in the hopes of finding a match. *Id.* at 35.
39. The HSFC uses “the Harris County system, the State (the DPS) system, and the FBI system” in AFIS to search for known matching prints. 2 RR at 43.
40. When reviewing records from the Holman murder, Ms. Green found pictures of the latent print collected from “from a 40-ounce Schlitz Malt Liquor bottle recovered on metal rail outside beside store.” 2 RR2019 at 65. She matched these prints to Marshall Knight. *Id.* at 66. She made this match from the FBI AFIS database. *Id.* at 67. Ms. Green obtained Knight’s actual print card from the FBI and verified that the print on the 40-ounce bottle was indeed Marshall Knight’s print. *Id.* at 67-68. She was also able to match a second copy of a fingerprint taken from the same bottle to Marshall Knight. *Id.* at 72, 121. *See* Defendant’s Ex. 16; State’s Exhibit 1, Latent Print Section.
41. The only other identifiable print found by Ms. Green was a fingerprint of eyewitness Charles Alonzo Douglas, which was found on a “Schlitz malt liquor can on top of outside ice cooler.” 2 RR2019 at 43, 118; State’s Exhibit 1, Latent Print Section, at 1-2; Defendant’s Ex. 16. This matches with trial testimony showing that Charles Douglas had purchased a beer at the convenience store prior to the shooting.
42. None of the fingerprints found on the 40-ounce Schlitz Malt Liquor bottle matched Ronald Hamilton. 2 RR2019 at 75; *see* Defendant’s Ex. 16. He was

excluded from leaving any of the comparable prints found at the scene. 2 RR2019 at 99; see Defendant's Ex. 16.

43. No technology was needed to compare the fingerprints of a known suspect, Ronald Hamilton, to the prints found at the scene. 2 RR2019 at 124. This could have been done prior to trial without running Hamilton's prints through AFIS. *Id.*

C. Marshall Knight asserted his Fifth Amendment Privilege and refused to answer any questions posed by Applicant.

44. Marshall Knight was called by Mr. Hamilton as a witness during the habeas hearing. He was represented by appointed counsel at the request of the parties. Defense counsel tendered six questions to Mr. Knight and his appointed counsel. 6 RR2019 at 8. Mr. Hamilton intended to ask Mr. Knight (1) if he was at the Tulson Convenience Store at 3235 Holman Street on December 8th of 2001; (2) if he "set down a 40-ounce beer bottle on the rail outside of the store on December 8th of 2001"; (3) if he could "explain how [his] fingerprints were found on the bottle sitting outside the store on the railing on December 8th of 2001"; (4) if he had possession of or access to a .380 auto handgun on December 8th of 2001; (5) if he entered the store at 3235 Holman Street on December 8th of 2001; and (6) whether he shot the clerk inside 3235 Holman on December 8, 2001. *Id.* at 8-9.
45. Knight, through his appointed counsel, asserted his Fifth Amendment rights and refused to answer any questions. 6 RR2019 at 9. Knight's counsel verified he had discussed the matter with Knight and that Knight would "indeed invoke his right against self-incrimination to each question." *Id.*

46. The Court finds that the Marshall Knight had an arrest record prior to the Holman murder. *See* Defendant's Ex. 15. Knight had been arrested by the Houston Police Department five times prior to the date of the Holman Murder. *Id.* Those arrests included unlawfully carrying a weapon and aggravated robbery with a deadly weapon. *Id.* The Court also finds that Knight was adjudicated guilty for this aggravated robbery in February 2002, for using alcohol while on community supervision. *See* Defendant's Ex. 21.
47. The Court finds that the Houston Police Department had taken Mr. Knight's prints and loaded them into the local AFIS system prior to the date of the Holman murder. *See* Defendant's Exhibit 29, AFIS records including prints from 1998.

D. The fingerprints on the bottle are more direct proof about the identity of the perpetrator of the Holman murder than the prior eyewitness identifications.

48. Eyewitnesses Douglas and Johnson both described the shooter as being in his teens. Mr. Douglas had originally identified the shooter as being a teenager weighing 140 pounds. 17 RR 254, 259.
49. Hamilton, who was born on April 21, 1977, was 24 years old at the time of the Holman murder. Additionally, records indicate that Hamilton weighed 170 lbs. *See* Defendant's Ex. 3, at 3. Marshall Dwayne Knight was born on December 17, 1980, and was 20 at the time of the murder. *See* Defendant's Ex. 28. Knight weighed 150 lbs. Applicant's Memorandum, Appendix 2 – Mugshot Photos & Criminal History Info of Marshall Dwayne Knight.
50. The police failed to use an up-to-date photo of Mr. Hamilton in the photo lineup. Witnesses Douglas and Johnson were presented with Hamilton's

September 3, 1998, booking photo, instead of the more recent January 21, 2002, booking photo. *Cf.* Defendant's Ex.'s 11, 13.

51. Dr. Trent Terrell is a professor at the University of Mary Hardin-Baylor in Belton, Texas. 4 RR2019 at 124. Dr. Terrell's main area of research is eyewitness memory, and eyewitness identification. *Id.* at 126-27. The Court finds that Dr. Terrell was properly qualified as an expert in eye-witness identification, and that eye-witness identification is a proper area for scientific witness expert testimony.
52. Dr. Terrell testified about factors that affect the ability of witnesses to make an identification from a photo-lineup. 4 RR2019 at 137. Certain variables affect a person's ability to correctly identify a suspect at a later time, and the "most important factor by far" is "called latency" which relates to the amount of time which passes between witnessing a crime and a later identification. *Id.* at 147. In this case, seven weeks had passed between the crime and when the witnesses picked Hamilton out of a photo-lineup. *Id.* After a week's delay "you see a majority of participants not able to make a correct identification." *Id.*
53. Even the accuracy of the police sketch, which was made three days after the crime, could have suffered from the effects of latency. *Id.* at 148.
54. Dr. Terrell was certain that witness Wanda Johnson's identification of Hamilton would have been affected by the police providing her the police sketch, which she looked at every day. *Id.* at 148. The police sketch "very likely became [the witnesses] memory of who they saw. . ." *Id.* at 150. "The presence of the sketch is the biggest problem in this case." *Id.* at 211.
55. As Dr. Terrell pointed out, and as mentioned at trial, Ms. Johnson had originally described the shooter as having an afro, while Mr. Douglas

described the shooter as clean shaven with short hair. 4 RR2019 at 208, 213; 18 RR at 56-57.

56. This Court finds noteworthy that the simultaneous “six-pack” lineup used in this case is not the currently suggested best practice. 4 RR2019 at 153. Today, it is recommended that a sequential administration be used. *Id.* “Someone is more likely to make an identification when they are shown all the photos at once rather than when they see them one at a time.” *Id.* However, at the time the lineup was made, the Department of Justice had not suggested that a sequential lineup was preferable to a simultaneous lineup. *Id.* at 198-99.
57. Dr. Terrell also noted that the lineup created in this case showed Hamilton “clearly holding a sign right here.” 4 RR2019 at 154; *see* Defense Exhibit 11. This is a problem because “[a]nything that is distinctive can cause a photo to be chosen when that feature is not present in the others.” *Id.* at 155. Outside of Hamilton’s holding of a sign, this was a “pretty good lineup.” *Id.* at 200. Dr. Terrell also agreed that three of the six persons in the lineup had some sort of distinguishing mark in their picture, but that Hamilton’s was the most obvious. *Id.* at 202.
58. Hamilton’s lineup was also “presented by an officer who knew who the suspect was.” 4 RR2019 at 156. This is not the most reliable way to present a lineup, instead, whoever presents the lineup should have “no knowledge whatsoever of who the suspect is.” *Id.*
59. Whenever creating a lineup, “[a]n effort should always be made to find as recent a picture as possible.” 4 RR2019 at 162. As noted above, the detectives in this case did not use a recent picture of Hamilton when creating the lineup. *See* Defense Exhibit 13, Defense Exhibit 11. Instead, the detectives used a mugshot over three years old.

60. The Court finds that Dr. Terrell cannot testify concerning whether or not Mr. Hamilton committed the Holman murder. 4 RR2019 at 175. However, the Court finds Dr. Terrell's testimony is relevant in explaining how and why two eyewitnesses could mistakenly identify Hamilton as the shooter even if he was not involved in the Holman Murder.
61. The Court finds that the fingerprints found on the 40-ounce bottle are the most direct and reliable evidence showing who committed the Holman Murder. As discussed above, the eyewitnesses in this case both identified a teenager as having committing the Holman Murder, and one witness originally described the shooter as having an afro. The Court finds that the long period of time in between the commission of the Holman murder and the presentation of the line-up; the providing the witnesses with the sketch from a sketch artist; the use of a lineup where Mr. Hamilton is holding a booking placard; the use of an outdated photo; the presentation of the lineup by detectives who knew the identity of the suspect; and the use of a the six pack lineup all contributed to a false identification of Hamilton as related to the Holman murder.

E. The DNA evidence is also exculpatory for Hamilton.

62. The parties' experts both agree that Hamilton cannot be included as contributor to the DNA found under Mr. Huynh's fingernails or on the mouth of the 40-ounce bottle. However, the experts disagree about whether the items of evidence were suitable for comparison.
63. After Hamilton's trial, the Houston Forensic Science Center performed DNA testing and analysis on a few items of evidence collected in this case, specifically "one was a swab from the mouth area of the malt beer bottle, and then two other fingernail scrapings from the right fingernail and the left

fingernail from the victim; and then they also received two reference samples, which would be the victim's profile and suspect's profile.” 5 RR2019 at 78; State’s Ex. 1, 12-14.

64. Dr. Collins, who testified as an expert for Mr. Hamilton, explained that he disagreed with the Houston Forensic Science Center’s (HFSC’s) conclusion about the DNA found on the mouth of the bottle. 5 RR2019 at 91-92. The HFSC concluded that there was a partial DNA profile found on the bottle, but also found there was *potentially* a second contributor to the DNA found on the mouth of the 40-ounce bottle. *Id.* at 91; State’s Ex. 1 at 13. Because of the potential second contributor, the lab concluded the DNA on the bottle was not suitable for comparison. *Id.*
65. Dr. Collins believed a scientifically acceptable conclusion is that the DNA recovered from the mouth of the bottle came from a single person – so that the results showed only a single DNA profile. *Id.* at 91-92. Based upon the single contributor conclusion, Mr. Hamilton is excluded from the partial profile found on the 40-ounce malt liquor bottle. *Id.* at 94-95. Dr. Collins believed a single male profile was present because the data showed no possible alleles above the analytical threshold (which would have suggested a second contributor). 7 RR2019 at 95.
66. Related to the right fingernail scrapings from Mr. Huynh, Dr. Collins agreed that Ronald Hamilton was excluded as a contributor to the major component of this DNA mixture. 5 RR2019 at 96. However, he once again disagreed with the HFSC’s conclusion that the minor profile was not suitable for comparison. *Id.* at 96-97. Instead, he explained that, assuming Mr. Huynh’s DNA was present under his own fingernails, Hamilton would be excluded from the remainder of the DNA found. *Id.* at 99. He testified that Hamilton

could not have contributed the minor profile found under Mr. Hunyh's fingernails. *Id.* at 99; 7 RR2019 at 61.

67. Dr. Collins also found that, assuming Mr. Huynh's DNA was present in the fingernail scrapings from his left hand, Mr. Hamilton was excluded as a contributor to the DNA discovered under the fingernails on Mr. Huynh's left hand. *Id.* at 99-100.
68. On cross-examination, Dr. Collins affirmed that his single contributor conclusion about the 40-ounce bottle was based upon the fact that there were never more than two alleles at any location on the allele table. 7 RR2019 at 32.
69. No witnesses testified that any of the DNA tested from the scene belonged to Mr. Hamilton. 7 RR2019 at 41.
70. Jessica Powers is a DNA analyst with the Houston Forensic Science Center. 7 RR2019 at 69-70.
71. Ms. Powers affirmed that a DNA allele should only be "called," or considered an allele, when it is above the analytical threshold. 7 RR2019 at 82. In the HFSC lab the analyst will "not use data below the analytical threshold to call as a true allele because it hasn't been called by the software." *Id.* at 84. However, the lab analyst will still consider non-called alleles in their interpretation. *Id.* Although only the alleles above the analytical threshold are "considered real," peaks below the threshold cause the lab analyst to be cautious. *Id.* at 84.
72. Ms. Powers, like Dr. Collins, would only use the alleles above the analytical threshold when making a comparison. 7 RR2019 at 85.

73. Ms. Powers believed the DNA found on the mouth of the 40-ounce bottle was low template DNA, meaning there was very little DNA. 7 RR2019 at 89. Therefore, she had to be cautious. *Id.*
74. Ms. Powers would not make the same conclusions about Ronald Hamilton being excluded as a contributor the DNA tested because she is cautious. 7 RR2019 at 88.
75. Ms. Powers does not dispute that the DNA profile on the 40-ounce beer bottle was a single source DNA profile, but she did decide not to draw any conclusions about the beer bottle. 6 RR2019 at 105. She wanted to be cautious in calling this a single source DNA profile. *Id.* at 106. She was able to base her opinions on her “[a]nalyst discretion, whenever it's used in our standard operating procedure, it just means that you have a little bit of flexibility in what you're looking at on your electropherogram.” *Id.* at 107. She decided that presence of peaks below the analytical threshold might, or might not, mean there is a second contributor. *Id.* at 111. She “would say that there is evidence that there is possibly a second contributor.” *Id.* at 114.
76. Regarding the fingernail scrapings, Ms. Powers agreed that it was permissible to subtract Mr. Huynh’s profile from the DNA sample, which is what Dr. Collins had done in reaching his conclusion. 7 RR2019 at 61-62; 109. However, Ms. Powers did not do that in this case. *Id.* Once again, Ms. Powers did not “make any calls on the minor” contributor the DNA. *Id.* at 109. According to Ms. Powers, the minor contributor DNA could have belonged to a mixture of up to four people. 7 RR2019 at 122.
77. Regarding Dr. Collins exclusion of Hamilton from the DNA samples taken from Mr. Huynh’s fingernail scrapings, Ms. Powers simply explained she “would not use that approach in our lab.” *Id.* at 110.

78. Ms. Powers thought that Dr. Collins technique “would be bias, unfair, and not correct.” *Id.* at 126.
79. Ms. Powers knew who the “suspect” or “defendant” was prior to beginning her analysis. 7 RR2019 at 127-28
80. All of the data suggesting there might have been a second contributor to the DNA found on the 40oz beer bottle was below the analytical threshold. 7 RR2019 at 130.
81. Ms. Powers agreed, that “if I made the assumption that all of these alleles called were from one contributor, I would have excluded Ronald Hamilton from this piece of evidence.” *Id.* at 131. Ms. Powers thought that the DNA sample in this case was “somewhere in between” a single source and mixture DNA sample. 7 RR2019 at 131-32. She also recognized that she could not “call this [DNA sample] two [people], because you don't see clear signs of two.” 7 RR2019 at 134. That is why the sample is not a mixture. *Id.* at 134.
82. Related to the fingernail scrapings, Ms. Powers agreed that “if I were able to say that this was a mixture of that two and I assumed that there were only two, I would have excluded Ronald Hamilton from the minor contributor.” *Id.* at 135-36.
83. Ms. Powers was clear that the assumption of a single source DNA sample on the bottle, and a two-person mixture under Mr. Hunyh’s fingernails, were simply “more aggressive than we’re willing to do in our lab.” 7 RR2019 at 137. However, she would not go so far as claiming that Dr. Collins’ assumptions were unsupported by the evidence. *Id.*
84. The Court finds that DNA evidence collected at the scene is additional evidence that Hamilton was not involved the Holman Murder. Hamilton’s DNA was not found at the scene or on the bottle which the shooter sat down

prior to shooting Mr. Huynh. Further, although Ms. Green would not have made the same conclusions about the number of contributors to the DNA in question, the court finds that a jury might credit Dr. Collins testimony about the number of contributors because there are no alleles above the analytical threshold which prove there was more than a single contributor to the DNA found on the bottle, or more than two contributors to the DNA found under Mr. Huynh's fingernails. A jury could have given weight to the fact that Hamilton's DNA profile was not present on any of the evidence found at the scene.

85. The Court also finds there is no proof that the DNA evidence in this case was tested or compared prior to trial. The DNA evidence was in the possession of the State of Texas at all times. Specifically, the evidence was in the possession of the Houston Police Department. As a result, the Court finds the DNA evidence is new evidence which was not previously available to Hamilton.

III. THE STATE AND ITS PROSECUTION TEAM – THE HOUSTON POLICE DEPARTMENT, TRIAL PROSECUTORS, INVESTIGATORS AND FINGERPRINT EXAMINERS -- ACTIVELY SUPPRESSED EXCULPATORY EVIDENCE.

86. The Court finds, and is troubled by, the prosecution team's active suppression of exculpatory evidence. The Court finds that both the Houston Police Department and trial prosecutor Colleen Barnett actively suppressed exculpatory evidence that Mr. Hamilton was excluded from contributing the fingerprints at the Holman Murder scene, and particularly on the 40-ounce bottle that witness Johnson saw the shooter set down.

A. Fingerprint Examiner Debbie Benningfield actively suppressed that she had compared Mr. Hamilton's fingerprints to those found at the scene, and that he had been excluded as a contributor.

87. Debbie Benningfield is now retired from the Houston Police Department and her previous role as a fingerprint examiner. 3 RR2019 at 57-58. She spent her entire career in the HPD Identification Department. She had previously worked in the Ten Print Section, where her job was to record fingerprints of people who were arrested. 59. By 1985, HPD had obtained an automated fingerprint system. *Id.* at 60-62. Eventually Ms. Benningfield became the manager of the AFIS for HPD.
88. Ms. Benningfield was well versed in using HPD's AFIS system. 3 RR2019 at 63. At the time of the Holman murder, HPD used an AFIS system called Print Track. *Id.* at 64. HPD had access to the Texas Department of Public Safety fingerprint system, called NES. *Id.* at 65. Also, Print Track would have contained the HPD database. *Id.* Someone at HPD had the job of entering the fingerprints of arrested people into the AFIS system. *Id.* at 69. Anyone arrested on a jailable offense would have had their fingerprints taken and entered into the HPD AFIS system. *Id.* at 71. Even when fingerprints were taken by ink, HPD would try to get the prints entered into the AFIS system the same day they were taken. *Id.* at 73. HPD has a policy of keeping and saving fingerprints of anybody that they arrest. *Id.* at 145. HPD would have had "their own fingerprints in their system based on the arrests within their agency." 4 RR2019 at 70, 101-02.
89. A record should have been made when any unknown latent print was entered into the Print Track system for comparison with known prints. *Id.* at 76. The record would be made by notation on the envelope containing the print.

90. On December 9, 2001, around 8 pm, Ms. Benningfield was called to the scene of a murder at 3235 Holman in Houston, Texas. *Id.* at 81. Benningfield would have discussed the scene with the detectives, and would have collected whatever evidence she deemed relevant. *Id.* at 82.
91. At scene of the murder Ms. Benningfield collected: “[o]ne Schlitz Malt Liquor can, one 24-ounce Heineken bottle, one 40-ounce Schlitz Malt Liquor beer bottle, and one 12-ounce Heineken bottle.” *Id.* at 84. She would not just randomly pick up trash outside of stores. *Id.* at 85. She might have decided to pick up bottles and cans outside of the Holman store because she had been told by the “daughter [of] the complainant . . . that the business was kept clean by her father.” 3 RR2019 at 86. Benningfield learned it was rare for there to be trash outside of the store where the Holman Murder took place. 4 RR2019 at 111. She would have collected evidence she felt “was important or could have an impact. . .” on solving the murder. 3 RR2019 at 87.
92. The bottles collected were submitted to the crime lab for DNA testing and fingerprinting. 3 RR2019 at 87.
93. If “prints of value” were found on any evidence, an offense report supplement would be created. *Id.* at 89. A supplement would be made “[i]f we made the scene, then we had a supplement. If we brought evidence back to the lab and processed it, we did a supplement. If there was a comparison request or if there was an identification in the case, then a supplement was typed.” 3 RR2019 at 89.
94. However, if there was a request to test fingerprints, and a known suspect was excluded from having left a fingerprint recovered from a crime scene, no offense report supplement would be made. *Id.* at 90.

95. The Court finds there was no evidence of a comparison or exclusion of fingerprint evidence in the offense report related to the Holman Murder. *See* Defendant's Ex. 8. Indeed, there is no evidence in the offense report or elsewhere that the fingerprints collected from the scene, or evidence collected from the scene, were ever compared to any suspect. *Id.*
96. According to Debbie Benningfield, it was HPD's policy to only make an offense report supplement if there was a fingerprint match found. *Id.* at 90. HPD's "standard practice" was not to issue reports on eliminations. 4 RR2019 at 61. A supplement would have been typed had there been an identification. 4 RR2019 at 61. The only notice given in the case of an elimination would have been to the person requesting the comparison. *Id.* at 62.
97. The HPD policy of not documenting fingerprint exclusions is troubling and directly led to the suppression of evidence in this case. If a defendant was excluded from leaving a print at a scene or on an item of evidentiary value, that information should always be turned over to the defense. HPD policy prevented that from happening in this case.
98. Benningfield testified that members of the District Attorney's Office could simply call the lab and ask if fingerprints had been compared, and learn the results. 5 RR2019 at 62. This would not happen with defense attorneys. *Id.* at 62. If a defense attorney called, the examiner would not discuss a case with them, but would notify HPD legal about the defense's request to speak with the examiner. *Id.* at 63. This policy compounded the problem in this case, and amounts to an active suppression of evidence.
99. Three fingerprints suitable for comparison were found on the 40 oz. Schlitz Malt Liquor bottle prior to Hamilton's trial. *Id.* at 91. This is the bottle that came from a rail outside of the business. *Id.* at 91. The bottle was taken to

Montgomery County, to a man named Butch Emmons, so that he could take special pictures of the print. This was done to get a better print for comparison. *Id.* at 92.

100. Based on a review of the Offense Report Supplements created by Debbie Benningfield, there was absolutely no indication that she compared any fingerprints in the Holman murder. 4 RR2019 at 93. Nor was there any indication that there was a request made to compare the prints. *Id.* at 94.
101. Someone else would have given Debbie Benningfield the names of “suspects” which were written on the envelopes containing fingerprints in this case. *Id.* at 98; Defendant’s Ex. 3-4.
102. Debbie Benningfield compared the fingerprints found at the scene, and on the 40 oz. Schlitz malt liquor bottle, to both Ronald Hamilton and Shawon Smith prior to trial. *Id.* at 101, Defendant’s Ex. 3-4. This fact was never mentioned in her offense report supplements. *Id.* at 101. Hamilton and Smith were excluded as having left all of the fingerprints found at the scene. *Id.* at 101-03. Debbie Benningfield did not make a notation in the offense report about this exclusion because “if we did not identify the print, we did not type a supplement if we excluded it.” *Id.* at 101. However, the information about the exclusion would be relayed to the person who requested the comparison. *Id.* at 102. The Court finds that either Detective Park or Hoffmaster knew that Hamilton had been excluded from leaving the prints found at the scene.
103. Prior to trial, Hamilton was excluded from leaving the prints found on the side of the cash register, the 40-ounce Schlitz Malt Liquor bottle, and all other prints found at the scene of the Holman Murder. 5 RR2019 at 67.
104. In addition to excluding Hamilton from the prints found at the scene, the print from the malt liquor bottle was run through the Houston and Texas AFIS

databases. 3 RR2019 at 109-110. Based on the fact that there was no offense report made about the AFIS search, Debbie Benningfield concluded the AFIS search did not return any fingerprints matching the prints from the 40 oz Schlitz Malt Liquor bottle. *Id.* at 113-114.

105. Notes found with the fingerprint evidence suggest that Connie Park, investigator in this case, requested that the prints found at the scene be compared with potential suspects, including Ronald Hamilton. *Id.* at 127-28. Further, it was generally the investigators who would guide Benningfield concerning what evidence to collect and test. 4 RR2019 at 43, 47.
106. In addition to testing Hamilton's and Smith's prints against those found at the scene, Debbie Benningfield also compared the prints to previously undisclosed suspects. Those additional suspects were also eliminated as having left the prints at the scene. 3 RR2019 at 131. Once again, this elimination was not reported in the offense report. *See* Defense Ex. 8. The names and identities of these additional suspects was not mentioned anywhere in the offense report, and were never disclosed to the defense.
107. The only way a non-law-enforcement person could have discovered that the fingerprints were compared to Hamilton's would be for the person to personally view the evidence collected from the scene, specifically the envelopes containing the fingerprints. 5 RR2019 at 51-53. However, even if this was done, the person would not know the prints had been compared to Hamilton's, and that he was excluded, unless the person knew Debbie Benningfield's standard practices for recording her work. *Id.*
108. Debbie Benningfield could not recall if she had run the fingerprints associated with Marshall Knight (the prints found on the 40-ounce bottle) through the AFIS system. 4 RR2019 at 88-89. If an unknown print was run through AFIS

but not saved in the AFIS system, HPD policy at the time was simply to not record that the print had been run through AFIS. *Id.*

109. Debbie Benningfield knew, prior to trial, that the four prints suitable for comparison collected at the scene of the Holman Murder excluded Ronald Hamilton, and his co-defendant Shawon Smith, from having left the prints. 4 RR2019 at 94. She actively suppressed this evidence by not making a supplement to the police report.
110. During these habeas proceedings, Debbie Benningfield refused to have a meeting with habeas counsel without the Assistant District Attorney's being present. 4 RR2019 at 94-96. The same would have been true prior to Hamilton's trial – Benningfield would not have spoken to defense counsel, but would have referred them to HPD legal. *Id.* at 96.
111. If the District Attorney had walked in and asked to see evidence envelopes, they would have been shown the evidence envelopes, but if a defense attorney asked to do the same thing, the defense attorney would have been directed to HPD legal. *Id.* Without permission from HPD's legal department, Benningfield would not speak with defense counsel, and would show them nothing. 4 RR2019 at 96-97.
112. There was no indication in the police report about Hamilton's (or Shawon Smith's) prints being compared to those found at the scene, nor was there any mention of the other suspects. 4 RR2019 at 97-98; Defendant's Ex. 8.
113. Benningfield would have obtained the names of Levigne and Brown, the alternative suspects, from one of the detectives, although this was never mentioned in the offense report. 4 RR2019 at 97-99.
114. Nothing in the offense report even suggests that comparisons were ever made to the prints found at the scene. 4 RR2019 at 98.

115. The Court finds that HPD's policy of not documenting exclusions was designed to suppress relevant evidence from defense counsel, and that the policy succeeded in this case.

B. The Harris County District Attorney's Office, the prosecution team, and trial prosecutor Colleen Barnett were aware the fingerprints on the 40 oz. bottle did not belong to Mr. Hamilton, or his co-defendant.

116. George "Buddy" Barringer was an investigator for the Harris County District Attorney's office at the time of Hamilton's trial. 5 RR2019 at 41. The Court finds that his testimony at the habeas hearing was credible.

117. As part of his job, Barringer would follow up on tasks he had been assigned by trial prosecutors. 4 RR2019 at 45.

118. As part of Hamilton's case, Mr. Barringer was asked by trial prosecutor Colleen Barnett to conduct certain tasks. 4 RR2019 at 47. Specifically, Mr. Barringer was asked to check for fingerprint results in both the Yellowstone Capital Murder, and in the separate Holman Murder. 4 RR2019 at 48; Defense Ex. 9. Mr. Barringer discovered that prints were found in the Holman Murder case, and that they were "compared to defendants and eliminated." Defense Ex. 9.

119. Mr. Barringer was confident that the trial prosecutor would have known that Hamilton, and his co-defendant, had been eliminated from having left the prints found at the scene of the Holman Murder. *Id.* at 48.

120. Mr. Barringer believed, based on reviewing his Investigator's Reply, that he would have checked on the fingerprint results prior to April 15, 2002. 5 RR2019 at 53, Defense Ex. 9. Pretrial proceedings did not commence in

Hamilton's case until October 7, 2002, and testimony did not begin until November 6, 2002. *See* Trial Reporters Records vol. 2 and 16.

121. Mr. Barringer explained that as a member of the District Attorney's Office, he could simply call up HPD and ask for the result of the print comparisons, and the agency would "report back whether or not – they wouldn't give me a written report. They would do that in a supplement type thing to their cases." 5 RR2019 at 52.
122. Mr. Barringer also believed that generally an offense report would tell you if prints had been tested. *Id.* at 53.
123. The Court finds based upon Mr. Barringer's testimony, and the Investigators Reply (Defendant's Exhibit 9) that trial prosecutor Colleen Barnett knew, or should have known, prior to trial that Hamilton had been excluded from leaving all of the prints recovered from the Holman Murder scene.

IV. THE DEFENSE WAS NEVER MADE AWARE THAT HAMILTON'S FINGERPRINTS HAD BEEN EXCLUDED FROM ALL FINGERPRINTS COLLECTED FROM THE HOLMAN MURDER SCENE.

124. Loretta Muldrow is an experienced criminal defense attorney practicing mostly in Harris County. 6 RR2019 at 21-22. Prior to practicing criminal defense, she worked for 6 years at the Harris County District Attorney's office as an assistant district attorney. *id.* Ms. Muldrow was lead counsel for the defense at Hamilton's capital murder trial. *Id.* at 27. The Court finds her testimony credible.
125. At the time of Hamilton's trial, the discovery practices in Harris County were "arduous. Where what you had to do was go to the [DA's] office." 6 RR2019 at 23. The DA's office would not allow defense counsel to make copies of

- offense reports; defense counsel would be allowed to review the offense report and take handwritten notes. *Id.* At 24.
126. The defense was not provided with copies of any documents prior to trial. *Id.* at 24.
127. Defense counsel would not be permitted to review DA work product. 6 RR2019 at 25. Ms. Muldrow did not recall ever seeing work product in any of the DA files she was permitted to review at the time of Hamilton's trial.
128. If Ms. Muldrow had question for the HPD latent print lab, as a defense attorney, it would not have been possible for her to simply call the lab and ask them a question. 6 RR2019 at 26. If she tried to call the lab, she would be directed to "go through the D.A.'s Office and that was never ever going to be a direct call to law enforcement." *Id.* In 2001, "[l]aw enforcement and the Defense community had a gulf between them and there was no bridge connecting either side." *Id.* at 27.
129. Related to the future dangerousness special issue, the Holman Murder was the most important portion of the case for the defense. 6 RR2019 at 30.
130. The defense intended to prove that Hamilton was not involved in the Holman Murder though the testimony of Shawon Smith. 6 RR2019 at 31.
131. Defense counsel knew of a plea deal that Smith reached with the State through prosecutor Colleen Barnett and Smith's attorney, Alvin Nunnery. *Id.* At 32. The defense expected that Smith would testify at Hamilton's trial if called as a witness.
132. The defense planed on proving that Smith's car, the same car used in the Yellowstone Murder, had been wrecked and was in the impound storage lot at the time of the murder. 6 RR2019 at 32. Ms. Muldrow's belief was that the state acted as if Shawon Smith might no longer have a deal simply because

the state did not want Smith to testify that Hamilton could not have committed the Holman Murder. 6 RR2019 at 32-40. She was not aware of the State needing to perform any additional investigation related to Smith. *Id.*

133. The Court finds that the defense team was aware of the deal in place for the co-defendant prior to trial.
134. Ms. Muldrow noted that after the time for a motion for new trial had passed, the prosecution team from Hamilton's case went ahead and honored the agreement with Smith. *Id.* at 41.
135. Ms. Muldrow was allowed to view the offense report in this case, prior to trial. 6 RR2019 at 41-42. However, the report did not mention that any fingerprints found at the scene had been compared to any known persons prints. *Id.*
136. The defense never learned prior to trial that the fingerprints had been compared in this case. 6 RR2019 at 42. The defense never learned from any sources that Hamilton's fingerprints had been excluded from all the prints collected in this case. 6 RR2019 at 42.
137. Had the defense known that Hamilton's prints had been compared to, and excluded from, all prints found at the Holman Murder scene, the defense strategy would have changed. 6 RR2019 at 43-44. Defense counsel would have employed her own fingerprint expert. *Id.* at 44.
138. Defense counsel did have a *Brady* motion granted in this case, but defense counsel was never allowed, before trial, to review any evidence except for the offense report. 6 RR2019 at 45-46.
139. Defense counsel never saw the envelopes containing the latent prints, which were in the possession of the Houston Police Department, prior to trial. 6 RR2019 at 46.

140. Based upon the statements of the trial prosecutors, and the lack of lab supplements noting fingerprint comparisons, defense counsel was led to believe that there were no identifiable fingerprints recovered at the scene of the Holman Murder – not that Hamilton was actually excluded from the found prints. 6 RR2019 at 48.
141. The open file policy in Harris County at the time of Hamilton’s trial meant defense counsel had “to rely on the integrity of the person who was presenting those files for review, either prosecutors or the State of Texas.” 6 RR2019 at 49.
142. When Ms. Muldrow examined Connie Park at trial, she did not know whether or not the fingerprints from the Holman Murder scene had actually been examined. 6 RR2019 at 50. Because the State had represented in the pretrial hearing that there were no scientific results in this case, she presumed there would be no prints to prove a “connection to Ronald James Hamilton, Junior and Shawon D. Smith.” 6 RR2019 at 51. Had she been told that the prints excluded both men, Ms. Muldrow would have changed the way she examined Investigator Park. *Id.* Further, Ms. Muldrow chose to stop her examination regarding the absent of fingerprints linking Hamilton to the scene because she believed the prints had never been tested. 6 RR2019 at 132-33.
143. Ms. Muldrow recalls that the DA’s file related to Mr. Hamilton’s case was generally in the possession of Colleen Barnett. 6 RR2019 at 59. Colleen Barnett was the person Ms. Muldrow would typically deal with on the prosecution team. 6 RR2019 at 71.
144. Ms. Muldrow explained that during the preparations for a capital murder trial, the defense has to focus not only investigating and strategizing for the charged offense, but also for all other future dangerousness evidence, and the

mitigation case. 6 RR2019 at 70-71. The defense cannot simply focus on any single aspect the case. *Id.*

145. The defense team had multiple investigators working on various parts of the case from guilt and innocence to mitigation. 6 RR2019 at 87-91. In spite of these investigators, the State has completely failed to present any evidence showing that any of the investigators knew, or should have known, that the prosecution team had suppressed the fact that Hamilton had been excluded from leaving any of the prints discovered at the scene of the Holman Murder.
146. There is evidence, on a note from the prosecutor's file, that Ms. Muldrow was provided with copies of some discovery in this case. 6 RR2019 at 97-98; State's Ex. 7. The note discusses Hamilton's statement to police, a copy of scene photos, a copy of the photo spread, a copy of the "c.m.," a copy of the composite sketch, and a copy of Smith's statement. *Id.* The note shows these documents were for the benefit of Hamilton's co-defendant, Shawon Smith, and were being given to Alvin Nunnery through Ms. Muldrow. *Id.* There is no evidence that the defense was provided a copy of the Holman Murder offense report, or was ever notified that the fingerprints obtained from the scene of the Holman Murder had been compared to Hamilton's and that Hamilton was excluded from leaving the prints.
147. The State has not presented any evidence showing that the defense was aware, or was made aware, that the comparable fingerprints found at the scene of the Holman murder were compared to Hamilton and Smith, but that they were both excluded from having left the prints.
148. The Court notes that the State did not call the original trial prosecutors, Colleen Barnett or Lucy Davidson to testify in this case. There is no evidence that the fingerprint evidence was ever made known to the defense. Rather,

the credible evidence presented to this Court is that the defense team was never made known about Hamilton's exclusion from the fingerprint testing prior to trial.

149. The defense theory related to the Holman Murder was that Hamilton was not present at the scene. 6 RR2019 at 100-101. Proving that his fingerprints were not present at the scene would have been strong evidence bolstering the defense punishment case.
150. Defense counsel believed Prosecutor Davidson when she explained there were no comparison tests performed in this case. 6 RR2019 at 114. The Court finds it is reasonable for a defense attorney to rely on the representations of trial prosecutors.
151. At trial, prosecutor Barnett told the court that there were no scientific tests, including fingerprint comparisons in this case. 6 RR2019 at 131. Ms. Muldrow rightfully took the prosecutor at her word. *Id. At 131, 134, 138.*
152. Ms. Muldrow was never shown the investigator's report proving that Hamilton had been excluded from leaving the prints recovered from the Holman Murder. *Id. At 139-40.*

V. THE PROSECUTION HAD REACHED A DEAL WITH CO-DEFENDANT SHAWON SMITH PRIOR TO TRIAL.

153. Alvin Nunnery is a long time Harris County criminal defense attorney, who also previously worked for the Harris County District Attorney's Office, the Tarrant County District Attorney's Office, and the Texas Attorney General's Office. 5 RR2019 at 107-08. The Court finds Mr. Nunnery to be credible.
154. Mr. Nunnery represented Mr. Hamilton's co-defendant, Shawon D. Smith. *Id.* at 108. Mr. Nunnery, after reviewing the clerk's record from his client's case,

testified that there was a plea agreement in place for his client. *Id.* at 110. “In exchange for him testifying in the matter of the State vs. Mr. Hamilton, his charge wherein he was indicted for capital murder was to be reduced to aggravated robbery. And in exchange for truthful testimony, he was to be sentenced to 20 years TDC, credit for any time that he had already served.” *Id.*

155. Mr. Nunnery was certain this plea agreement would have been solidified *prior* to setting the case for a plea. *Id.* at 111. Mr. Nunnery remembered the plea “would have been entered into and negotiated prior to the trial of Mr. Hamilton.” *Id.* at 111. The clerk’s records show that the plea would have been agreed upon by October 3rd, 2002. 5 RR2019 at 111. The trial testimony did not begin until November 6, 2002. *See* Trial Reporter Record vol 16.
156. Mr. Nunnery would have made the deal with either Prosecutor Colleen Barnett or Luci Davidson. 5 RR2019 at 12.
157. Mr. Nunnery also affirmed that his client, Shawon Smith, had previously provided information to the prosecution in exchange for his plea agreement. 5 RR2019 at 117.
158. Mr. Nunnery was present at Hamilton’s trial on the day Mr. Smith was expected to testify. 5 RR2019 at 114-15. He has no idea of the reason why the plea agreement was potentially revoked, but because of prosecutor Luci Davidson’s suggestion that there was no longer a plea agreement in place, Mr. Nunnery was forced to invoke the Fifth Amendment on behalf of his client. *Id.* at 115-16, 131, 135.

159. It was Mr. Smith's position that he was not involved in the Holman Murder. 5 RR2019 at 133. Further, Mr. Smith believed that Ronald Hamilton was not involved in the Holman Murder. *Id.* However, after the State suggested it had revoked Mr. Smith plea offer, Mr. Nunnery would not have permitted his testimony. *Id.* at 134.
160. Had the prosecution not suggested the plea deal for Mr. Smith had been called off, Mr. Nunnery would have permitted his client to testify at Hamilton's trial. *Id.* at 136. Mr. Smith knew that Hamilton did not commit the Holman Murder based upon "Mr. Hamilton's inability to or not have access to the vehicle." *Id.* at 137. "And that their relationship was such that had he been involved; I think he said he would have probably told [him]." *Id.*
161. Mr. Nunnery believed that Smith would have testified "[t]hat Mr. Hamilton could not be involved in that extraneous if he did not have access to his car, which I understood he would testify to was at a mechanic shop." 5 RR2019 at 140.
162. After Hamilton's trial, the prosecution decided to honor its previous plea agreement with Smith. *Id.* at 117-18. Mr. Smith did not do anything after the trial to have the original plea agreement put back in place. *Id.*
163. The Court finds that prior to Hamilton's trial the State of Texas had reached a deal with co-defendant Shawon Smith. Shawon Smith was to testify truthfully at Hamilton's trial, and in exchange would plead guilty to aggravated robbery and a 20-year sentence. The Court finds that Smith provided consideration for this deal, specifically, he had already provided

information to the police and prosecution team. After Hamilton's trial was complete, Mr. Smith was given the same deal agreed to before trial.

164. The Court finds that there was no evidence presented by the State of Texas showing that additional investigation was needed, at the time of Hamilton's trial, before the State of Texas would honor the previously agreed upon deal with Mr. Smith. Instead, the most likely reason that the prosecution claimed there was no deal in place is because the prosecution knew Smith would testify truthfully about Hamilton's non-involvement in the Holman Murder, and sought to prevent that testimony.

VI. THE FACTUAL BASIS OF THESE CLAIMS WAS NOT PREVIOUSLY AVAILABLE TO HAMILTON.

165. The Court finds that the State's failure to disclose Hamilton's exclusion from the prints found at the scene is the direct result of the Houston Police Department's policy of not reporting exclusions related to forensic evidence, and the Harris County District Attorney's Office's failure to turn over the fingerprint evidence in this case.
166. The Court would note that, in addition to the withheld fingerprint comparisons which excluded Hamilton, other comparison evidence was omitted from the offense report. For example, although not dispositive to the issue of who committed the Holman Murder, the Court would note that there was a comparison of firearm shell casings related to the Holman Murder, but that no offense report supplement was ever made concerning this comparison. 4 RR at 14-22. Once again, related to the shell casing's comparison, there was also an elimination. The firearm examiner would have conveyed the results of the comparison to the investigating officers who apparently did not request that an offense report supplement be made. 4 RR2019 at 21. However, had there

- been an identification between the two shell casings, then there would have been a report made. *Id.* at 22.
167. The firearm examiner, like the fingerprint examiner, explained that it was not the standard practice of HPD at the time of trial to document eliminations. *Id.* at 24.
168. The Court finds that the firearm examiner's testimony is yet more proof that it was the practice of the HPD crime lab to create supplemental offense reports when identifications were made, but to not make supplemental reports if exclusions were made.
169. Appropriately, the former HPD crime lab has since changed its policy. Fingerprint Examiner Green testified that she always documents everything she does in cases. 2 RR2019 at 76. This includes documenting comparisons that don't result in a match, and any prints that are run through AFIS. *Id.* at 76. This is done for transparency, and has been a consisted part of her job no matter what lab she was working with. *Id.* For the last 13 years that she worked as an examiner, she has always documented exclusions. *Id.* at 100, 123. Had Ms. Green eliminated Hamilton from prints found at the scene, she would have made a record of the elimination. *Id.* at 124. She would make a report. *Id.* at 125. In the hours and hours of training that Ms. Green has gone through, it has never been suggested that she should not record and report elimination comparisons. *Id.* at 139.
170. Fingerprint Examiner Green, who had access to all of the evidence in this case, had not seen any evidence that, prior to her work, the prints in this case were previously compared. 2 RR2019 at 77,92-39, 134-35. The Court finds that if the State's own fingerprint examiner experts could not tell that the prints had

been previously tested, then Hamilton and his attorneys certainly could not tell that the prints had been tested prior to trial.

171. Even the representatives of the Harris County District Attorney's Office, throughout these current proceedings, were not aware that the fingerprints had previously been tested. As the State recognized in its *State's Original Answer After Remand*: "here, there is no indication the evidence had been tested prior to trial, or that the State was in possession of the results of this testing. Additionally, even during the October 7, 2002, pretrial conference, the State informed the trial court there were no reports of any scientific tests like DNA or fingerprint comparisons." *See State's Original Answer After Remand* at 23. Additionally, the State represented: "On May 11, 2017, the applicant's federal habeas counsel contacted the State to see if the State would oppose forensic testing in the Holman Murder. After checking with HPD and finding no indication that any forensic analysis had been conducted on the recovered prints or DNA swabs, the State did not oppose counsel's request for the forensic testing and comparison of certain items." *See State's Original Answer After Remand* at 11.
172. The State learned for the first time just days prior to June 21, 2019, that there were no written supplements made for any comparisons, because HPD did not "do elimination reports at the time." R.R. June 21, 2019, Hearing, at 5-6. The lab only made "positive identification reports." *Id.* at 6. This is why HPD's general litigation did not find any fingerprint comparison reports. Indeed, had the Harris County DA's office had known that Hamilton's prints had been excluded from those found at the scene prior to this date, the DA's office would not have agreed to retesting. *Id.* The DA's "post-conviction counsel did not know about these eliminations." *Id.* The Court finds that if the

attorneys working for the State of Texas did not know that the prints in this case had been compared to Hamilton's and excluded, then Hamilton's attorneys could not have known that the fingerprints on the 40-ounce bottle, and the Holman Murder scene, had ever been compared to Hamilton and that he had been excluded.

173. It was not until just before the June 21, 2019, hearing that the DA's office turned over the pretrial memorandum written to Colleen Barnett which shows that the trial prosecutors were aware, prior to trial, that Hamilton's fingerprints did not match those found on the 40 oz. beer bottle. R.R. June 21, 2019, Hearing, at 5-9.
174. Defense counsel cannot be faulted for failing to go beyond the police report in trying to discover that the fingerprint evidence had been tested. Detective Hoffmaster explained that pretty much everything that was learned by detectives would go into the police report. Depo at 8. Hoffmaster believed that everything relevant would make it into the offense report. *Id.* Detective Hoffmaster believed that if the lab had performed testing or comparisons on forensic evidence, the lab personnel would create a supplement concerning the results of the forensic testing. *Id.* at 20, 23-24, 29. If it was reasonable for the investigating detective to believe the offense report was complete and accurate, it was also reasonable for Hamilton's defense counsel to believe the offense report was complete and accurate.
175. The DNA in this case was never tested until ordered by this Court, but, as noted by the prosecution, Hamilton had no legal ability to have the DNA evidence tested until the District Attorney's office agreed to his request.

CONCLUSIONS OF LAW

- I. HAMILTON WAS SUBJECTED TO CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH AMENDMENT TO THE U.S. CONSTITUTION THROUGH THE STATE’S USE OF MATERIALLY INACCURATE EVIDENCE.**
1. Hamilton was subjected to cruel and unusual punishment in violation of the Eighth Amendment to the U.S. Constitution, applicable to the States via the Fourteenth Amendment to the U.S. Constitution, because his death sentence was obtained upon the use of materially inaccurate evidence. Accordingly, this Court recommends that the Texas Court of Criminal Appeals grant relief on this claim.
 2. In *Johnson v. Mississippi*, the Supreme Court reversed a sentence of death where the “jury was allowed to consider evidence that has been revealed to be materially inaccurate.” *Id* at 590. The *Johnson* Court applied a two-factor test in analyzing the presented Eighth Amendment claim: 1) determining whether the jury was allowed to consider materially inaccurate evidence; and 2) determining whether the evidence was prejudicial. *Id.* at 586. This Court applies this test in analyzing Hamilton’s presented Eighth Amendment claim.
 3. This Court concludes that, with respect to the first factor, the jury in Hamilton’s case was allowed to consider materially inaccurate evidence – namely, any and all evidence presented at the original trial that Hamilton committed the extraneous Holman Murder. The evidence regarding the

Holman Murder presented originally at trial is described in Section I-A of the above Findings of Fact and is incorporated by reference herein.

4. This evidence presented at the punishment trial was materially inaccurate in light of the firmly established evidence showing that the perpetrator of the Holman Murder held, drank out of, and set down a particular 40-ounce beer bottle on a rail outside of the store immediately prior to committing the murder – and that forensic testing on this bottle excludes Hamilton and inculcates another individual, Marshall Knight, in the Holman Murder. *See* Findings of Fact Section II-A, II-B (incorporated by reference herein).
5. Eyewitness Wanda Johnson observed the shooter holding this bottle, drinking out of it, setting it down on a metal rail outside the store, and urinating over it immediately before entering the store and shooting and killing Mr. Huynh.
6. This 40-ounce bottle was collected as evidence by HPD Fingerprint Examiner Debbie Benningfield during the scene investigation which took place immediately following the murder. Forensic testing on this bottle, including fingerprint and DNA testing, establishes that Hamilton was not the person who possessed or touched this bottle. Hamilton was excluded as a contributor to the fingerprints found on the bottle. Hamilton was also excluded as a contributor to any and all identifiable fingerprints found at the Holman Murder scene. Additionally, a scientifically valid interpretation of the DNA

testing results excludes Hamilton as a contributor to the DNA found on the bottle. (This Court observes that the State's DNA expert, using interpretative discretion, concluded that the DNA on the fingernail scrapings was insufficient for comparison – thus, the State's expert made no conclusions regarding the DNA test results.).

7. Additional forensic DNA testing was conducted on both the left and right fingernail scrapings of the Holman Murder victim, Mr. Huynh, with whom the shooter had a brief physical struggle before committing the murder. A valid interpretation of the DNA testing results excludes Hamilton as a contributor to both these left and right fingernail scrapings. (This Court observes that the State's DNA expert, using interpretative discretion, and concluded that the minor profile DNA from the fingernail scrapings was insufficient for comparison – thus, the State's expert made no conclusions regarding the DNA test results.).
8. Fingerprint testing and comparisons were originally conducted on the prints taken from this bottle in 2002. The prints from the bottle were compared with the known prints of Hamilton and his co-defendant, Shawon Smith. The results of the 2002 fingerprint testing and comparisons excluded Hamilton, Smith, and two other suspects that were never previously disclosed to the defense. Similarly, the exclusion of both Hamilton and Smith from being the

contributors to these fingerprints was never revealed or disclosed to Hamilton or the defense.

9. Despite the State's awareness of these facts, prosecutors Colleen Barnett and Luci Davidson represented to the trial court and to the defense that there were no fingerprint comparisons during the original pretrial hearing. 2 RR at 8-9.
10. Additional fingerprint testing, in 2017, excluded Hamilton and identified Marshall Dwayne Knight as the individual whose fingerprints were found on the bottle. *See* Findings of Fact Section II-B (incorporated herein for all purposes). This Court also notes that the Houston Police Department would have had Knight's fingerprints, through multiple arrests, in their fingerprint database at the time of the fingerprint testing and comparisons in 2002. There is no direct evidence, however, that the Houston Police Department identified Knight prior to the 2017 testing.
11. The DNA testing was conducted exclusively in 2017, and there is no indication that any DNA testing was conducted prior to 2017.
12. In addition to the forensic evidence directly linking Knight to the bottle, Knight's physical description was also similar to the descriptions provided by eyewitnesses Charles Douglas and Wanda Johnson. Both witnesses described the shooter as being a teenager. And eyewitness Douglas described the shooter as weighing 140 pounds. Knight was 20 years old at the time of the

Holman Murder, and District Clerk records indicate that Knight weighed 150 lbs. By contrast, Hamilton would have been 24 years at the time of the Holman Murder and records indicate that Hamilton weighed 170 lbs.

13. Knight also had a criminal history involving violence, and a history involving alcohol use. At the time of the Holman Murder, Knight had been previously convicted of unlawful carrying of a weapon and was on a deferred adjudication for aggravated robbery with a deadly weapon. Knight was adjudicated guilty for this aggravated robbery in February 2002, for using alcohol while on community supervision.
14. Knight was called as a witness during the writ hearing and exercised his Fifth Amendment privilege to refuse to answer the questions that were posed by Applicant. *See Findings of Fact Section II-C (incorporated herein for all purposes).*
15. In light of the above, and this Court's Findings of Fact, this Court concludes that Hamilton has proven by a preponderance of the evidence that the State presented materially inaccurate evidence at Hamilton's punishment trial. Further, the Court finds it is more likely that Marshal Knight committed the Holman murder than Hamilton.
16. This Court concludes, after analyzing the second factor, that Hamilton was prejudiced by the State's introduction of the materially inaccurate and false

and misleading evidence – the extraneous Holman capital murder in this death penalty case.

17. Because Hamilton had entered a guilty plea to the capital murder charge with which he was indicted, the Yellowstone Murder, the Holman Murder became the State's main focus during the punishment trial.
18. At the punishment phase of the trial, the jury was tasked with answering Texas's two special issues relating to future dangerousness and mitigation. *See* 2 CR at 330; see also TEX. CODE CRIM. PROC. art. 37.071 §(b)(1), (e)(1).
19. The extraneous capital murder was material to the analysis of both special issues.
20. At the outset of the punishment trial, prosecutor Colleen Barnett emphasized the importance of the Holman Murder, stating during opening statements that the State would prove the extraneous murder beyond a reasonable doubt and that, therefore, the State would meet their burden on both prongs of the punishment question. 16 RR at 22-25.
21. During the trial, the State presented eight witnesses, hundreds of pages of testimony, and numerous exhibits to prove up that Hamilton had committed this extraneous capital murder. *See* Findings of Fact I-A (incorporated by reference). These exhibits included, among other items, gruesome

photographs of Mr. Huynh laying in his own blood and pictures of his brain. Prosecutor Barnett walked the picture of Mr. Huynh's brain in front of the jury just before resting the State's case. *Id.*

22. The State also heavily and repeatedly emphasized and relied on this extraneous capital murder in each of its closing arguments – arguing that the jury should answer the special issues in a manner that resulted in a death sentence. *See Findings of Fact I-A, (incorporated by reference) (discussing the closing arguments given by prosecutors Colleen Barnett and Luci Davidson).*
23. The jury was also instructed that it could not consider evidence of an extraneous crime or bad act in answering the special issues, unless the State had first shown beyond a reasonable doubt that Hamilton had committed the extraneous crime or bad act. 2 C.R. at 325. Both prosecutors emphasized that the jury should find beyond a reasonable doubt that Hamilton committed the Holman Murder – an extraneous capital murder. The State made this argument while depriving Hamilton of the strongest evidence that he did not commit this extraneous capital murder – exculpatory forensic testing results from an item of physical evidence left behind by the true Holman shooter.
24. This Court finds that Hamilton has proven by a preponderance of the evidence that he was deprived of his right to be free from cruel and unusual punishment

under the Eighth Amendment to the U.S. Constitution through the State's use of materially inaccurate evidence at his punishment trial. This Court recommends that the Texas Court of Criminal Appeals grant relief on this claim.

25. Finally, the Court finds that the factual basis of this claim was not previously available to Mr. Hamilton. *See* Tex. C. Crim. P. art. 11.071, Sec. 5 (a)(1); *See* Findings of Fact, VI, *supra*. The fact that the fingerprint evidence had been compared to Hamilton's prior to trial, and that Hamilton was excluded from all fingerprint evidence was actively suppressed by the prosecution team. Further, the DNA evidence, which has been in the exclusive possession of the prosecution team, was not tested until after Hamilton's initial habeas application was denied, and Hamilton had no legal mechanism to have the DNA evidence tested without the blessing of the state. Finally, the identity of Marshal Knight and the presence of his fingerprints on the 40-ounce beer bottle was not known or disclosed until after Hamilton's initial application was denied.
26. The Court also finds that "[a] rule thus declaring 'prosecutor may hide, defendant must seek' is not tenable in a system constitutionally bound to accord defendants due process." *Banks v. Dretke*, 540 U.S. 668, 696 (2004).

Based upon clear Due Process jurisprudence the failure to disclose the favorable evidence in this case falls on the State of Texas.

II. HAMILTON WAS DEPRIVED OF HIS RIGHT TO DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION AND DEPRIVED OF HIS RIGHT TO DUE COURSE OF LAW UNDER THE TEXAS CONSTITUTION THROUGH THE STATE'S USE OF FALSE AND MISLEADING EVIDENCE.

27. This Court finds Hamilton was deprived of his right to due process of law under the Fourteenth Amendment to the U.S. Constitution because his death sentence was obtained upon the use of false and misleading evidence material to the punishment decision.

28. This Court also finds that Hamilton was deprived of his right to due course of law under Art. I, §§ 13 and 19 of the Texas Constitution because his death sentence was obtained upon the use of false and misleading evidence material to the punishment decision in this case.

29. The Fourteenth Amendment's due process clause prohibits the State from securing a conviction or death sentence through the use of false or highly misleading evidence. *See Napue v. Illinois*, 360 U.S. 264, 269 (1959) (holding that "a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment.") "The same result [is obtained] when the State, although not

soliciting false evidence, allows it to go uncorrected when it appears.” *Id.* at 79.

30. It is not necessary that the State actually knew that the testimony in a case was false, it is enough that the prosecution should have known as much. *See e.g., U.S. v. Agurs*, 427 U.S. 97, 103) (1976) (explaining this error occurs with the use of false evidence where the “evidence demonstrates that the prosecution’s case included perjured testimony and that the prosecution knew, or should have known, of the perjury.”). Convictions based on false evidence must be reversed if the false evidence “may have had an effect on the outcome of the trial.” *Napue*, 360 U.S. at 272 (1959).

31. Texas also recognizes that “[t]he Due Process Clause of the Fourteenth Amendment can be violated when the State uses false testimony to obtain a conviction, regardless of whether it does so knowingly or unknowingly.”” *Ex Parte Chavez*, 371 S.W.3d 200, 207–08 (Tex. Crim. App. 2012) (citing *Ex parte Robbins*, 360 S.W.3d 446, 459 (Tex.Crim.App.2011)); *see also Ex parte Ghahremani*, 332 S.W.3d 470, 478 (Tex. Crim. App. 2011).

32. The question is whether the testimony, taken as a whole, gives the jury a false impression. *Ghahremani*, 332 S.W.3d at 477.

33. “The present standard for materiality of false testimony is whether there is a ‘reasonable likelihood that the false testimony affected the applicant’s

conviction or sentence. This standard is ‘more likely to result in a finding of error’ than the standard that requires the applicant to show a ‘reasonable probability’ that the error ‘affected the outcome.’” *Ex Parte Chavez*, 371 S.W.3d at 206-07 (internal citations omitted).

34. As with Hamilton’s related Eighth Amendment claim, this Court finds that Hamilton has proven the constitutional violation.
35. This Court concludes that, with respect to the first factor, the jury in Hamilton’s case was allowed to consider materially inaccurate evidence – namely, any and all evidence presented at the original trial that Hamilton committed the extraneous Holman Murder. *See Findings of Fact section I-A.*
36. This evidence presented at the punishment trial was materially inaccurate in light of the firmly established evidence showing that the perpetrator of the Holman Murder held, drank out of, and set down a particular 40-ounce beer bottle on a rail outside of the store immediately prior to committing the murder – and that forensic testing on this bottle excludes Hamilton and inculpatates another individual, Marshall Knight, in the Holman Murder. *See Findings of Fact Section II-A, II-B (incorporated by reference herein); see also Conclusions of Law Section I.*
37. In light of the above, and this Court’s Findings of Fact, this Court concludes that Hamilton has proven by a preponderance of the evidence that the State

presented false and misleading evidence at Hamilton's punishment trial. Indeed, based upon the evidence before this Court, the Court finds that Hamilton has proven his false and misleading evidence claim by clear and convincing evidence.

38. This Court concludes, after analyzing the second factor, that Hamilton was prejudiced by the State's introduction of the false and misleading evidence – the extraneous Holman capital murder in this death penalty case. *See* Conclusions of Law Section I (detailed discussion of harm).
39. This Court concludes that the record shows that there is a reasonable likelihood that the false and misleading evidence – that Hamilton had committed the Holman Murder – affected the judgment of the jury during the punishment phase of trial. *See Chavez*, 371 S.W.3d at 207-08.
40. Because Hamilton had entered a guilty plea to the capital murder charge with which he was indicted, the Yellowstone Murder, Hamilton's trial went directly into the punishment phase. The Holman Murder became the State's focus during the punishment trial.
41. The extraneous capital murder was material to the analysis of both special issues – to both the future dangerousness and mitigation prongs.
42. The State relied upon the false evidence that Hamilton committed a second capital murder throughout trial, starting with opening statements and ended in

closing argument. The State used the testimony to prove that Hamilton was a future danger to and to refute the defense's mitigation case. The State called eight witnesses to prove the Holman murder, but concealed the evidence needed for Hamilton to prove he was not involved in the murder. *See also* Conclusions of Law Section I (discussing harm in more detail).

43. This Court finds that Hamilton has proven by a preponderance of the evidence that he was deprived of his right to due process of law under the Fourteenth Amendment to the U.S. Constitution, and under the due course of law provisions of the Texas Constitution, based on the State's use of false and misleading evidence at his punishment trial. This Court recommends that the Texas Court of Criminal Appeals grant relief on this claim.
44. For the reasons discussed in Conclusion of Law no. 25, and Findings of Fact section VI, the factual basis of this claim was not previously available to Mr. Hamilton. *See* Tex. C. Crim. P. art. 11.071, Sec. 5 (a)(1); *See also* Findings of Fact, VI, *supra*. Further, to the extent that this claim relies upon the unknowing use of false testimony, the legal basis of this claim was not previously available to Mr. Hamilton. *Ex Parte De La Cruz*, 466 S.W.3d 855 (Tex. Crim. App. 2015) (establishing the *Ex parte Chabot* graded new law for Texas' applicants in 2009).

III. HAMILTON WAS DEPRIVED OF HIS RIGHT TO DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION, AND UNDER THE DUE COURSE OF LAW PROVISIONS OF THE TEXAS CONSTITUTION, BECAUSE THE STATE FAILED TO DISCLOSE EXCULPATORY EVIDENCE THAT WAS MATERIAL TO HAMILTON'S DEFENSE.

45. Hamilton was deprived of his right to due process of law under the Fourteenth Amendment to the U.S. Constitution because the State failed to disclose exculpatory information that was material to Hamilton's defense. Hamilton was also deprived of his right to due course of law under Art. I, §§ 13 and 19 of the Texas Constitution because of the State's failure to disclose exculpatory information that was material to Hamilton's defense. Accordingly, this Court recommends that the Texas Court of Criminal Appeals grant relief on these claims.

46. In *Brady v. Maryland*, the Supreme Court held that suppression by the State of "evidence favorable to the accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution." *Brady v. Maryland*, 373 U.S. 83, 87 (1963). *Brady* applies even if there has been no request by the defendant, *United States v. Agurs*, 427 U.S. 97 (1976), and that this duty includes both impeachment and exculpatory evidence. *United States v. Bagley*, 473 U.S. 667 (1985).

47. The State is deemed to possess evidence that is in the possession of any part of the prosecutorial team. *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). The Court finds, that in addition to the trial prosecutors, the prosecutor's investigator, and all police officers investigating this case (including Debbie Benningfield) were part of the prosecution team. *Ex Parte Miles*, 359 S.W.3d 647, 665 (Tex. Crim. App. 2012).
48. Evidence withheld by the State is material, and a new trial is required, if there is a reasonable probability that, had the evidence been disclosed to the defense, the outcome of the proceeding would have been different. *See e.g. Giglio v. U.S.*, 405 U.S. 150, 154 ("A new trial is required if 'the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury.")
49. With respect to the first and second prongs, this Court finds that the State failed to disclose favorable evidence to Hamilton – evidence that was both exculpatory and had impeachment value.
50. The prosecution team failed to disclose to Hamilton that fingerprint comparisons had been made from the fingerprints taken from the Holman Murder scene, and particularly from the 40-ounce bottle that witness Wanda Johnson saw the shooter hold, drink from, and set down on the metal rail

immediately before committing the murder. *See* Findings of Fact Sections III-IV, *supra*, fully incorporated by reference herein.

51. Wanda Johnson told police when she was first interviewed that the shooter held the bottle. Either Detective Connie Park or Sgt. Larry Hoffmaster documented Johnson's statement about the shooter holding the bottle in the Holman Murder offense report.
52. The prosecution team knew about the existence of the fingerprint comparisons. Members of the prosecution team specifically knew that Hamilton and Shawon Smith were excluded from leaving all identifiable prints at the murder scene, but the prosecution team actively concealed this information from the defense team.
53. HPD had a policy of not documenting fingerprint comparisons that resulted in an exclusion, and specifically did not document these exclusions in the offense report or any supplement to the offense report in this case. Rather, Benningfield would relay the result of the exclusion to the person who had requested that she conduct a comparison – either Detective Connie Park or Sgt. Larry Hoffmaster, the HPD lead investigators in this case.
54. The State's prosecutors were made aware of the results of the fingerprint exclusions before trial. Prosecutor Colleen Barnett assigned DA's Office investigator George "Buddy" Barringer the task of determining whether there

were fingerprint comparisons and results in the Holman Murder. Barringer documented in an internal DA's office memorandum that in the Holman Murder case "prints found were compared to defendants and eliminated." This information was never given to Hamilton or his defense, and was only revealed in the days before the habeas hearing in this Court.

55. Compounding this error, the State's prosecutors represented to both the trial court and the defense team during the pre-trial conference that there were no fingerprint comparisons. 2 RR at 8-9. Further, the State was ordered to turn over fingerprint comparisons, but specifically failed to do so. 2 RR at 14.
56. Hamilton's exclusion from the fingerprints on the bottle has significant exculpatory and impeachment value. Exculpatory evidence is that which may justify, excuse, or clear the defendant from fault. *Ex parte Miles*, 359 S.W.3d 647, 665 (Tex.Crim.App. 2012). The fingerprints constituted direct forensic evidence about the identity of the shooter in the Holman Murder, as it was an item of physical evidence the State's own witness, Wanda Johnson, observed the shooter leave behind at the murder scene. And she told police about this fact on the day she was interviewed. The testing of these prints, and Hamilton's resulting exclusion, would have been the strongest evidence available to clear Hamilton from fault in that extraneous capital murder – and

he was wholly deprived of using this evidence, despite specifically asking that fingerprint comparisons be produced.

57. Additionally, the testing results showing Hamilton's exclusion from this physical evidence would serve to dispute, disparage, deny, and contradict the entirety of the State's evidence presented suggesting Hamilton's involvement in the Holman murder – a vitally important task in Hamilton's defense of the extraneous capital murder, and what was described as the most important task in the defensive effort to keep Hamilton from receiving a death sentence.
58. Finally, although there is no direct evidence that the Houston Police Department identified Knight prior to the 2017 testing, Knight's fingerprints were in the Houston Police Department's database on account of his multiple arrests. The Houston Police Department arrested Knight shortly after they arrested Hamilton in connection with the Yellowstone Murder. Knight was arrested and booked by the Houston Police Department on February 11, 2002, many months before Hamilton's November 2002 trial ultimately took place. It could very well be the case that had this favorable evidence been turned over, and not actively suppressed, that either the State or Hamilton's defense team would have been able to figure out what was established in 2017 – Marshall Knight's identity and the fact that it was his fingerprints that were on this bottle.

59. For these reasons, and those described below, the Court finds that the withheld and favorable evidence was material – and that there is a reasonable probability that, had the evidence been disclosed, the outcome of the trial would have been different.
60. This Court applies the principles set forth in *Kyles v. Whitley*, 514 U.S. 419, 437 (1995), in conducting its materiality analysis and concluding that there is a reasonable probability that, had the evidence been disclosed, the outcome of the trial would have been different.
61. The confidence in Hamilton’s punishment verdict is undermined by the State’s failure to disclose the favorable evidence in this case. Restated, the undisclosed favorable evidence related to the extraneous capital murder could reasonably be taken to put the whole case in such a different light as to undermine confidence in the punishment verdict.
62. The Holman Murder – an extraneous capital murder – was, in connection with the Yellowstone Murder – the strongest future dangerousness evidence presented in this death penalty punishment case. Additionally, it was the strongest evidence that there was not a sufficient mitigating circumstances or circumstances warranting that a sentence of life imprisonment rather than death be imposed.

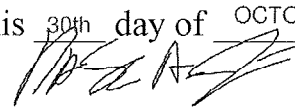
63. This Court does recognize that other evidence was presented in the State's future dangerousness and lack of sufficient mitigation case. *See* Findings of Fact I-B, *supra* (incorporated by reference). However, none of the other presented bad acts or extraneous crimes rise nearly to the level of a second capital murder -- none were as severe, strong, or determinative in evaluating the future dangerousness and mitigation special issues. And the State recognized as much in its closing arguments, heavily emphasizing the importance of this extraneous capital murder in the jury's analysis of the special issues.
64. The verdict given in the punishment phase of this case is not worthy of confidence where Hamilton was deprived of the most vital and important evidence illustrating that he did not commit the extraneous Holman Murder -- forensic testing excluding him from an important piece of physical evidence and inculcating another in that crime.
65. This Court finds that Hamilton has proven by a preponderance of the evidence that the State violated his right to due process of law under the Fourteenth Amendment to the U.S. Constitution and under the due course of law provisions of due course of law under Art. I, §§ 13 and 19 of the Texas Constitution. Accordingly, this Court recommends that the Texas Court of Criminal Appeals grant relief on these claims.

66. Finally, the Court finds that the factual basis of this claim was not previously available to Mr. Hamilton. *See* Tex. C. Crim. P. art. 11.071, Sec. 5 (a)(1); *See* Findings of Fact, VI, *supra*. The fact that the fingerprint evidence had been compared to Hamilton's prior to trial, and that Hamilton was excluded from all fingerprint evidence discovered at the Holman murder scene was actively suppressed by the prosecution team.

CONCLUSION

Ronald Hamilton's death sentence was obtained in violation of the United States and Texas Constitutions. The Applicant has demonstrated that his death sentence was unlawfully obtained, and therefore it is recommended to the Texas Court of Criminal Appeals that relief be granted in the form of a new punishment proceeding.

By the following signature the Court adopts these findings of fact and conclusions of law in this cause number and recommends that relief be granted.

Signed this 30th day of OCTOBER, 2019
Signed: 
10/30/2019

Honorable DaSean Jones

180th District Court, Harris County, Texas

Cause No. 0901049-B

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
v.	§	180th JUDICIAL DISTRICT
	§	
RONALD HAMILTON, JR.	§	HARRIS COUNTY, TEXAS

ORDER

THE CLERK IS HEREBY ORDERED to prepare a transcript of all papers in cause number 901049-B and transmit same to the Court of Criminal Appeals as provided by Article 11.071 of the Texas Code of Criminal Procedure. The transcript shall include certified copies of the following documents:

1. all of the applicant's pleadings filed in cause number 901049-B including any exhibits and affidavits;
2. all of the Respondents pleadings filed in cause number 901049-B including exhibits and affidavits;
3. all orders of the Court (including the order regarding Larry Hoffmaster's deposition, and the deposition itself);
4. all proposed findings filed by either party;
5. A complete transcript of all Reporters Records relating to the proceedings which took place before this Court (including the habeas hearing and all recorded habeas proceedings);
6. the indictment, judgment, sentence, docket sheet;

7. appellate record in cause number 901049 unless they have been previously forwarded to the Court of Criminal Appeals, and;
8. Any other matters used by the convicting court in resolving issues of fact.

THE CLERK IS FURTHER ORDERED to send a copy of these findings to both parties, either by electronic means or by mail.

Signed this 30TH day of OCTOBER, 2019

Honorable DaSean Jones

180th District Court, Harris County, Texas

Cause No. 0901049

THE STATE OF TEXAS

§
§
§
§
§

IN THE DISTRICT COURT

v.

180th JUDICIAL DISTRICT

RONALD HAMILTON, JR.

HARRIS COUNTY, TEXAS

**PROPOSED ORDER FOR TESTING AND
COMPARISON OF FORENSIC EVIDENCE**

The applicant, Ronald Hamilton, Jr., has been granted a stay and abeyance of his federal writ of habeas corpus proceedings so that he can pursue a subsequent writ of habeas corpus in this court. This Court grants the applicant's request for the testing and comparison of certain forensic evidence, and orders the following:

1. The Court **ORDERS** the Houston Forensic Science Center to compare the fingerprints lifted from the 40 ounce Schlitz malt liquor bottle recovered from a rail outside the convenience store at 3235 Holman (the scene of the homicide investigation documented in Houston Police Department incident number 169781801) with the known fingerprints of the applicant. These latent prints are currently in the custody of the Houston Forensic Science Center under latent lab number 7574-01. The Houston Forensic Science Center is **ORDERED** to produce a written report of the results of this comparison and provide the same to counsel for the State and to the defense.

The applicant's fingerprints are available through Harris County jail records and the Texas Department of Criminal Justice prison records. To assist the Houston Forensic Science Center in accessing the applicant's fingerprints from such records, the applicant's State Identification Number is TX 05333961 and the applicant's FBI number is 569202WA9. In the event such records are unavailable or insufficient for use: (a) this court **ORDERS** the

Appendix C- Trial Court Order for Forensic Testing

Houston Forensic Science Center to inform both counsel for the State and the defense, and (b) this Court **ORDERS** the applicant to submit to his fingerprints being taken at a time agreeable to both counsel for the State and the defense.

Additionally, this court **ORDERS** that the fingerprints cards and the sample of the applicant's fingerprints are to be made available for inspection and photographing by Defense counsel and/or their designated fingerprint expert at a place and time agreeable to both the counsel for the State and the defense.

2. The Court **ORDERS** the Houston Forensic Science Center to conduct DNA forensic testing on the fingernail scrapings taken from decedent Son Vinh Huynh, in conjunction with Houston Police Department incident report number 169781801, to determine whether a DNA profile suitable for comparison can be developed from these scrapings. If a DNA profile suitable for comparison is obtained, the Houston Forensic Science Center is **ORDERED** to compare this profile with the decedent's DNA profile and the applicant's known DNA profile.

The decedent's fingernail scrapings are currently in the custody of the Houston Police Department and are located in the property room in conjunction with Houston Police Department incident number 169781801 as Item Number I0D5M0D6. The Court **ORDERS** these fingernail scrapings be transported to the Houston Forensic Science Center, located at 1301 Fannin Street, Houston, Texas 77002. The Houston Forensic Science Center is **ORDERED** to produce a written report of the results of this comparison and provide the same to counsel for the State and the defense.

The applicant's DNA profile was entered into the Combined DNA Index System ("CODIS") in March 2005. In the event that the applicant's known DNA profile not be

available or not suitable for comparison: (a) this court **ORDERS** the Houston Forensic Science Center to inform both counsel for the State and the defense, and (b) it is this Court's understanding that the applicant will **voluntarily consent** to submit to the taking of a reference DNA sample at a time agreeable to both counsel for the State and the defense.

3. The Court **ORDERS** the Houston Forensic Science Center to conduct forensic testing on the article described as the "40 oz. Schlitz Malt Liquor Beer Bottle," in Houston Police Department incident report number 169781801, to determine whether a DNA profile suitable for comparison can be developed from this bottle. If a DNA profile suitable for comparison is obtained, the Houston Forensic Science Center is **ORDERED** to compare this profile with the applicant's known DNA profile.

This beer bottle is currently in the custody of the Houston Police Department and is located in the property room in conjunction with Houston Police Department incident number 169781801 as Item Number H9JRAH9JS. The Court **ORDERS** this beer bottle be transported to the Houston Forensic Science Center, located at 1301 Fannin Street, Houston, Texas 77002. The Houston Forensic Science Center is **ORDERED** to produce a written report of the results of this comparison and provide the same to counsel for the State and the defense.

The Houston Forensic Science Center is **ORDERED** to complete the above-listed forensic testing within ninety (90) days of this order being signed. If in the course of completing this forensic testing, the Houston Forensic Science Center is unable to meet compliance within ninety (90) days, the Houston Forensic Science Center is **ORDERED** to notify counsel for the State and the defense.

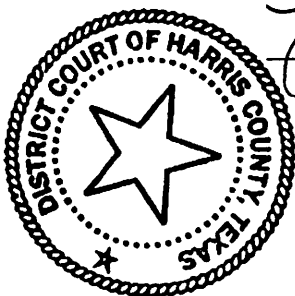
The Clerk is **ORDERED** to send a copy of this order to this order to habeas counsel for the applicant, Bryan Garris, Law Offices of Bryan Garris, 300 Main Street, 3rd Floor, Houston, Texas 77002, bryan@txdefense.net, and Jonathan Landers, 917 Franklin, Suite 300, Houston, Texas 77002, jlanders.law@gmail.com; and to counsel for the State, Farnaz Faiaz Hutchins, Assistant District Attorney, 1201 Franklin, Suite 600, Houston, Texas 77002, Hutchins_Farnaz@dao.hctx.net.

The Clerk is also **ORDERED** to serve copies of this order to:

Houston Forensic Science Center
1301 Fannin Street, Suite 170
Houston, Texas 77002
Fax: 832.598.7178
triage@houstonforensicscience.org

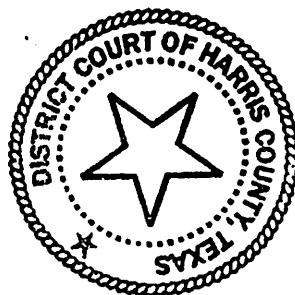
The Clerk of the Court is **ORDERED NOT** to transmit a copy of this order to the Court of Criminal Appeals until further ordered by this Court.

SIGNED on this the 17th day of July, 2017.



A handwritten signature in cursive script, appearing to read "Jenny", is written over a horizontal line.

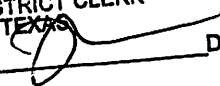
Presiding Judge, 180th District Court
Harris County, Texas



**STATE OF TEXAS
COUNTY OF HARRIS**

I, Chris Daniel, District Clerk of Harris County, Texas, certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date. Witness my official hand and seal of office this 7-17-17

**CHRIS DANIEL, DISTRICT CLERK
HARRIS COUNTY, TEXAS**

 Deputy

Appendix D – Houston Forensic Science Center Latent Print Report



Houston Forensic Science Center

Forensic Analysis Division
Latent Print Section

1301 Fannin, Suite 170, Houston, Texas 77002
(713) 308-2600



Incident Number: 169781801
Forensic Case Number: 169781801

Report Date: August 15, 2017

Laboratory Report #1

Items of Evidence:

- 3 1 Latent Print Envelope
 - 3.1 Latent lift card labeled from "cash register behind counter, glass case font, side"
 - 3.2 Latent lift card labeled from "inside window, gum machines"
 - 3.3 Latent lift card labeled from "inside front door"
 - 3.4 Latent lift card labeled from "inside front door just above handle, 2nd lift (see A inside front door above handle), inside front door above handle"
 - 3.5 Latent lift card labeled from "inside front door above handle (midway center)"
 - 3.6 Latent lift card labeled from "top of Lotto stand where you fill out your pick 3 or 6 #'s"

- 4 1 Latent Print Envelope
 - 4.1 Latent lift card labeled from "side of cash register"
 - 4.2 Latent lift card labeled from "dark plated window (customer side) to Royal Cash register"
 - 4.3 Latent lift card labeled from "Schlitz malt liquor can on top of outside ice cooler"
 - 4.4 Latent lift card labeled from "40 oz Schlitz malt liquor bottle (recovered on metal rail)(outside) beside store"
 - 4.5 Latent lift card labeled from "neck area of 40 oz Schlitz malt liquor bottle (recovered on metal rail) outside beside store"
 - 4.6 Latent photo labeled from "beer bottle (40 oz Schlitz malt liquor bottle)"
 - 4.7 Latent photo duplicate of item 4.6
 - 4.8 Latent photo duplicate of item 4.6
 - 4.9 Latent photo duplicate of item 4.6
 - 4.10 Latent photo duplicate of item 4.6
 - 4.11 Latent photo duplicate of item 4.6
 - 4.12 Latent photo duplicate of item 4.6
 - 4.13 Latent photo duplicate of item 4.6
 - 4.14 Latent photo duplicate of item 4.6
 - 4.15 Latent photo duplicate of item 4.16
 - 4.16 Latent photo labeled from "40 oz Schlitz malt liquor bottle recovered front metal rail (outside) beside store"

- 6 Record fingerprints bearing the name Ronald James Hamilton, FBI# 569202WA9 obtained from the AFIS database

- 7 Record fingerprints bearing the name Charles Alonzo Douglas, FBI# 305136JA4



Incident Number: 169781801

Houston Forensic Science Center

Forensic Case Number: 169781801 (1)

Report Date: August 15, 2017

obtained from the AFIS database

8 Record fingerprints bearing the name Marshall Dwayne Knight, FB# 469910HB7 obtained from the AFIS database

Results and Interpretations:

Items 4.3 through 4.16 were visually analyzed for the presence of latent prints.

Items 3.1 through 3.6, 4.1, and 4.2 were not analyzed per the request entered by Manager Tim Schmah.

Three latent fingerprints of value for comparison purposes were found on Items 4.3, 4.4, and 4.6 through 4.14. The latent prints were labeled L-1 through L-3.

Any latent impressions not listed were analyzed and determined to be of no value for comparison purposes.

The latent prints, labeled L-1 through L-3 were compared to the record fingerprints bearing the name Ronald James Hamilton contained in Item 6.

As a result of searches through the Federal Bureau of Investigation's and the Texas Department of Public Safety's Automated Fingerprint Identification Systems (AFIS), the latent prints, labeled L-1 through L-3 were compared to the record fingerprints bearing the name Charles Alonzo Douglas contained in item 7 and Marshall Dwayne Knight contained in item 8.

The attached table lists the results of the comparisons conducted in this case.

Results of Comparison(s)		
L#	Item #/Location of Lift(s)	Results: (Conclusion/Name/Anatomical Source/Remarks)
		*INCL- Inconclusive *UTC- Unable to Compare *FP - Fingerprint *NC-Not Compared *ID - Identification/Identified *EXCL - Excluded *PP - Palm Print
L-1	4.3 / "Schitz malt liquor can on top of outside ice cooler"	ID / Charles Alonzo Douglas (item 7) / right index finger
L-2	4.4 / "40 oz Shiltz malt liquor bottle (recovered on metal rail)(outside) beside store"	ID / Marshall Dwayne Knight (item 8) / right index finger
L-3	4.7 / "beer bottle (40 oz Shiltz malt liquor bottle)"	ID / Marshall Dwayne Knight (item 8) / right index finger

Please submit fully rolled inked finger and palm prints of the above listed individual at least thirty (30) days in advance if courtroom testimony is required for the identifications in this report. A comparison will be conducted between the database prints and the submitted prints to determine if both originated from the same source. A supplemental report will be generated with the results.

Incident Number: 169781801

Houston Forensic Science Center

Forensic Case Number: 169781801(1)

Report Date: August 15, 2017

Disposition of Evidence:

Items 3.1 through 3.6 and 4.1 through 4.16 will be returned to the submitting agency.

Items 6 through 8 will be retained digitally within the Houston Forensic Science Center, Latent Print Section.

Rebecca Green

Rebecca Green, CLPE
Senior Latent Print Examiner
Rgreen@houstonforensicscience.org

The prosecutor and defense counsel may obtain additional documents related to this case by submitting a request to Triage@HoustonForensicScience.org . Requests should state the requestor's connection to the case and include full contact information.

Appendix E – Hearing Testimony of Eye Witness
Wanda Johnson

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REPORTER'S RECORD
VOLUME 5 OF 8 VOLUMES
TRIAL COURT CAUSE NO. 0901049-B

RONALD HAMILTON) IN THE DISTRICT COURT
Applicant)
) HARRIS COUNTY, TEXAS
)
) 180TH JUDICIAL DISTRICT

WRIT HEARING

On the 3rd day of June, 2019, the following proceedings came on to be held in the above-entitled and numbered cause before the Honorable DaSean Jones, Judge Presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenography machine.

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SBOT NO. 24070101
917 Franklin St., Ste 300
Houston, Texas 77002
Counsel for the Defendant.

Mr. Bryan Garris
SBOT NO. 24079945
300 Main St., Ste 300
Houston, Texas 77002
Counsel for the Defendant.

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Writ Hearing

June 3, 2019

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PROCEEDINGS

1
2 THE COURT: Back on the record for
3 cause number -- back on the record for the Hamilton
4 writ. Go ahead and put it on the record for me.

10:37 5 MR. LANDERS: Your Honor, so on Friday
6 we subpoenaed a witness named Wanda Johnson who
7 testified in the initial trial in this case. And I
8 spoke with her Sunday. She called my office and I
9 actually got by and spoke to her. And she was
10:37 10 pretty concerned about testifying in front of Mr.
11 Hamilton to the point where she was telling me she
12 wouldn't testify. And so I suggested to her, well,
13 we could have Mr. Hamilton leave the courtroom
14 while you testify. And I also asked that she not
10:37 15 come in the courtroom until Mr. Hamilton had left
16 the courtroom. So I have gone over this with Mr.
17 Hamilton and he's consented. He's here right now.
18 He's consented to that; is that correct, Mr.
19 Hamilton?

10:38 20 THE DEFENDANT: Yes, sir.

21 MR. LANDERS: And so we would just ask
22 that he be removed from the courtroom until
23 Ms. Johnson's testimony is over.

24 THE COURT: That's fine.

10:38 25 MR. LANDERS: Mr. Garris will step out

1 and find her.

2 Your Honor, we would call Wanda
3 Johnson.

10:41

4 THE DEPUTY: This witness has not been
5 sworn in, Judge.

6 THE COURT: Come on up, ma'am. Please
7 raise your right hand. Do you swear the testimony
8 you give will be the truth, the whole truth, and
9 nothing but the truth so help you God?

10:41

10 THE WITNESS: Yes.

11 THE COURT: Please take a seat and
12 adjust the mic. You may proceed when ready.

13 **DIRECT EXAMINATION**

14 BY MR. LANDERS:

10:41

15 Q. Ms. Johnson, would you please introduce
16 yourself for the record?

17 A. Hello, my name is Wanda Johnson.

18 Q. And in 2001 did you also -- or did you have
19 the last name Wanda Abata?

10:41

20 A. Yes.

21 Q. So you're the same person, right?

22 A. Yes.

10:41

23 Q. And I think you were first contacted by I
24 want to say the defense team -- that's Bryan or
25 investigator Chris -- on Friday.

1 A. Yes.

2 Q. And I appreciate you being here today. Do
3 you recall the events of December 9, 2001, a murder
4 that you witnessed?

10:42

5 A. Yes.

6 Q. I just have a few questions for you about
7 that murder.

8 A. Okay.

9 Q. What time of day did this all take place?

10:42

10 A. It was around like 7:00.

11 Q. In the evening?

12 A. Yes.

13 Q. And do you still have a recollection of what
14 happened?

10:42

15 A. Yes.

16 Q. Okay. Please tell me -- well, first off,
17 let me show you what's marked as Defendant's
18 Exhibit No. 31. There's also a State's Exhibit 52
19 from the original trial. Do you recognize this
20 picture?

10:42

21 A. Yes.

22 Q. Okay. What is that a picture of?

23 A. A convenience store.

24 Q. Okay. Was that the scene of the crime we're
25 talking about?

10:42

1 A. Yes.

2 Q. Is that a true and correct representation?

3 A. Yes.

4 Q. Someone's placed a little red arrow on
5 there, right?

10:43

6 A. Yes.

7 Q. Like a sticky note. But other than that, is
8 that a true and correct picture?

9 A. Yes.

10:43

10 MR. LANDERS: Okay. Your Honor, I'd
11 ask that, although it's been judicially noticed,
12 introduce Defendant's Exhibit 31 into the record.

13 MS. REAGIN: Is this just a copy of
14 what was introduced at the trial?

10:43

15 MS. HUTCHINS: We have no objection.

16 THE COURT: It's admitted.

17 MR. LANDERS: And I'll leave it up
18 there in case you need to refer to it at all.

19 BY MR. LANDERS:

10:43

20 Q. So, ma'am, how did you get to that store on
21 the night in question?

22 A. I walked to it.

23 Q. Okay. And what do you do when you first
24 arrived?

10:43

25 A. I went in the store, bought me a beer and a pack

1 of cigarettes. I had a friend with me.

2 Q. Who was the friend that was with you?

3 A. Charlie.

4 Q. And do you know what his last name is by any
5 chance?

10:43

6 A. I don't remember.

7 Q. Okay. Did you and Charlie walk in the store
8 together?

9 A. Yes.

10:43

10 Q. And after you purchased your beer and your
11 cigarettes, did you walk out of the store?

12 A. Yes.

13 Q. What happened next?

10:44

14 A. I told Charlie that I was going to be standing
15 on the outside waiting for him. And while I was
16 standing on the outside of the store, I was like right
17 here where the arrow at.

18 Q. Yes, ma'am.

10:44

19 A. I was standing right there. While I was
20 standing there, I seen a car pull up.

21 Q. Okay. Do you recall what the car looked
22 like?

23 A. No, because it was dark.

10:44

24 Q. Okay. I understand. Okay. What happened
25 when the car pulled up?

1 A. A guy got out the car drinking a 40-ounce. He
2 turned the 40-ounce up. I guess -- I don't know if he
3 finished it all or not. But when he finished it, he
4 set it on this little iron bench and then he urinated
5 over it and then he walked in the store.

10:44

6 Q. Okay. Let me -- you know how it goes. I
7 have to keep asking questions. Is the iron bench
8 pictured in that exhibit in front of you?

9 A. Yes.

10:44

10 Q. And that's what I labeled Defense 31. So
11 are you sure that the gentleman who got out of the
12 car was drinking from that 40-ounce?

13 A. Yes.

10:45

14 Q. And are you sure that he set it down
15 actually on the railing?

16 A. Yes.

17 Q. Are you positive it was a 40-ounce bottle?

18 A. Yes.

10:45

19 Q. Did the gentleman get out of the driver or
20 passenger side of the car?

21 A. The passenger.

22 Q. Okay. And then after the gentleman urinated
23 over the bottle, what happened next?

24 A. He went in the store.

10:45

25 Q. Okay. And what happened in the store?

1 A. When he was in the store, it was a line.

2 Q. Could you see inside the store?

3 A. Yes.

4 Q. Okay. Was that through the door?

10:45

5 A. Yes.

6 Q. And what happened in the store?

7 A. There was a line like. He went in the store.

8 And when you walk in the store, it got like a counter
9 and then it had a little door.

10:45

10 Q. Yes.

11 A. And then it had some more counter.

12 Q. Okay.

13 A. On the other side. When he went in the store,
14 he was like leaning over, just looking, looking. And

10:46

15 then I don't know how long from the time that I was
16 looking at him, he took and killed Tulson. But he had
17 a gun and he shot him right here.

18 Q. So long story short, the gentleman who set
19 the bottle down went into the store and eventually

10:46

20 shot --

21 A. Uh-huh.

22 Q. Who is Tulson?

23 A. Tulson is the man who owned the store.

24 Q. Was it also known as Tulson Market or

10:46

25 something like that in the neighborhood?

1 A. Yeah.

2 Q. And did you speak to the police about this
3 matter?

4 A. Yeah.

10:46 5 Q. How long after the shooting did you first
6 speak with them?

7 A. It was a long time.

8 Q. It was a long time ago, right?

9 A. But, no, it was a long time before I talked to
10 the police. I didn't call the police. The people in
11 the neighborhood called homicide.

12 Q. Okay.

13 A. Because when I saw him shot Tulson, I took off
14 running.

10:46 15 Q. I imagine that was a pretty scary situation?

16 A. Yeah.

17 Q. And so you took off running?

18 A. Yeah.

19 Q. Okay. When you spoke to the police, did you
10:47 20 tell him about the gentleman setting down the
21 bottle?

22 A. Uh-huh.

23 (Court reporter coughing.)

24 THE COURT: Let's take a five minute
10:55 25 break. All right.

1 (Off the record.)

2 (Back on the record.)

3 BY MR. LANDERS:

10:55

4 Q. All right, Ms. Johnson. Just to clarify,
5 did you ever see the shooter take a drink out of
6 the bottle?

7 A. Yes.

8 Q. Okay. And that was prior to setting the
9 bottle down?

10:55

10 A. Yes.

11 Q. Where was this bottle set down?

12 A. It was set down on the corner of this bench.

13 Q. Okay. And that's the kind of railing or
14 bench that goes along the side of this convenience
15 store?

10:55

16 A. Yes. It's an iron bench.

17 Q. I'm sorry, ma'am.

18 A. I say it's an iron bench.

10:55

19 Q. Okay. Did you tell the police about the
20 bottle being set down on the bench?

21 A. Yes.

22 Q. Did you ever see the shooter pick the bottle
23 back up?

24 A. No.

10:55

25 Q. Did you ever tell the police that the

1 shooter had not touched the bottle?

2 A. No.

3 Q. Why is that?

4 A. They didn't ask me.

10:56 5 Q. Okay. But also you know he didn't touch
6 that bottle, right?

7 A. Yes.

8 Q. And then just for the record, how did you
9 get down to court today?

10:56 10 A. Pardon me?

11 Q. How did you get to court today? We helped
12 you get down here, right?

13 A. Yes.

14 Q. Our investigator drove you?

10:56 15 A. Yes.

16 MR. LANDERS: Thank you, ma'am. That's
17 all I have.

18 THE COURT: You may proceed.

19 MS REAGIN: Your Honor, at this time we
10:56 20 request any recordings or statements that the
21 Defense took from Ms. Johnson.

22 MR. LANDERS: I'm sorry.

23 MS. REAGIN: Any recordings or
24 statements?

10:56 25 MR. LANDERS: Yes, we have one. And

1 I'll e-mail it right now.

2 MS. REAGIN: May we have just a moment
3 to review that?

10:56

4 THE COURT: Sure. You guys want to
5 take about a 15 minute break.

6 MS. REAGIN: That's fine.

7 THE COURT: Take a 15 minute break.

8 (Off the record.)

9 **CROSS EXAMINATION**

11:25

10 BY MS. REAGIN:

11 Q. Good morning, Ms. Johnson.

12 A. Good morning.

13 Q. Now I know you're not real happy about being
14 here today, right?

11:25

15 A. No, ma'am.

16 Q. The things that we've been talking about,
17 they happened a long time ago, right, 18 years ago?
18 Do you remember?

19 A. Yes, ma'am.

11:25

20 Q. I don't know if you're like me, but I think
21 18 years ago, my memory was a little bit better
22 than it is today. How about you?

23 A. Yes.

11:25

24 Q. Do you feel like that your memory about what
25 you saw that night was better back then or better

1 today?

2 A. Today.

3 Q. You remember the events better today?

4 A. Yes.

11:26 5 Q. Even though the 18 years have gone by?

6 A. Yes.

7 Q. Well, I think you told us earlier that it
8 took you a couple of weeks to come out of your
9 house, that you didn't talk with the police for a
10 long time after this event happened; is that
11 correct?

11:26

12 A. Yes.

13 MS. REAGIN: May I approach the
14 witness, Your Honor?

11:26

15 THE COURT: Yes, you may.

16 BY MS. REAGIN:

17 Q. Ms. Johnson, do you remember giving a
18 written statement? Not that maybe you wrote
19 yourself, but talking to the police and them taking
20 down a statement from you.

11:26

21 A. Yes.

22 Q. I am going to show you this. Do you
23 recognize this as the statement that you gave and
24 signed?

11:26

25 A. Yeah.

1 Q. You do recognize this as the statement you
2 gave?

3 A. Yes.

11:27

4 Q. Okay. And if you could, please tell us what
5 is the date on this statement?

6 A. The twelve, the tenth, of two thousand one.

7 Q. So that would be the day after the shooting;
8 is that correct?

9 A. Yes.

11:27

10 Q. So have you had an opportunity to review
11 this statement just now?

12 A. Yes.

13 Q. Has anyone shown you this statement before
14 you came here today?

11:28

15 A. No.

16 Q. Okay. In the statement did you see anything
17 -- did you say anything about the shooter touching
18 a beer bottle or setting down a beer bottle?

19 A. Yes.

11:28

20 Q. Could you show me where?

21 A. I didn't -- I said this after -- I said after he
22 set the bottle down. Got it like -- (mumbling).

23 Q. Why don't you just read it to yourself and
24 then tell me when you find it, show me the part
25 where you talked about him sitting down the beer

11:29

1 bottle.

2 A. Right here. I saw the guy urinate. The beer
3 bottle is not in there.

11:29

4 Q. So in this statement there's nothing about
5 the man setting down a beer bottle, correct?

6 A. Yes, it's not.

7 Q. Yes, it's correct, there's nothing in here
8 about that?

9 A. Yes.

11:29

10 Q. Okay. And so according to this, when you
11 walked up to the store, you saw a man urinating
12 against the building, correct?

13 A. Nope.

14 Q. Well --

11:29

15 A. When I went in the store and then I came out, I
16 was standing on the outside. A car pulled up to the
17 stop sign. He got out on the passenger side, drinking
18 a beer, put the beer on the bench, then he urinated
19 over it, then he went in the store.

11:30

20 Q. Okay. But my question was, you didn't tell
21 that to the police at the time you gave your
22 statement the day after the shooting?

23 A. Yes, I did.

11:30

24 Q. But they didn't include it in your
25 statement, correct?

1 A. Correct.

2 Q. And on this statement, this is your
3 signature, correct?

4 A. Yes.

11:30 5 Q. And you basically told the person who took
6 the statement that everything you said was true and
7 correct?

8 A. Yes.

9 Q. Right?

11:30 10 And in this statement you also say that you
11 saw the man urinating as you were approaching the
12 store, correct?

13 A. No.

14 Q. You don't say that here?

11:30 15 A. No, that's not correct.

16 Q. But is that what's typewritten there?

17 A. Yes.

18 Q. So did you read this statement before you
19 signed it?

11:30 20 A. No.

21 Q. You just swore to it without knowing what
22 was actually in the document?

23 A. Yes.

24 Q. Okay. You remember testifying at the trial?

11:31 25 A. Yes.

1 Q. And you remember when you testified at trial
2 that you, just like today, the judge or somebody
3 swore you in to tell the truth?

4 A. Yes.

11:31 5 Q. The whole truth?

6 A. Yes.

7 Q. And nothing but the truth?

8 A. Yes.

9 Q. And did you do that?

11:31 10 A. Yes.

11 Q. Do you remember when Sergeant Hoffmaster
12 came out to see you with the photo spread?

13 A. Nope.

14 Q. Do you remember telling Officer Hoffmaster
11:31 15 at any time that the man that you saw did not touch
16 the beer bottle?

17 A. No.

18 Q. Do you remember talking to the defense
19 investigator, Mr. Henderson, yesterday afternoon?

11:32 20 A. Yes.

21 Q. He came out to your house?

22 A. Yes.

23 Q. And when you were talking to him, you were
24 having a little trouble remembering what happened
11:32 25 as well, correct?

1 A. I'mma tell you what I remember. I remember --

2 Q. Ma'am, that wasn't my question. Just please
3 listen to what I'm asking you and just answer that
4 question. When you spoke to Mr. Henderson
11:32 5 yesterday you were having some difficulty or some
6 trouble remembering what happened that night,
7 correct? Yes or no?

8 A. Yes.

9 Q. And you told Mr. Henderson that you're
11:32 10 almost 50-years-old so your memory is not what it
11 used to be, correct?

12 A. Correct.

13 Q. So when you first talked to Mr. Henderson
14 yesterday, you said that the dude was already
11:33 15 inside the store when you and Charlie walked up,
16 right?

17 A. No.

18 Q. You didn't tell that to Mr. Henderson
19 yesterday?

11:33 20 A. No.

21 Q. Would it help you to refresh your memory --
22 did you understand you were being recorded
23 yesterday when he talked to you?

24 A. No, he didn't tell me.

11:33 25 Q. He didn't tell you that he was recording

1 you?

2 A. No.

3 Q. Would it refresh your memory to listen to
4 the recording that you made while he was talking to
5 you?

11:33

6 A. Yes.

7 Q. Ma'am, he's going to be able to play the
8 recording for you. Maybe you can hear it better.

9 MR. LANDERS: This is just to refresh
10 her memory, Judge.

11:34

11 THE COURT: Understood.

12 (Recording playing.)

13 BY MS. REAGIN:

14 Q. Does that refresh your memory?

11:36

15 A. Yeah.

16 Q. You were talking about that it was Charlie
17 that shot the guy in the head, right?

18 A. No, Charlie was still in the store.

19 Q. Right, but you said the dude walked up to
20 Tulson and said give me your money and then he shot
21 him in the head, right?

11:36

22 A. Yeah.

23 Q. So at least yesterday your memory was that
24 by the time you got to the store, that guy --

11:36

25 that's who you are talking about when you say the

1 dude, right?

2 A. I think I was talking about Charlie.

3 Q. Well, but you said the dude shot Tulson in
4 the head. Charlie didn't shoot him did he?

11:37 5 A. Uh-uh.

6 Q. Okay. So when you're talking about the dude
7 who shot Tulson in the head was already in the
8 store, right?

9 A. No, he wasn't.

11:37 10 Q. Okay. But that is what you remembered
11 yesterday at first, right?

12 A. I didn't know I was being recorded so.

13 Q. So you would have said something different
14 if you'd known you were being recorded?

11:37 15 A. No, I'm going to keep saying the same thing.
16 When I went to the store --

17 Q. I understand, ma'am.

18 A. -- in the store.

19 Q. My question to you now though, all I was
11:37 20 asking you was, when you first started talking to
21 Mr. Henderson yesterday, your memory was that the
22 guy that shot Tulson was already in the store by
23 the time you got there, right?

24 A. No, that's not how it go.

11:37 25 Q. But, I mean, you just listened to yourself

1 speaking, right? Was that your voice?

2 A. Uh-huh.

3 Q. So that is what you said to Mr. Henderson at
4 first yesterday, right?

11:38 5 A. I just had to backtrack myself and really think
6 how it went.

7 Q. And subsequently you did go back to the
8 story about seeing the guy walk in, right?

9 A. Yeah.

11:38 10 Q. But at first you told Mr. Henderson --

11 A. Because --

12 Q. -- that the guy was already in the store?

13 A. Because after 17 years I had to think about the
14 story to put it together.

11:38 15 Q. And that's fine.

16 A. The first time that I told him it probably
17 wasn't correct, incorrect. But the second time when he
18 came back, I had thought about it and I knew how it
19 went.

11:38 20 Q. Okay. So, again, you would agree with me
21 that your memory could be --

22 A. That's right.

23 Q. -- not quite perfect here 18 years after
24 this happened, right?

11:38 25 A. Yeah, I had totally forgot all about it really.

1 Q. So now you said that you had never -- you
2 had -- you did not review this statement before you
3 came here today, correct?

4 A. Correct.

11:39

5 Q. Now, again, you remember testifying at
6 trial. And by testifying, I just mean you sat up
7 in a place much like that, not as nice a courtroom,
8 and told the jury what happened, right?

9 A. Exactly.

11:39

10 Q. What you saw. And was that -- that was
11 about in November of 2002, correct?

12 A. I guess. It's been --

13 Q. Just about a year --

14 A. -- so long I don't remember.

11:39

15 Q. I'm sorry?

16 A. I said it's been so long, I don't remember the
17 year or the date.

18 Q. Okay. Well, would you take my word for it
19 that it was just about a year after the incident --
20 not quite a year, as a matter of fact, after the
21 shooting?

11:39

22 A. Ask me that again.

23 Q. The shooting happened, you told us, in
24 December of 2001, right, or do you remember?

11:40

25 A. I don't remember. I just told you I don't

1 remember the dates, the time, and stuff like that. If
2 I wouldn't have saw the report, I totally forgot about
3 what year it was, because I forgot about all of it,
4 because I thought it was over.

11:40 5 Q. And when you say if you would have seen the
6 report, do you mean the statement I showed you?

7 A. Yes.

8 Q. Or another report?

9 A. The statement you showed me.

11:40 10 Q. So as you can see today, you see this lady
11 who's working there with that machine while we
12 talk?

13 A. What is your point?

14 Q. Right there.

11:40 15 A. What are you trying to get to? Because I
16 already told you.

17 Q. I'm trying to get you to answer the
18 question.

11:40 19 A. That's all I remember. I remember -- I'mma tell
20 you what I remember.

21 Q. Ma'am, that's not my question. Please
22 answer the question I'm asking. When you testified
23 at trial, do you remember that a person was taking
24 down your testimony, the words that you said?

11:40 25 A. Yes.

1 Q. Okay. And you had sworn to tell the truth
2 at that time, correct?

3 A. Yes.

11:41

4 Q. So before today, and after you testified in
5 2002, have you ever had an opportunity to review
6 the things you said at the trial?

7 A. No.

8 Q. So I think we've established that you agree
9 you told the truth at the trial, right?

11:41

10 A. Yes.

11 Q. And when you talked to the police about this
12 incident, did you tell the truth?

11:41

13 A. Yes. But how you expect me to remember what I
14 told somebody 17 years ago and I'm 54? I was younger
15 then, but now I'm older.

16 Q. Well, we all are.

17 A. I don't remember a lot of that.

18 MS. REAGIN: Pass the witness, Your
19 Honor.

11:41

20 THE COURT: You may proceed.

21 MR. LANDERS: Very few questions,
22 ma'am.

23 **REDIRECT EXAMINATION**

24 BY MR. LANDERS:

11:41

25 Q. So you thought this whole case was behind

1 you 17 years ago, right?

2 A. Yes.

3 Q. Okay.

4 A. Because they told me it was over with.

11:42

5 Q. And whenever you spoke with our
6 investigator, Chris, you did tell him the same
7 story that you told us today, correct?

8 A. Yes.

11:42

9 Q. You just -- you told him that whenever he
10 asked you about the bottle, right?

11 A. Yes.

12 Q. He didn't tell you what to say did he?

13 A. No.

11:42

14 Q. That's when you remembered the whole detail
15 about the bottle?

16 A. Yes. I wouldn't forget that part.

17 Q. Okay. So you've been sure about that for 17
18 years?

19 A. Yes.

11:42

20 Q. And you told the police that, right?

21 A. Yes.

22 Q. Who typed your statement?

23 A. I don't know.

24 Q. Okay. It wasn't you?

11:42

25 A. No.

1 Q. The police had someone that typed it, right?

2 A. Yes.

3 Q. So just because there's nothing about
4 setting the bottle down in this statement --

11:42

5 MS. REAGIN: Your Honor, I object as
6 leading.

7 THE COURT: Sustained.

8 BY MR. LANDERS:

11:43

9 Q. Ma'am, did you tell the police about the
10 shooter setting the bottle down?

11 A. Yes.

12 Q. Okay. You seem to recall that?

13 A. Yes. Well, I don't know if I told the police,
14 but I think when they brung me to court to testify --

11:43

15 Q. Yes, ma'am.

16 A. -- I told the Court.

17 Q. Well, let me ask you this. If anybody would
18 have asked you that ever, would you have told them
19 that the shooter touched the bottle?

11:43

20 MS. REAGIN: Object to speculation,
21 Your Honor.

22 THE WITNESS: Yes.

23 THE COURT: Sustained.

24 BY MR. LANDERS:

11:43

25 Q. How sure are you that the shooter set that

1 bottle down?

2 A. I'm so sure. I would put my life on it.

3 Q. Okay. But did the shooter ever pick the
4 bottle back up?

11:43 5 A. Actually I don't know because I left before the
6 bottle was --

7 Q. Well, you never saw it get picked back up?

8 A. No.

9 Q. Okay. So if anyone would have asked you
11:43 10 that question, you would have told them the same
11 thing?

12 MS. REAGIN: Object to speculation
13 again, Your Honor.

14 THE WITNESS: No, because I didn't see
11:44 15 --

16 MS. REAGIN: Excuse me, ma'am. When I
17 stand up and make an objection, if you could wait
18 to answer. Object to speculation, Your Honor.

19 THE COURT: Sustained.

11:44 20 MR. LANDERS: No further questions,
21 Your Honor. Thank you, Your Honor.

22 THE COURT: You may proceed.

23 MS. REAGIN: Thank you. May I have
24 just a moment?

11:45 25 Your Honor, at this time we would offer

1 into evidence for purposes of this hearing a copy
2 of Ms. Johnson's statement that she gave on
3 December 1, 2001. We would ask that it be subject
4 to redaction for the personal information that's
5 included in it, date of birth, social security
6 number and so forth.

7 THE COURT: Any response from the
8 Defense?

9 MR. LANDERS: Judge, we'll object to
10 hearsay for this.

11 MS. REAGIN: Your Honor, she has
12 continued to resist. She's not admitted to the
13 statement that she made, so it was offered for
14 impeachment purposes, just so the record can be
15 clear as to what she actually said at that time.

16 THE COURT: Understood. Any response
17 to that?

18 MR. LANDERS: Ms. Johnson has told us
19 that the statement in question is not in her sworn
20 report. She said that on her cross examination.
21 She's been impeached with it. It's still -- the
22 rest of it's hearsay. And, also, there's nothing
23 else -- there's nothing in the statement about the
24 bottle being set down. It does not say the shooter
25 didn't set the bottle down. So, it's also improper

1 impeachment. It's still hearsay.

2 MS. REAGIN: Your Honor, it's not
3 hearsay. It's this witness' own statement.

4 THE WITNESS: Can I say something?

11:46

5 THE COURT: No, ma'am. I thought you
6 were saying something else. Go ahead.

7 MS. REAGIN: Your Honor, additionally
8 Ms. Johnson was denying the truth of the statement,
9 so it would not be offered for the truth of the
10 matter asserted. It's just offered as a prior
11 inconsistent statement made by this witness that
12 conflicts with her testimony here today.

11:47

13 THE COURT: Any response?

11:47

14 MR. LANDERS: Ms. Johnson read the
15 statement and agreed there's nothing about the
16 bottle in her sworn statement. So there's nothing
17 inconsistent about the statement. It doesn't
18 mention the bottle being picked up or set down.

19 THE COURT: Understood. It's admitted.

11:47

20 MR. LANDERS: Okay. Your Honor, at
21 this time pursuant to Texas Rule of Evidence 106,
22 which says that when a recorded statement is
23 introduced, any other writing which in fairness
24 ought to be considered at the same time should be
25 introduced. I would like to admit page 2.011 of

11:48

1 the offense report in this case. And in that it
2 does say -- and it's written by either Officer
3 Hoffmaster or Officer Park. I'll bring a copy up
4 to you, Your Honor. It says that it was not
5 mentioned in the statement, but she also saw the
6 same man set down an empty 40-ounce beer bottle on
7 the rail that runs along the Burkett side of the
8 store.

9 THE COURT: I remember reading it.

10 MR. LANDERS: Okay. What I would like
11 to do, I would like to excise or take out page
12 2.011. At least that page and maybe the previous
13 few pages so we know who wrote this supplement.
14 That should be considered pursuant to Rule 106.

15 THE COURT: Anything from the State?

16 MS. REAGIN: No, Your Honor. Excuse
17 me, Your Honor. That does not apply to something
18 that someone else has said, some hearsay statement
19 that's included in an offense report about what
20 some officer said that she said. And if that's the
21 case, then there's other places in the offense
22 report that contradict that. The Rule of Optional
23 Completeness just considers whether or not there
24 was another part. If I had only offered one
25 paragraph from this statement in, they can

1 introduce the rest. Not another person's statement
2 or written report that ostensibly has anything to
3 do with this witness. That's not what that rule is
4 about. So we would object.

11:49

5 MR. LANDERS: If -- but that is
6 correct. There's actually on page 2.025, it says
7 that Sergeant Hoffmaster asked witness Johnson if
8 she was sure the suspect had picked up the 40-ounce
9 glass beer bottle that night and she said he did
10 not pick up the glass bottle but stood over it when
11 he urinated. We should probably include that as
12 well.

11:49

13 MS. REAGIN: Your Honor, again,
14 excerpts from an offense report written by some --
15 doesn't even know which investigator wrote it -- is
16 not admissible as this witness' statement as part
17 of the Rule of Optional Completeness.

11:50

18 MR. LANDERS: And this is under Rule of
19 Evidence 106, which is remainder or related
20 writings for recorded statements. It's not
21 optional completeness, Your Honor.

11:50

22 MS. REAGIN: Again, Your Honor, this is
23 not her writing. She was not recorded. This is
24 something some other witness has said and
25 attributed to her. I mean, for that matter -- when

11:50

1 they went to see -- show her the photo spread,
2 Sergeant Hoffmaster asked witness Johnson if she
3 was sure the suspect had picked up the 40-ounce
4 glass beer bottle that night of the shooting
11:50 5 outside the convenience store. Witness Johnson
6 stated the suspect did not pick up the glass bottle
7 but stood over it when he urinated against the
8 convenience store. This is rank hearsay. This is
9 something that this police officer is testifying to
11:51 10 that she said. Again, this is not -- not her
11 writing, not her statement.

12 THE COURT: Understood. Anything else?

13 MR. LANDERS: Just that Rule 106
14 doesn't require anything other than a related
11:51 15 writing or a recorded statement. As far as I know,
16 this is the only way Ms. Johnson's statements were
17 recorded at the time, other than the other
18 statement which is now admitted. And the Rule is
19 that in fairness ought to be considered at the same
11:51 20 time. Both of these statements support
21 Ms. Johnson's testimony today, that the shooter set
22 the bottle down on the rail, urinated over the
23 bottle, but he did not pick it back up. They ought
24 to be admitted at the same time out of fairness,
11:51 25 Your Honor.

1 THE WITNESS: Can I say something?

2 MR. LANDERS: Not yet, ma'am.

3 THE WITNESS: Can I ask a question?

4 MR. LANDERS: Not right now. I'm

11:52 5 sorry.

6 THE COURT: One moment. Give me ten
7 minutes. And if anyone has any case law that might
8 be help.

9 THE DEPUTY: All arise.

10 (Off the record.)

11 (Back on the record.)

12 THE COURT: All right. We're back on
13 the record. Anything you guys want to discuss
14 before I make my ruling?

12:10 15 MR. LANDERS: The only thing I would
16 say, Your Honor, is we found a case, Tie (ph).
17 Just now we e-mailed it to everybody. I think to
18 you as well. And so -- well, first off, almost
19 every case War-Klining (ph) is talking about, Rule
12:10 20 107, the Rule of Optional Completeness as opposed
21 to 106. The Tie (ph) case is unpublished, 2007
22 Westlaw, 2193309, and it basically discusses that
23 Rule 107 is a rule of mandatory inclusion, whereas
24 Rule 106 is a rule designed to help prevent
12:10 25 confusion and to allow other proponents, which is

1 us, to put in writings in the record now as opposed
2 to later with Ms. Park, the investigating officer,
3 or Mr. Hoffmaster. We know he's got health issues.
4 So basically what Rule 106 does is it allows the
12:11 5 Court or -- there's not a jury in this case -- but
6 to know exactly what happened now rather than at a
7 later time. And then we've also got a case,
8 K-R-O-O-P-F and that's 970 SW 2d 626. And really
9 the only benefit to that case is it discusses that
12:11 10 this is a -- Rule 106 -- is an exception to
11 hearsay. In that case I think the proponent didn't
12 argue that or didn't make that clear on the record.
13 The case does recognize that Rule 106 is an
14 exception to hearsay. So we just think that these
12:12 15 two sections of the offense report which support
16 what Ms. Johnson has testified to and kind of
17 explains why this stuff about the bottle is not in
18 the statement, it's already been introduced by the
19 State, should be introduced now. And then, you
12:12 20 know, hopefully we can clear them up through Ms.
21 Park who was the investigating officer or
22 Investigator Hoffmaster later as well.

23 THE COURT: Now when you say
24 investigating officer, was it the same
12:12 25 investigating officer that wrote this --

1 MR. LANDERS: Well, these two
2 supplements -- well, I'll start with supplement --
3 summaries -- I'm on the wrong page. All right. So
4 page 2.011 is the first supplement. This is a very
12:12 5 lengthy supplement which goes over the details, the
6 events. It's also got a complete description of
7 the crime scene. And this supplement just like --
8 that's supplement number two. The next supplement
9 we'll talk about have both Hoffmaster and Park
10 listed at the top. So we've never known which one
11 of those officers wrote the supplement, but it is
12 one of the two.

13 THE COURT: Which ones do you have
14 coming in?

12:13 15 MR. LANDERS: Park is going -- Ms.
16 Park's the one who's mother they think had a
17 stroke. Verified she'll be here tomorrow.
18 Hoffmaster who we're working to take his deposition
19 on, which I think we're planning to do about a week
12:13 20 after the hearing is over. And the same goes for
21 the last page of this offense report. Let me see
22 if I can find a supplement number. That supplement
23 list -- let's see here. Both Park and Hoffmaster
24 again. Sorry, this one lists Officer Park --
12:13 25 Supplement No. 11 -- as the officer. But the

1 details list both Park and Hoffmaster. So, for
2 example, it appears Park wrote the offense report
3 and then it states, however, Sergeant Hoffmaster
4 asked witness Johnson if she was sure the suspect
12:14 5 had picked up the 40-ounce bottle on the night in
6 question and she answered she (sic) did not pick up
7 the glass bottle.

8 THE COURT: Understood. Anything from
9 the State?

12:14 10 MS. REAGIN: Your Honor, would just
11 stand by our early objections. We would ask if the
12 Court is inclined to let those two supplements --
13 portions of the supplements in -- that the entire
14 offense report be redacted. But want to just show
12:14 15 the context within the offense report, that we be
16 allowed to redact the entire offense report or the
17 intended supplements, for that to go in this
18 record.

19 MR. LANDERS: We would agree with that.

12:14 20 THE COURT: Okay. So you made the
21 objection, right?

22 MS. REAGIN: I beg your pardon?

23 THE COURT: You made the original
24 objection?

25 MS. REAGIN: Yes.

1 THE COURT: All right. Sustained. And
2 if you guys want to ask the witness anymore
3 questions, I will permit that and then move along.
4 But I know it was your turn. I'm just saying.

12:15

5 MR. LANDERS: We don't have anymore
6 questions at this time either, Your Honor.

7 THE COURT: Okay.

8 Anything further from the State?

12:15

9 MS. HUTCHINS: Just one second, Your
10 Honor.

11 THE COURT: Okay.

12:15

12 MR. LANDERS: For the record, can I
13 make an offer of proof? It's already been made
14 that the offense report -- the two pages in
15 question -- would state what I read into the record
16 previously.

17 THE COURT: Understood.

18 MS. REAGIN: No, Your Honor, we don't
19 need Ms. Johnson back.

12:15

20 THE COURT: Okay. Anything?

21 MR. LANDERS: No, Your Honor.

22 THE COURT: All right.

23 MR. LANDERS: If we can go off the
24 record for a second?

25 THE COURT: Sure.

Appendix F - Holman Police Report

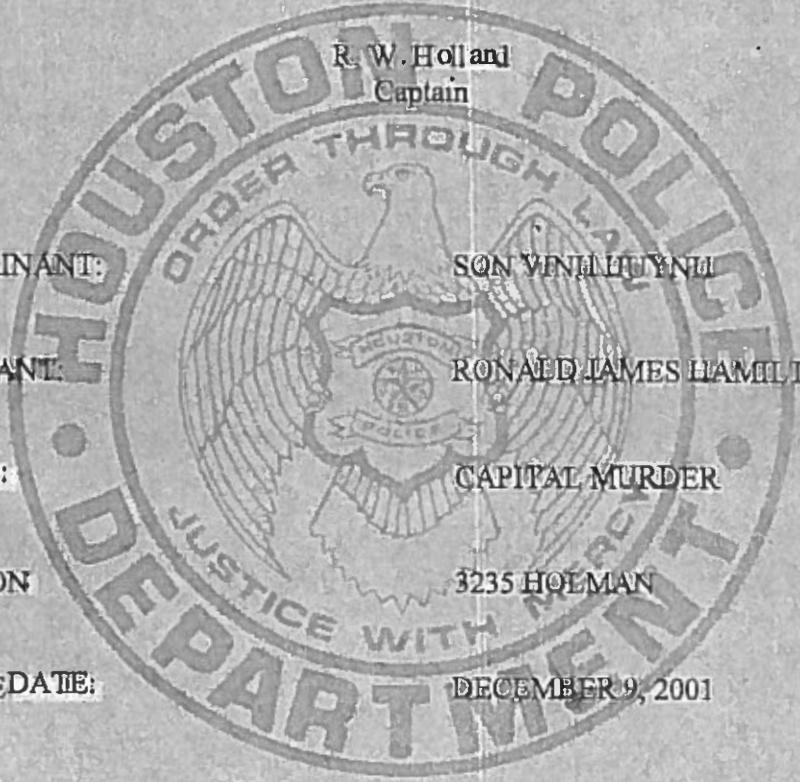
HOUSTON POLICE DEPARTMENT

C. O. Bradford
Chief of Police

HOMICIDE DIVISION

R. W. Holland
Captain

COMPLAINANT: SON YENHUU YNHI
DEFENDANT: RONALD JAMES HAMILTON
OFFENSE: CAPITAL MURDER
LOCATION: 3235 HOLMAN
OFFENSE DATE: DECEMBER 9, 2001
CHARGE:
INVESTIGATORS: HOFF MASTER PARK
COPY: D.A.



tabbler
DEFENDANT'S
EXHIBIT
8

CURRENT INFORMATION REPORT NON-PUBLIC

HOUSTON POLICE DEPARTMENT

PAGE 1.001

CURRENT INFORMATION REPORT Incident no. 169781801 T

Offense- CAPITAL MURDER

UCR Offense codes- 00021/00000/00000

Premises- CONVENIENCE STORE

Weather- CLOUDY

Location: Street no- 003235 Name- HOLMAN

City-HOUSTON

County-HARRIS

Kmap-493Z Dist-10 Beat-10H50

Neighborhood code-00380 Desc-THIRD WARD

Begin date- SA 12/08/01 Time- 1830 End date- SA 12/08/01 Time- 1900

Received/Employee: Name-C.Y. PARK

No.-107338 Date-12/08/01 Time-1920

Gang crime related-N

Hate crime related-N

COMPLAINANT(S)

No-01 Name: Last-HUYNH First-SON Middle-VINH

Race-A Sex-M Age-51 Hispanic-N

Address-3235 HOLMAN HOUSTON, TX

Driver license#- [REDACTED]

Force used against complainant- Y

DOB- [REDACTED]

Relation to susp-NONE

Relation to #(01) Suspect-UNKNOWN

Relation to #(02) Suspect-UNKNOWN

Condition-M.E. # 01-3937

WITNESS(S)

No-01 Name: Last-DOUGLAS First-CHARLES Middle-ALONZO

Race-B Sex-M Age-40 Hispanic-N

Address-4000 GRIGGS RD #87 HOUSTON, TX 77021

Phone: Home-(832) 573-9465 Business-(000) 000-0000 Ext-

Driver license#- [REDACTED]

SOCIAL SECURITY- [REDACTED]

Force used against complainant- N

DOB- [REDACTED]

Relation to susp-UNKNOWN

No-02 Name: Last-JOHNSON First-WANDA Middle-

Race-B Sex-F Age-36 Hispanic-N

Address-3710 TIERWEISTER HOUSTON, TX #19C

Phone: Home-(713) 440-6167 Business-(000) 000-0000 Ext-

Driver license#- [REDACTED]

SOCIAL SECURITY- [REDACTED]

Force used against complainant- N

DOB- [REDACTED]

Relation to susp-UNKNOWN

REPORTEE (S)

NONE

DETAILS OF OFFENSE

THE COMPLAINANT SON VINH HUYNH A/M 51, WAS SHOT TO DEATH, DURING THE ATTEMPTED ROBBERY OF HIS CONVENIENCE STORE AT 3235 HOLMAN. THE SUSPECTS WERE TWO YOUNG BLACK MALES, WHO FLED THE SCENE IN A SMALL TWO DOOR DARK COLORED CAR.

Officer1: Name-
Officer2: Name-

Employee no-000000 Shift-0
Employee no-000000 Shift-0

Division/Station #-

Unit #-00000

END OF PAGE ONE

21

SUSPECT(S)

No-01 Disposition-ARRESTED /CHARGED HPD-no-700187
Name: Last-HAMILTON First-RONALD Middle-JAMES
Address-6736 LOZIER
Race-B Sex-M Age- -00 Hispanic-N Date of birth-
Height-600 To- Weight-170 To-
Hair: Color-BLACK Type-AFRO Length-SHORT
Complexion-DARK Facial hair-
Speech/Accent- Eye color-BROWN
Weapon used-PISTOL

Misc-SS- [REDACTED]

PAROLEE/PAROLE VIOLATOR: U

No-02 Disposition-POSSIBLE / HPD-no-000000
Name: Last-UNKNOWN First- Middle-
Race-B Sex-M Age- -00 Hispanic-N Date of birth- / /
Weapon used-PISTOL

Misc-

PAROLEE/PAROLE VIOLATOR: U

M.O. SUMMARY

Related cases-120403601/

Report entered by-C.Y. PARK

Employee number-107338

000000000

Status: Open- Cleared-X Inactive- Unfounded-

Report reviewed by-BSTARNES

Employee number-094182

Date cleared-03/06/02.

NARRATIVE

NONE

SUPPLEMENT (S)

No-0001

Offense- CAPITAL MURDER

	Street location information		
Number-	3235	Name-HOLMAN	Type- Suffix-
Apt no-		Name-VELASCO	Type- Suffix-
Date of offense-	12/08/01	Date of supplement-	12/09/01
Comp1(s) Last-	HUYNH	First-SON	Middle-VINH
	Recovered stolen vehicles information		
Stored-		by-	Ph#- (000) 000-0000
Officer1-	ME DUNN	Emp#-	110430 Shift-2 Div/Station-S.C.PATROL

SUPPLEMENT NARRATIVE

INTRODUCTION:

OFFICER ME DUNN, UNIT 10H57E, WAS DISPATCHED AT 1908 HRS TO 3235 HOLMAN IN REGARDS TO A SHOOTING/JUST OCCURRED.

OFFICER DUNN ARRIVED AT 1916 HRS AND WAS MET BY SEVERAL UNITS WHO WERE ON THE SCENE. OFFICER DUNN AND THE UNITS SECURED THE SCENE AND ATTEMPTED TO LOCATE ANY WITNESSES. THE COMP WAS DOA AND HFD AMBULANCE #525 WAS ALSO ON THE SCENE.

OFFICER DUNN HAD DISPATCH TO PHONE FOR A CRIME SCENE UNIT AND OFFICER WAGNER CALLED HOMICIDE DIVISION AND SPOKE WITH OFFICER HARRIS. HOMICIDE INVESTIGATORS SGT.HOFFMASTER AND OFFICER PARK ARRIVED AND TOOK CONTROL OF SCENE FROM OFFICER DUNN. THE INVESTIGATORS WERE GIVEN THE NAME OF THE PERSON WHO LOCATED THE DECEASED.

SYSTEM ADVISORY: REPORT ENTERED USING PERSONAL COMPUTER VER-4.00-D

 * ENTRY DEVICE: 167988 COMPAQ 167988 *
 * ENTRY FROM DATE-120901 TIME-2251 TO DATE-120901 TIME-2301 *
 * TRANSFER DEVICE: NEC PENTIUM 212741 N85 VER. 4.00-W*
 * TRANSFER DATE-120901 TIME-2257 LOAD DATE-120901 TIME-2303 *
 * LOCATION OF OFFENSE: POLICE DISTRICT-DISTRICT 10 DIST-10 *

 EVIDENCE WAS TAGGED-N LATENT PRINTS WERE LIFTED AT A SCENE-N

Supplement entered by = 110430
Report reviewed by-BSTARNES
Date cleared- 03/06/02

Employee number-094182

No-0002

Offense- CAPITAL MURDER

		Street location information	
Number-	3235	Name-HOLMAN	Type- Suffix-
Apt no-		Name-VELASCO	Type- Suffix-
Date of offense-	12/08/01	Date of supplement-	12/15/01
Compl(s) Last-	HUYNH	First-SON	Middle-VINH
Recovery location-		Recovered stolen vehicles information	
Stored-		by-	District- Beat- 00
Officer1-	L.W. HOFFMASTER	Emp#-	039866 Shift-2 Div/Station-2
Officer2-	C.Y. PARK	Emp#-	107338 Shift-2

SUPPLEMENT NARRATIVE

INTRODUCTION

SERGEANT HOFFMASTER AND OFFICER PARK, RECEIVED AN ASSIGNMENT FROM OFFICER HARRIS, TO INVESTIGATE THE HOMICIDE AT THE TULSON GROCERY STORE AT 3235 HOLMAN AT BURKETT. WE RECEIVED THE ASSIGNMENT AT APPROXIMATELY 1920 HOURS. AND ARRIVED ON THE SCENE AT APPROX. 2000 HOURS.

UPON ARRIVING ON THE SCENE WE TALKED WITH THE PRIMARY UNIT, OFFICER M. DUNN PR# 130 ON UNIT 10H57E. OFFICER DUNN ADVISED ME THAT AN ANOYMOUS CALLER HAD CALLED IN FROM THE PAY PHONE IN FRONT OF THE STORE AND REPORTED THAT THE STORE OWNER HAD BEEN SHOT. WHEN OFFICER DUNN ARRIVED HE FOUND THE STORE OWNER, SON VINH HUYNH A/M 51 HAD BEEN SHOT AND WAS LAYING FACE DOWN IN A POOL OF BLOOD NEAR HIS CASH REGISTER, IN WHAT APPEARED TO BE AN ATTEMPTED ROBBERY. OFFICER DUNN KNEW SON HUYNH FROM HIS WORK IN THAT AREA.

THE SUSPECT OR SUSPECTS HAD FLED THE SCENE. AT THIS TIME THERE WERE NO KNOWN WITNESSES AND NEIGHBORHOOD CO-OPERATION WAS POOR, DUE TO STRONG ANTI-POLICE SENTIMENT.

SCENE SUMMARY

COMPLAINANT HUYNH'S BODY WAS FOUND AT THE TULSON CONVENIENCE STORE WHICH IS LOCATED AT 3235 HOLMAN ON THE NORTHWEST CORNER OF HOLMAN AND BURKETT. THE BUILDING IS A ONE STORY BRICK BUILDING THAT FACES SOUTH ONTO HOLMAN. THE PARKING LOT IS LOCATED AT THE NORTHEAST SIDE OF THE BUILDING ENCLOSED BY AN IRON ROD FENCE. THE PARKING LOT OF THE STORE FACES EAST ONTO BURKETT.

INVESTIGATORS OBSERVED CEMENT STAIR STEPS LEADING TO THE SWINGING GLASS FRONT DOORS OF THE CONVENIENCE STORE. THERE ARE BURGLAR BAR DOORS SURROUNDING THE

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FRONT DOORS. A PUBLIC PAY TELEPHONE IS LOCATED AT THE EAST END OF THE BUILDING. AN ICE REFRIGERATOR BOX IS LOCATED ON THE WESTSIDE OF THE BUILDING. FRONT OF THE STORE IS ILLUMINATED BY LIGHTS ABOVE THE DOOR THAT IS ATTACHED TO THE ROOF OVERHANG. ALONG THE NORTHSIDE OF THE BUILDING IS A METAL BAR APPROXIMATELY 3 FT TALL THAT STRETCHES FROM THE FRONT OF THE BUILDING DOWN TO THE DRIVEWAY OF THE STORE. INVESTIGATORS OBSERVED AN EMPTY 40 OZ. SCHLITZ MALT LIQUOR BEER BOTTLE ON TOP OF THE METAL BAR ON THE SOUTH END.

AS YOU ENTER THROUGH THE FRONT DOORS, INVESTIGATORS OBSERVED ALONG THE EAST WALL THE WORK AREA BEHIND THE COUNTERTOPS AND GLASS DISPLAYS THAT STRETCHES FROM THE NORTH END OF THE STORE TO THE SOUTH. ON THE NORTH END OF THE COUNTERS IS A BURGLAR BAR DOOR, IN FRONT OF THE BACKROOM. AN APPROXIMATELY 4FT X 7FT COUNTERTOP IS LOCATED AT THE SOUTHEAST CORNER OF THE STORE. THE UNOPENED CASH REGISTER WAS FOUND BOLTED DOWN ON TOP OF THIS COUNTERTOP AT THE NORTHEAST CORNER. THE CASH REGISTER WAS POSITIONED AT AN ANGLE. IN FRONT OF THE CASH REGISTER, THERE IS A BLACK MARKER, A RAZOR BLADE AND A METAL NAIL FILE LAYING ON TOP OF THE CASH DRAWER BOX. BACK IN THE NORTHEAST CORNER OF THE STORE IS A ROOM WITH A BED, TELEVISION AND A DESK. THE FULL SIZE BED IS LOCATED IN THE NORTHWEST CORNER OF THE ROOM AGAINST THE WALL. THERE IS A FLORAL COMFORTER, RED BLANKET AND 3 PILLOWS ON THE BED AND A PAIR OF GRAY SWEAT PANTS HANGING ON THE BOTTOM SIDE. IN THE SOUTHEAST CORNER IS A 25 INCH COLOR TELEVISION ON TOP OF SOME PLASTIC CRATES. THE SCREEN OF THE TELEVISION WAS FACING THE NORTHEAST CORNER OF THE ROOM AT AN ANGLE. ON THE FLOOR, NORTH OF THE TELEVISION, ARE STACKS OF VIDEOS. A LOUNGE CHAIR IS AGAINST THE NORTHEAST CORNER OF THE ROOM. IN BETWEEN THE LOUNGE CHAIR AND THE TELEVISION IS A 2 FT X 2FT MARBLE TABLE ON TOP OF 2 MILK CRATES, A MAKESHIFT DINING TABLE. THERE ARE UTENSILS AND POTS ON TOP OF THE TABLE.

IN THE CENTER OF THE NORTH WALL, IS AN OPENING THAT LEADS TO THE CLOSET AREA. ON THE WESTSIDE OF THE CLOSET ARE CLOTHES HANGING AGAINST THE WALL AND MISCELLANEOUS ITEMS SCATTERED ON THE FLOOR. BELOW THE CLOTHES, ON THE SOUTH END OF THE FLOOR, IS A METAL SAFE THAT IS HIDDEN UNDER THE CLOTHES. ON THE EASTSIDE OF THE CLOSET IS THE TOILET. IT DOES NOT APPEAR THE BACKROOM AND THE CLOSET AREA WERE DISTURBED.

A MIRRORED WINDOW IS LOCATED ON THE SOUTH WALL OF THE BACKROOM WHERE YOU CAN VIEW THE CONVENIENCE STORE FROM INSIDE THE ROOM.

THE NORTHSIDE OF THE CONVENIENCE STORE IS USED FOR ADDITIONAL STORAGE WITH A METAL SINK AND SHELVES IN THE NORTHWEST CORNER. THE REAR METAL DOOR WHICH IS LOCATED IN THE CENTER OF THE WALL, IS SECURED WITH A METAL BAR. THERE IS A GLASS REFRIGERATED DISPLAY, EAST OF THE STORAGE AREA, WHERE MISCELLANEOUS ITEMS WERE STORED.

THE WALK-IN COOLER AND THE COOLER WHERE DRINKS ARE STORED ARE LOCATED AGAINST THE WEST WALL OF THE STORE. IN THE CENTER OF THE STORE ARE 4 AISLES DISPLAYING FOOD AND OTHER PRODUCTS. THE AISLES ARE AT SET UP AT AN ANGLE THAT POINTS FROM NORTHWEST TO THE SOUTHEAST CORNERS OF THE STORE.

COMPLAINANT HUYNH'S BODY WAS FOUND ON THE FLOOR, FACED DOWN, BETWEEN THE 2 COUNTERTOPS IN THE FRONT OF THE STORE. A FIRED RP .380 CALIBER CASING IS FOUND ON THE FLOOR APPROXIMATELY 5 FT NORTHWEST OF THE COMPLAINANT'S BODY, WEST OF THE GLASS COUNTER DISPLAYS. A WOODEN SHELF APPROXIMATELY 4FT X 2FT, USED AS CANDY DISPLAY, IS FOUND KNOCKED DOWN TO THE FLOOR IN THE SECOND AISLE OF THE STORE. THE FRONT END OF THE SHELF IS FACED DOWN TO THE FLOOR. INVESTIGATORS OBSERVED BRAIN MATTER AND BLOODSTAINS ON THE BOTTOM SHELF OF THE DISPLAY. IT

APPEARS THAT COMPLAINANT HUYNH FELL FORWARD, KNOCKING DOWN THE SHELF TO THE FLOOR, AND HIS HEAD HITTING THE BOTTOM SHELF CAUSING THE SUPPORT TO BECOME LOOSE.

ON THE FLOOR IS AN EMPTY CAMEL CIGARETTE BOX, NEXT TO THE GLASS DISPLAYS ON THE NORTHSIDE OF THE COUNTERS, NEXT TO THE COMPLAINANT'S BODY. BEHIND THE CASH REGISTER COUNTER IS A BEIGE BARSTOOL, EAST OF THE CASH REGISTER. A RED CHAIR IS LOCATED NORTH OF THE BARSTOOL, BEHIND THE COUNTERS. INVESTIGATORS OBSERVED A SECURITY CAMERA HANGING ABOVE THE SOUTHEAST CORNER OF THE STORE. BELOW THE CAMERA IS A 19 INCH TELEVISION THAT DISPLAYS WHAT IS ON THE SECURITY CAMERA AND A VCR ON TOP OF METAL SHELVES. HOWEVER, THERE WAS NO VIDEOTAPE INSIDE THE VCR RECORDING FROM THE SECURITY CAMERA.

ON TOP OF THE CASH REGISTER COUNTER, SOUTH OF THE CASH REGISTER, IS AN UNOPENED BOX OF SALEM 100 MENTHOL CIGARETTES ON TOP OF THE MATS. BEHIND THE CASH REGISTER COUNTER, BROWN DRAWER IS LOCATED BELOW THE LOTTERY MACHINE. INSIDE THE DRAWER IS A LOADED .380 LARSON SEMI-AUTOMATIC PISTOL WITH A SERIAL NUMBER 167872 BELONGING TO THE COMPLAINANT. THE MAGAZINE IS LOADED WITH 6 ROUNDS OF WINCHESTER BULLETS, NO ROUND IN THE CHAMBER.

AFTER OBTAINING THE CODE TO THE CASH REGISTER, THE FOLLOWING AMOUNT OF CURRENCY WAS INSIDE THE CASH DRAWER:

- 2 - \$10 DOLLAR BILL
- 6 - \$5
- 15 - \$1
- ASSORTED CHANGE

PHYSICAL EVIDENCE:

MOVABLE EVIDENCE:

1. 1 FIRED .380 RP CASING
2. 1 EXTINGUISHED PALL MALL MENTHOL CIGARETTE FOUND UNDER THE COMPLAINANT'S BODY

IMMOVABLE EVIDENCE:

- POOL OF BLOOD ON THE FLOOR NEXT TO THE COMPLAINT'S BODY, WEST OF THE GLASS COUNTER DISPLAYS
- BLOOD MATTER AND BLOOD STAINS ON THE WOODEN DISPLAY SHELF

SCIENTIFIC AIDS:

CSU OFFICER TUTTLE CONDUCTED THE CRIME SCENE INVESTIGATION BY TAKING 35 MM PHOTOGRAPHS, VIDEOTAPING AND TAKING MEASUREMENTS OF THE SCENE. PLEASE REFER TO OFFICER TUTTLE'S SUPPLEMENT.

POSITION OF BODY:

COMPLAINANT HUYNH'S BODY IS FOUND LYING ON THE FLOOR BETWEEN THE OPENING OF THE COUNTERS. THE COMPLAINANT'S HEAD AND CHEST IS IN FRONT OF THE COUNTERS, BOTTOM HIPS BEHIND THE COUNTERS. INVESTIGATORS OBSERVED WHITE TISSUE COVERING THE BODY

1

OF THE COMPLAINANT LEFT FROM THE HFD MEDICS WHO WERE AT THE SCENE. THE HEAD IS TO THE NORTHWEST, LEGS TO THE SOUTHEAST. THE HEAD IS TILTED NORTH, RIGHT SIDE THE COMPLAINANT'S HEAD EXPOSED. COMPLAINANT HUYNH'S LEFT ARM IS DIAGONALLY UNDER HIS CHEST, HIS RIGHT ARM PARALLEL TO THE BODY. THE COMPLAINANT'S RIGHT PALM IS FACING UP, FINGERS SLIGHTLY CLENCHED.

IDENTIFICATION OF VICTIM:

COMPLAINANT HUYNH'S BODY WAS IDENTIFIED BY OFFICER P.E. THOMAS PR#92146, WHO KNEW THE COMPLAINANT HUYNH FOR SEVERAL YEARS.

DRESS OF VICTIM:

COMPLAINANT HUYNH WAS WEARING A BLUE LONG SLEEVE SHIRT WITH A BLACK T-SHIRT INSIDE AND BLUE JEANS. HE WAS WEARING BROWN LEATHER SHOES WITH GRAY SOCKS, AND A BLACK LEATHER BELT.

WOUNDS OR APPARENT WOUNDS OF VICTIM:

COMPLAINANT HUYNH RECEIVED A GUNSHOT WOUND TO THE FRONT LEFT SIDE OF HIS HEAD.

ORDER OF LACK OF DISORDER OF SCENE:

THE WOODEN DISPLAY SHELF AND CANDY KNOCKED DOWN TO THE FLOOR IS THE ONLY DISORDER AT THE SCENE INVESTIGATORS OBSERVED.

SIGNS OF STRUGGLE:

THERE WERE NO SIGNS OF STRUGGLE.

RECOVERY OF WEAPON OR INSTRUMENTS USED:

CSU OFFICER TUTTLE RECOVERED AND TAGGED THE FIRED .380 RP CASING FOUND AT THE SCENE.

WEATHER, LIGHTING, VISIBILITY CONDITIONS:

THE WEATHER WAS CLOUDY AND INVESTIGATORS USED ARTIFICIAL LIGHTING INSIDE THE CONVENIENCE STORE AND FLASHLIGHTS FOR THE SCENE INVESTIGATION.

8

CORONER:

PERSONAL EFFECTS FROM BODY:

MEDICAL EXAMINER JONES, UNIT NUMBER 9008, ARRIVED AT THE SCENE AT APPROXIMATELY 2045 HRS WITH BODY CART PERSONNEL GUZMAN AND LOCKE. THE FOLLOWING ITEMS WERE RECOVERED FROM COMPLAINANT HUYNH'S BODY:

2 TONE METAL WATCH ON RIGHT WRIST

GOLD COLORED METAL RING ON LEFT RING FINGER

GOLD COLORED METAL NECKLACE WITH GOLD MEDALLION AROUND THE COMPLAINANT'S NECK

BROWN LEATHER WALLET INSIDE THE RIGHT REAR POCKET: VARIOUS CARDS, COMPLAINANT'S DRIVER'S LICENSE AND \$37 DOLLARS IN CURRENCY.

- 1 - \$20 DOLLAR BILL
- 2 - \$5
- 2 - \$1

DISPOSITION OF BODY:

BODY CART PERSONNEL GUZMAN AND LOCKE TRANSPORTED COMPLAINANT HUYNH'S BODY TO THE HARRIS COUNTY MEDICAL EXAMINER'S OFFICE FOR AN AUTOPSY.

AUTOPSY REQUEST FORM:

INVESTIGATORS REQUESTED FINGERNAIL SCRAPINGS, HAIR, FOREIGN OBJECTS AND BLOOD TO BE TESTED FOR EVIDENCE.

DETAILS OF OFFENSE

THE DETAILS OF THIS OFFENSE ARE MOSTLY UNKNOWN AT THIS TIME, THE FOLLOWING WAS LEARNED FROM THE SCENE OF THE OFFENSE:

THE SCENE OF THIS OFFENSE IS A SMALL INDEPENDENTLY OWNED NEIGHBORHOOD GROCERY STORE IN THE THIRD WARD AREA, LOCATED AT 3235 HOLMAN AT BURKETT STREET. THE NAME ON THE STORE IS THE TULSON MARKET. IT IS OWNED BY A 51 YEAR OLD VIETNAMESE MALE NAMED SON VINH HUYNH. SON HUYNH MIGRATED TO THE UNITED STATES WHEN SOUTH VIETNAM FELL IN 1975. SON HUYNH SERVED IN THE SOUTH VIETNAMESE AIR FORCE AND HAS MOMENTOS OF THAT SERVICE IN HIS STORE. HE HAS OWNED THIS STORE FOR THE PAST 20 YEARS. THE STORE WAS OPERATED BY SON HUYNH'S WIFE UNTIL SHE DIED 9 MONTHS AGO.

SINCE THAT TIME SON HUYNH HAS BEEN OPERATING THE STORE HIMSELF. ON SUNDAY DECEMBER 9TH, HE WENT WITH HIS FAMILY TO VISIT HIS WIFE'S GRAVE AND AFTERWARD LUNCH WITH HIS FAMILY. THAT AFTERNOON HE CONDUCTED SOME BUSINESS AT

ANOTHER BUILDING HE OWNS, WITH AN EMPLOYE BY THE NAME OF STEVEN CARNER. STEVEN STATED THAT HE ACCOMPANIED SON TO THE STORE AROUND 3:00PM, AT WHICH TIME SON OPENED THE STORE FOR BUSINESS AND STEVEN LEFT.

SOME TIME BETWEEN 6:30 PM AND 7:00PM, IT APPEARS, SON HUYNH WAS SITTING ON HIS BAR STOOL BEHIND HIS CASH REGISTER AND HAD JUST LIT UP A PALL MALL MENTHOL CIGARETTE. AT THIS POINT SOMETHING HAPPENED AND THE CIGARETTE FELL FROM HIS MOUTH TO THE FLOOR AS SON TRIED TO GET UP BUT WAS SHOT AS HE MOVED TOWARD THE SHOOTER. SON HUYNH'S FEET WERE NEXT TO THE BAR STOOL, THE CIGARETTE WAS UNDER HIS ABDOMEN AND HAD BEEN EXTINGUISHED BY THE URINE RELEASED WHEN HE DIED. THE BULLET ENTERED THE LEFT SIDE OF HIS FOREHEAD APPROX. 2 INCHES LEFT OF CENTER LINE AND 1 INCHES ABOVE THE LEFT EYEBROW AND TRAVELED IN A DOWNWARD DIRECTION, LODGING IN THE NECK. SON HUYNH'S MOMENTUM CARRIED THE UPPER PART OF HIS BODY FORWARD AND HIS HEAD PAST THE BACK OF A CANDY STAND NEXT TO THE COUNTER, THE SPURTING BLOOD FROM THE WOUND MARKED THE BACK OF THE STAND AS HE WAS GOING DOWN AND HIS HEAD CAME TO REST ON THE BOTTOM OF THE STAND KNOCKING LOOSE A SUPPORT MEMBER. SON'S HEAD RESTED ON THE BOTTOM OF THE STAND, WHERE THE SUPPORT MEMBER WAS BROKEN LOOSE, AS EVIDENT FROM THE POOLED BLOOD AND BRAIN MATTER. IT APPEARS HE MAY HAVE RAISED HIS HEAD ONCE AFTER HE WENT DOWN, DUE TO THE ARTERIAL SPURTING PATTERN BENEATH ONE OF THE SHELVES OF THE CANDY RACK. WHEN PARAMEDICS ARRIVED THEY MOVED THE RACK FROM BENEATH SON'S HEAD.

THERE WAS A 380 CALIBER CARTRIDGE CASE SEVERAL FEET TO THE NORTHWEST OF SON'S BODY. THE WOUND APPEARED TO BE A CLOSE CONTACT WOUND. ON THE COUNTER NEXT TO THE CASH REGISTER WAS AN UN-OPENED PACKAGE OF SALEM 100'S MENTHOL CIGARETTES, AS IF SOMEONE HAD ASK TO PURCHASE THEM AND SON HAD REACHED BACK BEHIND HIM AND PICKED THEM UP FROM WHERE THE CIGARETTES ARE KEPT AND LAID THEM ON THE COUNTER FOR A CUSTOMER. THE CASH REGISTER WAS TURNED AT AN ANGLE AS IF SOMEONE HAD TRIED TO TAKE IT BUT OFFICERS LATER LEARNED IT WAS BENT DOWN TO THE COUNTER. OFFICERS LEARNED THAT THERE WAS A SPECIFIC COMBINATION OF BUTTONS THAT HAD TO BE PUSHED TO OPEN THE CASH REGISTER. WHEN IT WAS OPENED WITH THE HELP OF A FAMILY MEMBER, IT WAS LEARNED THAT THE MONEY WAS STILL IN THE CASH REGISTER AND IF THIS WAS A ROBBERY, THE SUSPECT WAS APPARENTLY NOT ABLE TO GET THE CASH REGISTER OPEN. THE MONEY IN THE CASH REGISTER WAS TURNED OVER TO JAMES GEACI, A FAMILY FRIEND AT THE SCENE, AT THE REQUEST OF THE FAMILY.

LATENT PRINT EXAMINER DEBBIE BENNINGFIELD WAS CALLED TO THE SCENE AND SHE PRINTED THE FRONT DOOR AND THE COUNTER AREA WHERE THE MURDER OCCURRED AND SHE TOOK IN THE CASH REGISTER AND SOME BEER BOTTLES THAT WERE LEFT NEXT TO THE STORE. SHE IS HAVING THE MOUTHS OF THE BEER BOTTLES SWABBED FOR DNA AND SHE IS CHECKING THEM FOR PRINTS. CSU OFFICER LEROY TUTTLE PHOTOGRAPHED AND VIDEOED THE SCENE, AND ALSO RECOVERED THE 380 CALIBER CARTRIDGE CASE.

ON THE FOLLOWING DAY, MONDAY, DEC. 10, 2001, WE WENT BACK TO THE SCENE AND DID SOME NEWS INTERVIEWS, TO GET MORE COVERAGE, WE CANVASSED THE NEIGHBORHOOD AND MET WITH SON HUYNH'S FAMILY. WE LEARNED FROM THE FAMILY THAT A FRIEND OF THE FAMILY, WAS FAMILIAR WITH THAT AREA AND HAD GONE INTO THE NEIGHBORHOOD AND LOCATED A WITNESS AND HE WAS ON HIS WAY BACK TO THE STORE WITH THE WITNESS. THE FAMILY FRIENDS NAME IS TRAVIS CAINS, HE IS A B/M 31.

A FEW MINUTES LATER A VEHICLE PULLED UP, IT WAS DRIVEN BY AN UN-IDENTIFIED ASIAN MALE AND TRAVIS CAIN WAS IN THE FRONT PASSENGER SEAT AND THERE WAS ANOTHER BLACK MALE IN THE BACK SEAT. THEY ALL GOT OUT AND TRAVIS TOLD THE OTHER BLACK MALE TO TALK TO US.

THE MAN IDENTIFIED HIMSELF AS CHARLES DOUGLAS AND STATED THAT HE HAD WITNESSED WHAT HAD HAPPENED TO TOUNSON (AS SON WAS CALLED IN THE NEIGHBORHOOD, A VERNON OF STORES NAME, TOULSON). HE ALSO LED US TO THE WOMAN WHO WAS WITH CHARLES AT THE STORE, WANDA JOHNSON. SHE ALSO WITNESSED THE MAN SHOOT SON HUYNH. WE TOOK THEM TO THE HOMICIDE OFFICE WHERE WE TOOK A STATEMENT FROM THEM. THE FOLLOWING IS A SUMMARY OF WHAT THEY SAID, FOR FULL DETAILS SEE THEIR WRITTEN STATEMENTS.

WANDA STATED THAT SHE AND CHARLES WERE WALKING TO THE STORE AND AS THEY APPROACHED THE STORE, SHE SAW A GUY URINATING AGAINST THE SIDE OF THE BUILDING AND A SMALL DARK COLORED CAR PARKED ON BURKETT NEXT TO THE BUILDING. (IT WAS NOT MENTIONED IN THE STATEMENT BUT SHE ALSO SAW THE SAME MAN SIT DOWN AN EMPTY 40 ONCE BEER BOTTLE ON THE RAIL THAT RUNS ALONG THE BURKETT SIDE OF THE STORE). WANDA THEN SAW THE MAN GET BACK IN THE CAR AND TALK TO THE DRIVER BEFORE HE GOT OUT AGAIN AND WENT INSIDE THE STORE.

CHARLES SAID THEY WERE IN THE STORE AND HE WAS GETTING A BEER AND HE SAT THE BEER ON THE COUNTER TO PAY FOR IT WHEN SOMEONE OUTSIDE CALLED TO HIM AND CHARLES WENT OUT TO SEE WHAT THE MAN WANTED. CHARLES THEN SAW WANDA COME OUT OF THE STORE AND HE CALLED TO HER THAT SHE HADN'T PAID FOR HIS BEER. WANDA ASK WHERE THE BEER WAS AND CHARLES WAS POINTING TO THE COUNTER WHEN THEY LOOKED BACK TOWARDS THE COUNTER, BOTH OF THEM SAW THE MAN WHO HAD GOTTEN OUT OF THE CAR, IN A BRIEF STRUGGLE WITH SON AND THEN SAW HIM SHOOT SON IN THE FOREHEAD. WANDA STATED THAT SHE WAS SO SCARED SHE RAN OFF AND CHARLES SAID THAT AFTER THE MAN SHOT SON, THE MAN SAID YOU SHOULD HAVE GIVE ME THE MONEY. THEN THE MAN TRIED TO PICKUP THE CASH REGISTER AND CARRY IT OFF BUT HE COULDN'T GET IT UP. HE NEXT TRIED TO OPEN THE CASH REGISTER BUT HE COULDN'T GET IT OPEN. THE MAN FINALLY LEFT AND GOT IN THE DARK COLORED CAR AND THE CAR DROVE NORTH ON BURKETT. THE CAR WAS DRIVEN BY ANOTHER BLACK PERSON.

BOTH CHARLES AND WANDA AGREE THAT THE SUSPECT WAS A BLACK MALE, APPROX. 17 TO 18 YEAR OLD, 6 FT. TALL, SLIM BUILD AND DARK COMPLECTED. THEY DISAGREE ON THE STYLE OF HIS HAIR, CHARLES DESCRIBES IT AS SHORT AND WANDA DESCRIBES IT AS AN AFRO. THEY AGREE THAT THE CAR WAS A SMALL DARK COLORED CAR.

ON TUESDAY, DEC. 11, AT APROXIMATELY 2:00PM, OFFICER PARK AND I PICKED UP CHARLES DOUGLAS AT HIS JOB AT THE TRUXILLO FOOD MARKET AND TOOK HIM TO MEET WITH POLICE SKEVCH ARTIST LOIS GIBSON. LOIS MADE AN ARTIST SKETCH FROM HIS DESCRIPTION OF THE MAN THAT HE SAW SHOOT SON HUYNH. THAT DRAWING WAS THEN RELEASED TO THE MEDIA, THROUGH THE PIO OFFICE.

WITNESS STATEMENT

HOUSTON POLICE DEPARTMENT

HOMICIDE DIVISION

W I T N E S S S T A T E M E N T

INCIDENT NUMBER: 169781801 T

COUNTY OF HARRIS

STATE OF TEXAS

DATE: 12/10/2001

TIME: 3:07:18 PM

BEFORE ME, THE UNDERSIGNED AUTHORITY, THIS DAY, PERSONALLY APPEARED CHARLES ALONZO DOUGLAS, BELIEVED BY ME TO BE A CREDIBLE PERSON, WHO AFTER BEING SWORN UPON HIS OATH, DID DEPOSE AND SAY:

MY NAME IS CHARLES ALONZO DOUGLAS. I AM A B/M AND I AM 40 YEARS OLD, HAVING BEEN BORN [REDACTED]. MY HOME ADDRESS IS 4000 GRIGGS RD. # 67, HOU, TX. 77021 AND MY HOME TELEPHONE NUMBER IS 713-741-4109. I CAN ALSO BE REACHED AT 713-747-4928. MY PAGER NUMBER IS 832-573-9465. MY TX DRIVERS LICENSE NUMBER IS [REDACTED] MY SOCIAL SECURITY NUMBER IS [REDACTED]. I AM EMPLOYED BY TRUXILLO FOOD MARKET AND MY WORK ADDRESS IS 3200 TRUXILLO. MY WORK TELEPHONE NUMBER IS UNK. MY OCCUPATION IS STOCKER. I HAVE ATTAINED 11 YEARS OF FORMAL EDUCATION.

SOME TIME YESTERDAY EVENING (DECEMBER 9TH, 2001), I DON'T KNOW THE TIME, I WENT TO TUSON'S GROCERY STORE AT HOLMAN AND BURKETT. I WAS WITH A FRIEND NAMED WANDA J. ABATA, HER PHONE NUMBER IS 713-440-9677. WANDA AND I WENT IN SIDE THE STORE, I GOT A BEER AND SAT IT ON THE COUNTER. THEN A GUY THAT KNEW ME, CALLED TO ME FROM OUTSIDE THE STORE, I WENT OUT TO SEE WHAT HE WANTED.

WANDA CAME OUT OF THE STORE AND I SAID WANDA YOU HADN'T, PAID FOR MY BEER AND WANDA SAID WHERE IS IT AT AND I POINTED TO THE BEER SETTING ON THE COUNTER. AS WE WERE LOOKING AT THE BEER ON THE COUNTER, WE SAW TUSON AND A YOUNG BLACK MALE SCUFFLING. IT LOOKED LIKE TUSON WAS TRYING TO TAKE THE GUN FROM THE YOUNG MAN. THEN THE YOUNG MAN WITH THE GUN PUT THE GUN TO TUSON'S FOREHEAD AND SHOT HIM.

WANDA SAID HE DUN SHOT TUSON. I WENT BACK INTO THE STORE TO SEE IF TUSON WAS ALRIGHT AND I HEARD THE YOUNG MAN SAY, YOU SHOULD HAVE GAVE ME THE MONEY. TUSON WAS LAYING FACE DOWN ON THE FLOOR. THE YOUNG MAN WAS TRYING TO GET INTO THE CASH REGISTER BUT HE COULDN'T GET IT OPEN. HE TRIED TO PICK THE CASH REGISTER UP BUT HE COULDN'T. THEN HE RAN OUT OF THE STORE.

THE MAN THAT SHOT TUSON GOT IN A CAR PARKED ON THE SIDE OF THE STORE ON BURKETT AND DRIVEN BY ANOTHER BLACK MALE AND THEY DROVE OFF NORTH ON BURKETT.

I HAVE NEVER SEEN THOSE TWO IN THE NEIGHBORHOOD BEFORE.

THE MAN THAT SHOT TUSON WAS A B/M, APPROX. 17 TO 18 YEARS OLD, APPROX. 6FT. TALL, 140 LBS., THIN BUILD, DARK BROWN COMPLEXION, CLEAN SHAVEN, SHORT HAIR.

HE WAS WEAR A BLACK SLIP OVER SHIRT WITH SOME WHITE THREE QUARTER SHORTS.

THE GUN WAS A SMALL BLACK SEMI-AUTOMATIC PISTOL.
 THE CAR WAS A SMALL CAR, I BELIEVE IT WAS A 2 DOOR, POSSIBLY A TOYOTA, DARK
 GREY IN COLOR, OLDER MODEL CAR, KINDA BEAT UP LOOKING.

THE DRIVER APPEARED TO BE A BLACK MALE.

HOUSTON POLICE DEPARTMENT

HOMICIDE DIVISION

WITNESS STATEMENT

INCIDENT NUMBER: 169781801T
 COUNTY OF HARRIS

STATE OF TEXAS

DATE: 12/10/2001

TIME: 2:56:22 PM

BEFORE ME, THE UNDERSIGNED AUTHORITY, THIS DAY, PERSONALLY APPEARED WANDA
 JOHNSON, BELIEVED BY ME TO BE A CREDIBLE PERSON, WHO AFTER BEING SWORN UPON HER
 OATH, DID DEPOSE AND SAY:

MY NAME IS WANDA JOHNSON. I AM A B/F AND I AM 36 YEARS OLD, HAVING BEEN BORN
 [REDACTED] MY HOME ADDRESS IS 3710 TIERWEISTER #19C AND MY HOME TELEPHONE NUMBER
 IS 713-440-6167. MY SOCIAL SECURITY NUMBER IS [REDACTED] I AM EMPLOYED BY
 CONVENTION AND SHOW SERVICES AND MY WORK ADDRESS IS HEMPSTEAD. MY WORK
 TELEPHONE NUMBER IS 713-747-8325. MY OCCUPATION IS SECURITY GUARD. I HAVE
 ATTAINED 11 YEARS OF FORMAL EDUCATION.

ON DECEMBER 9, 2001 AT ABOUT 7:00 P.M. I WAS WALKING TO TULSON STORE WITH
 CHARLES. AS WE WERE APPROACHING THE STORE, I SAW A GUY URINATING AGAINST THE
 BUILDING BY THE STOP SIGN. THE GUY WAS A BLACK MALE, DARK SKIN, AROUND 17
 YEARS OLD AND HE WAS AROUND 6 FEET TALL, SLIM BUILDING. THE GUY HAD A AFRO
 HAIR STYLE. I SAW A CAR ON THE SIDE OF THE BUILDING, PARKED BY THE STOP SIGN.
 THE GUY FINISHED URINATING AND GOT INSIDE THE PASSENGER SIDE OF THE CAR. THE
 CAR WAS A 2 DOOR, DARK COLORED THAT WAS AN OLDER MODEL CAR. THE GUY WAS
 TALKING INSIDE THE CAR TO ANOTHER BLACK GUY WHO WAS SITTING IN THE DRIVER'S
 SEAT. THEY WERE TALKING AND THEN THE GUY IN THE PASSENGER SIDE GOT OUT OF THE
 CAR AND WALKED INTO THE STORE.

THE GUY THAT URINATED WAS WALKING AROUND THE STORE AND WALKED UP TO THE
 OUTER. THE STORE OWNER, MR. HUYNH OR "TULSON" WAS TELLING HIM TO COME ON AND

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THAT HE WAS NEXT IN LINE. THE GUY LET ME GO AHEAD OF HIM AND I PAID FOR MY CIGARETTES AND BEER. I WALKED OUTSIDE BY THE STORE WAITING FOR CHARLES TO FINISH UP IN THE STORE. WHILE I WAS WAITING OUTSIDE, THE GUY WAS UP IN FRONT OF THE COUNTER BY THE REGISTER AND THEN HE SHOT "TULSON" IN THE HEAD. I TOOK OFF RUNNING FROM THERE.

MY FRIEND, CHARLES WAS STILL INSIDE THE STORE WHEN THE SHOOTING HAPPENED.
SYSTEM ADVISORY: REPORT ENTERED USING PERSONAL COMPUTER VER-4.00-D

* ENTRY DEVICE: NEC PC 216340 *
* ENTRY FROM DATE-121501 TIME-1909 TO DATE-121501 TIME-1914 *
* TRANSFER DEVICE: COMPAG PENUTIUM 177100 N57 VER. 4.00-W*
* TRANSFER DATE-121501 TIME-1914 LOAD DATE-121501 TIME-1919 *
* LOCATION OF OFFENSE: POLICE DISTRICT-CONFIDENTIAL DIST-CO *

EVIDENCE WAS TAGGED-N LATENT PRINTS WERE LIFTED AT A SCENE-N

Supplement entered by = 39866
Report reviewed by-BSTARNES Employee number-094182
Date cleared- 03/06/02

No 0003

Offense- CAPITAL MURDER

Street location information
Number- 3235 Name-HOLMAN Type- Suffix-
Apt no- Name-VELASCO Type- Suffix-
Date of offense-12/08/01 Date of supplement-12/13/01
Compl(s) Last-HUYNH First-SON Middle-VINH
Last-

Recovered stolen vehicles information
Stored- by- Ph#- (000) 000-0000
Officer1- D. BENNINGFIELD Emp#-053865 Shift-I Div/Station-ID 83050

SUPPLEMENT NARRATIVE

LL#7574-01
ON 12-9-01 I, LATENT PRINT EXAMINER D. BENNINGFIELD, THE ON-CALL EXAMINER WAS CONTACTED BY HOMICIDE INVESTIGATOR TYLER AT 8:06PM AND REQUESTED TO ASSIST AT THE SCENE OF A MURDER AT 3235 HOLMAN. I LEFT MY RESIDENCE AND DROVE TO HPD HEADQUARTERS TO PICK UP THE LATENT CRIME SCENE VAN AND PROCEEDED TO THE CRIME SCENE LOCATION ARRIVING AT APPROXIMATELY 9:50PM. AT THE SCENE I MET WITH HOMICIDE SGT. HOFFMASTER, INVESTIGATOR PARK AND CSU OFFICER TUTTLE AND WAS GIVEN A WALK-THRU OF THE SCENE.

THE FOLLOWING AREAS WERE PROCESSED USING STANDARD BLACK POWDER:

- * FRONT DOOR AND SIDE GLASS WINDOWS
- * FRONT COUNTERS
- LOTTO STAND
- COOLER DOOR AND REAR STORAGE ROOM DOOR

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* DISPLAY STAND FOUND LYING ON THE GROUND BETWEEN ISLES

RESULTS OF THE AREAS PROCESSED AT THE SCENE REVEALED ONE (1) PALM CONTAINING SUFFICIENT CHARACTERISTICS TO EFFECT AN IDENTIFICATION ON THE INSIDE FRONT GLASS DOOR.

THE FOLLOWING EVIDENCE WAS TRANSFERRED TO THE LAB FOR PROCESSING:

- * ROYAL CASH REGISTER (REGISTER HAD BEEN BOLTED DOWN BY FOUR SCREWS, THESE WERE REMOVED SO THAT THE REGISTER COULD BE TRANSFERRED TO THE LAB);
- * LOTTO TICKETS ON THE LOTTO TICKET STAND AND ON THE FLOOR IN FRONT OF THE STAND;
- * ONE PACK OF UNOPENED SALEM 100'S CIGARETTES RECOVERED FROM THE COUNTER;
- * ONE EMPTY PACK OF CAMEL 100'S UNDER FRONT COUNTER;
- * ONE SCHLITZ MALT LIQUOR CAN (SMALL AMOUNT OF LIQUID INSIDE) RECOVERED FROM TOP OF ICE COOLER OUTSIDE;
- * ONE 24 OZ HEINEKEN BOTTLE (EMPTY) ON GROUND OUTSIDE OF BUSINESS (BELOW METAL RAIL);
- * ONE 40 OZ SCHLITZ MALT LIQUOR BEER BOTTLE (WITH PARTIALLY LIQUID) OUTSIDE OF BUSINESS SITTING ON RAIL;
- * ONE 12 OZ HEINEKEN BOTTLE ON STEPS OUTSIDE BETWEEN ICE COOLER AND FRONT DOOR

IT SHOULD BE NOTED THAT THE DAUGHTER OF THE COMPL. WAS AT THE SCENE AND HAD INFORMED THIS EXAMINER THAT THE OUTSIDE PREMISES AROUND THE BUSINESS WAS KEPT CLEAN BY HER FATHER.

THE ABOVE LISTED BOTTLES WERE SUBMITTED TO THE CRIME LAB BY THIS EXAMINER FOR SWABBING FOR POSSIBLE DNA PRIOR TO PROCESSING FOR FINGERPRINTS.

RESULTS OF THE ITEMS PROCESSED IN THE LAB WILL BE DOCUMENTED IN A LATER SUPPLEMENT WHEN THE EVIDENCE IS COMPLETED.

D. BENNINGFIELD: 53865
LATENT PRINT EXAMINER

Supplement entered by = 53865
Report reviewed by-BSTARNES
Date cleared- 03/06/02

Employee number-094182

N 0004

Offense- CAPITAL MURDER

		Street location information	
Number-	3235	Name-HOLMAN	Type- Suffix-
Apt no-		Name-VELASCO	Type- Suffix-
Date of offense-	12/08/01	Date of supplement-	12/14/01
Comp1(s) Last-	HUYNH	First-SON	Middle-VINH
		Recovered stolen vehicles information	
Recovery location-		District-	Beat- 00
Stored-		by-	
Officer1-	DARBELL STEIN	Emp#-	106957 Shift-1 Div/Station-CRIME LAB

SUPPLEMENT NARRATIVE

FIREARMS CASE # 974-01

THE FOLLOWING ITEMS WERE RECEIVED IN THE FIREARMS LABORATORY, POLICE CRIME LABORATORY DIVISION:

- (1) FIRED 380 AUTO REMINGTON PETERS CARTRIDGE CASE (ECC-1)
RECEIVED BY K. DOWNS, LOCKED EVIDENCE BOX 12-10-01
- (1) FIRED JACKETED LEAD BULLET IN A PLASTIC BAG BEARING MORGUE# 01-3937 (EB-1)
RECEIVED BY K. DOWNS, LOCKED EVIDENCE BOX 12-12-01

RESULTS OF EXAMINATIONS COMPLETED 12-14-01 ARE AS FOLLOWS:

MARKINGS ON THE FIRED 380 AUTO REMINGTON PETERS CARTRIDGE CASE (ECC-1) INDICATE THAT IT COULD HAVE BEEN FIRED IN A 380 AUTO PISTOL OF THE FOLLOWING MANUFACTURE:

ARRIZOBALAGA	ASTRA	BERETTA	BERSA
COLT	EAA	FIE	FIEL
FN/BROWNING	GARCIA	KIRIKKALE	LLAMA
REMINGTON ARMS	STAR	TANFOGLIO	UNIQUE
WALTHER	ZASTAVA		

THE FIRED JACKETED LEAD BULLET (EB-1) IS CONSISTENT IN SIZE, STYLE, AND WEIGHT WITH HAVING BEEN LOADED IN A 380 AUTO CARTRIDGE. LAND AND GROOVE IMPRESSIONS ON THIS ITEM INDICATE THAT IT COULD HAVE BEEN FIRED FROM A 380 AUTO PISTOL OF THE FOLLOWING MANUFACTURE:

ARRIZOBALAGA	ASTRA	BERETTA	BERNARDELLI
BRYCO ARMS	FBN	FIE	FN/BROWNING
KIRIKKALE	LLAMA	MAB	MKE
TANFOGLIO	TAURUS	WALTHER	

IN THE EVENT THAT THE FIRED 380 AUTO REMINGTON PETERS CARTRIDGE CASE (ECC-1) AND THE FIRED JACKETED LEAD BULLET ITEM (EB-1) WERE FIRED IN THE SAME FIREARM,

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THEN THEY COULD HAVE BEEN FIRED IN A 380 AUTO PISTOL OF THE FOLLOWING MANUFACTURE:

ARIZOBALAGA KIRIKKALE TANFOGLIO WALTHER

CONDITION OF THE EVIDENCE:

ECC-1 : GOOD
EB-1 : GOOD

THE ABOVE DESCRIBED ITEMS WILL BE RETAINED IN THE FIREARMS LABORATORY PENDING FURTHER INVESTIGATION AND/OR DISPOSITION.

DARRELL STEIN
FIREARMS EXAMINER

SYSTEM ADVISORY: REPORT ENTERED USING PERSONAL COMPUTER VER-4.00-D

* ENTRY DEVICE: COMPAQ 300M 177594 *
* ENTRY FROM DATE-121401 TIME-0943 TO DATE-121401 TIME-0944 *
* TRANSFER DEVICE: COMPAQ PENTIUM 168840 S44 VER. 4.00-W*
* TRANSFER DATE-121401 TIME-0947 LOAD DATE-121401 TIME-0951 *
* LOCATION OF OFFENSE: POLICE DISTRICT-DOWNTOWN BEAT 1A DIST-DN *

EVIDENCE WAS TAGGED-N LATENT PRINTS WERE LIFTED AT A SCENE-N

Supplement entered by = 106957
Report reviewed by-BSTARNES
Date cleared- 03/06/02

Employee number-094182

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No-0005

Offense- MURDER

Street location information
Number-- 3235 Name-HOLMAN Type- Suffix-
Apt no- Name-VELASCO Type- Suffix-
Date of offense-12/08/01 Date of supplement-12/10/01
Compl(s) Last-HUYNH First-SON Middle-VINH
Last-

Recovered stolen vehicles information
Stored- by- Ph#- (000) 000-0000
Officer1-C.Y. PARK Emp#-107338 Shift-2 Div/Station-HOM
Officer2-L.W. HOFFMASTER Emp#-039866 Shift-2

SUPPLEMENT NARRATIVE

DECEMBER 10, 2001:

PLEASE COMPARE THE 380 CASING FROM THIS CAPITAL MURDER CASE #169781801T TO ANOTHER CAPITAL MURDER CASE #120403601D WHICH MIGHT BE RELATED. BASED ON THE EVIDENCE AND WITNESS STATEMENTS, IT APPEARS THAT IT IS A SERIES OF MURDER CASES COMMITTED BY THE SAME SUSPECT(S).



Supplement entered by = 107338
Report reviewed by-BSTARNES Employee number-094182
Date cleared 03/06/02

No-0006

Offense- CAPITAL MURDER

Street location information
Number-- 3235 Name-HOLMAN Type- Suffix-
Apt no- Name-VELASCO Type- Suffix-
Date of offense-12/08/01 Date of supplement-12/11/01
Compl(s) Last-HUYNH First-SON Middle-VINH

Recovered stolen vehicles information
Recovery location- District- Beat- 00
Stored- by-
Officer1-D.C. LAMBRIGHT Emp#-085226 Shift-1 Div/Station-HOMICIDE/CSU

SUPPLEMENT NARRATIVE

INTRODUCTION:

ON TUESDAY 12-11-01 , OFFICER LAMBRIGHT 85226 , C.S.U.2 MADE THE MORGUE RUN AT THE HARRIS COUNTY MEDICAL EXAMINERS OFFICE.LAMBRIGHT MET WITH ROBERT REYNOLDS AND RECEIVED THE FOLLOWING EVIDENCE IN THIS CASE.

M.L.# 01-3937....SON VINH HUYNH....

FINGERNAIL SCRAPINGS , PULLED HEAD HAIR AND BLOOD VIAL.THESE ITEMS WERE TAGGED IN THE PROPERTY ROOM FREEZER...

SEALED BOX OF CLOTHING , TAGGED IN THE PROPERTY ROOM...

ONE SEALED MISSILE ENVELOPE , TAGGED IN THE FIREARMS LAB LOCK BOX...

NO FURTHER EVIDENCE THIS CASE , THIS DATE.....

*****SUPPLEMENT COMPLETE*****

SYSTEM ADVISORY: REPORT ENTERED USING PERSONAL COMPUTER VER-4.00-D

* ENTRY DEVICE: COMPAQ E500 169364 *

* ENTRY FROM DATE-121101 TIME-1112 TO DATE-121101 TIME-1150 *

* TRANSFER DEVICE: GATEWAY PENTIUM 226569 N82 VER. 4.00-W*

* TRANSFER DATE-121101 TIME-1202 LOAD DATE-121101 TIME-1208 *

* LOCATION OF OFFENSE: POLICE DISTRICT-DISTRICT 10 DIST-10 *

EVIDENCE WAS TAGGED-Y LATENT PRINTS WERE LIFTED AT A SCENE-N

Supplement entered by = 85226

Report reviewed by-DR

Date cleared- 03/06/02

Employee number-082821

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Number- 007

Offense- CAPITAL MURDER

Street location information

Number- 3235 Name-HOLMAN Type- Suffix-
Apt no- Name-VELASCO Type- Suffix-
Date of offense-12/08/01 Date of supplement-12/16/01
Compl(s) Last-HUYNH First-SON Middle-VINH
Last-

Recovered stolen vehicles information

Stored- by- Ph#- (000) 000-0000
Officer1-L.W. HOFFMASTER Emp#-039866 Shift-2 Div/Station-HOM
Officer2-C. PARK Emp#-107338 Shift-2

SUPPLEMENT NARRATIVE

PROGRESS REPORT SUNDAY, DECEMBER 16,2001

THE FOLLOWING ARE A LIST OF PEOPLE THAT ARE NOT WITNESS BUT HAVE SOME INFORMATION ABOUT THIS CASE:

THUYANH ORR A/F [REDACTED] -IS THE DAUGHTER AND NEXT OF KIN TO SON HUYNH.
7741 SPRINGVILLE DR.
HOUSTON, TX. 77095
HM PH 281-856-7326
CELL PH 713-825-3739
S.S.# [REDACTED]

QUYN HUYNH A/M [REDACTED] -IS THE 15 YEAR OLD SON OF SON HUYNH. HE SPENT A LOT OF
10858 WHITE OAK TRACE TIME WITH HIS FATHER AT THE STORE AND KNOWS A LOT ABOUT
CYPRESS, TEX. 77429 WHAT WENT ON AT THE STORE.
HE HAS AN ALIAS OF
WOOKIE.
STUDENT AT CYFAIR
HM PH 281-477-9838
CELL PH 713-294-8892

TRAVIS CAINS B/M DOB [REDACTED]-FAMILY FRIEND, THAT IS FAMILAR WITH THE NEIGHBORHOOD
5515 SOUTH ACRES
HOU., TX. 77048
SS# [REDACTED]
HM PH 713-842-6219

JAMES GEACI W/M DOB [REDACTED]-BOYFRIEND OF THUY ORR, MONEY FROM CASH DRAWER TURNED
7741 SPRINGVILLE DR OVER TO HIM AT THE SCENE BY SGT. HOFFMASTER.
HOU., TX. 77095
SS# [REDACTED]
HM PH 281-468-1670
JK PH 281-518-7438

STEVEN ROY CARNER B/M DOB [REDACTED]-WORKED FOR SON HUYNH, EARLIER IN THE DAY.

3244 HOLMAN
HOLMAN, TX. 77004
TELEPHONE I D [REDACTED]
PH # 713-222-2678 (FIANCEE)

Supplement entered by = 39866
Report reviewed by-BSTARNES Employee number-094182
Date cleared- 03/06/02

No-0008

~~Offense- CAPITAL MURDER~~

Street location information
Number- 3235 Name-HOLMAN Type- Suffix-
Apt no- Name-VELASCO Type- Suffix-
Date of offense-12/08/01 Date of supplement-12/27/01
Comp1(s) Last-HUYNH First-SON Middle-VINH
Last-

Recovered stolen vehicles information
Stored- by- Ph#- (000) 000-0000
Officer1-D. BENNINGFIELD Emp#-053865 Shift-I Div/Station-ID 83050

SUPPLEMENT NARRATIVE

LL 574-01
THE RESULTS OF THE EVIDENCE COLLECTED BY THIS EXAMINER AND TRANSFERRED TO THE LATENT LAB (SEE PREVIOUS SUPPLEMENT LISTING EVIDENCE) REVEALED THREE (3) FINGERPRINTS CONTAINING SUFFICIENT CHARACTERISTICS TO EFFECT AN IDENTIFICATION. THESE PRINTS WERE DEVELOPED ON A 40 OZ SCHLITZ MALT LIQUOR BOTTLE RECOVERED FROM A RAIL OUTSIDE BESIDE THE BUSINESS AND FROM A SCHLITZ MALT LIQUOR CAN RECOVERED FROM ON TOP OF THE OUTSIDE ICE COOLER IN FRONT OF THE BUSINESS.

D. BENNINGFIELD, 53865
LATENT PRINT EXAMINER

Supplement entered by = 53865
Report reviewed by-DR Employee number-082821
Date cleared- 03/06/02

No-0009

Offense- CAPITAL MURDER

Street location information
Number- 3235 Name-HOLMAN Type- Suffix-
Apt no- Name-VELASCO Type- Suffix-
Date of offense-12/08/01 Date of supplement-12/29/01
Compl(s) Last-HUYNH First-SON Middle-VINH
Last-

Recovered stolen vehicles information
Stored- by- Ph#- (000) 000-0000
Officer1- D. BENNINGFIELD Emp#-053865 Shift-I Div/Station-ID 83050

SUPPLEMENT NARRATIVE

LL#7574-01

ON 12-18-01 I, LATENT PRINT EXAMINER D. BENNINGFIELD, SUBMITTED THE 40 OZ SCHLITZ BEER BOTTLE TO LT. P. A. FRANKHOUSER OF THE MONTGOMERY COUNTY SHERIFF'S OFFICE, AND REQUESTED ASSISTANCE IN PHOTOGRAPHING FINGERPRINT RIDGE DETAIL ON THIS ITEM OF EVIDENCE. ON 12-26-01 THIS EVIDENCE WAS PICKED UP, ALONG WITH PHOTOGRAPHS TAKEN BY SGT. B. EMMONS, BY THIS EXAMINER. THE BOTTLE WILL BE TAGGED IN HPD'S PROPERTY ROOM.

D. BENNINGFIELD, 53865
LATENT PRINT EXAMINER

Supplement entered by = 53865
Report reviewed by-DR Employee number-082821
Date cleared- 03/06/02

No-0010

Offense- CAPITAL MURDER

Street location information
Number- 3235 Name-HOLMAN Type- Suffix-
Apt no- Name-VELASCO Type- Suffix-
Date of offense-12/08/01 Date of supplement-12/30/01
Compl(s) Last-HUYNH First-SON Middle-VINH

Recovered stolen vehicles information
Recovery location- District- Beat- 00
Stored- by-
Officer1-L.TUTTLE Emp#-057054 Shift-2 Div/Station-HOM/CSU

SUPPLEMENT NARRATIVE

INFO:

OFF.TUTTLE,RIDING CSU9 ON 12/09/01,RECVD.A SHOOTING CALL AT 1938HRS.THE LOCATION OF 3235 HOLMAN IS THE 2 SON STORE JUST S.E.OF THE DOWNTOWN AREA OF THE CITY OF HOUSTON,HARRIS COUNTY,KEY MAP,493Z.

ARRIVING AT 1952HRS.OFF.TUTTLE WAS MET AT THE SCENE BY SGT.HOFFMASTER AND INV.PARK FROM THE HOM.DIV.AND SHOWN A DECEASED O/M INSIDE OF THE STORE.

SCENE DESCRIPTION:

THE STORE IS A SINGLE STORIED BRICK STRUCTURE ON THE N.E.CORNER OF HOLMAN@BURKETT.THE FRONT ENTRANCE/EXIT FACES S.ONTO A SIDEWALK WITH THE FRONT OF THE STRUCTURE PARTIALLY GLASS FRONTED.

OFF.TUTTLE,ENTERING THE STORE FOUND THE INTERIOR TO BE WELL LIT WITH GOOD INTERIOR VISIBILITY.THE STORE COUNTER SITS ON THE E.SIDE OF THE FRONT DOORS WITH THE FOOD SHELVING ON THE W.SIDE.OFF.TUTTLE OBSERVED THE COMPL.LYING ON THE FLOOR APPROX.7FT.N.OF THE FRONT DOORWAY BETWEEN THE COUNTER OPENING.OFF.TUTTLE NOTED AN OVERTURNED CANDY DISPLAY SHELF JUST W.OF THE COMPL.'S HEAD WITH BLOOD ON THE BOTTOM SHELF OF THE DISPLAY CASE. THE COMPL.WAS LYING FACE-DOWN IN A LARGE POOL OF BLOOD,HEAD TOWARD THE N.W.,WEARING BLUE JEANS AND A BLUE SHIRT. OFF.TUTTLE OBSERVED A SINGLE GUNSHOT ENTRY WOUND TO THE COMPL.'S HEAD HOWEVER,NO EXIT WOUND WAS FOUND.OFF.TUTTLE ALSO OBSERVED A FIRED SHELL CASING ON THE FLOOR APPROX.3FT.N.OF THE COMPL.

OFF.TUTTLE,GOING BEHIND THE COUNTER OBSERVED NO SIGN OF A STRUGGLE HAVING TAKEN PLACE. A VIDEO CAMERA SETUP IN THE S.E.CORNER BEHIND THE COUNTER WAS APPARENTLY ON WITH NO TAPE FOUND IN THE MACHINE.OFF.TUTTLE ALSO OBSERVED A CAMERA IN THE UPPER S.E.CORNER BEHIND THE COUNTER AND ANOTHER ON THE UPPER WALL W OF THE COUNTER.OFF.TUTTLE ALSO NOTED THE CASH REGISTER ON THE COUNTER APPEARED TO HAVE BEEN MOVED BUT NOT OPENED, AND AN UNOPENED PACK OF CIGARETTES LYING NEXT TO THE REGISTER.OFF.TUTTLE FOUND A SEMI-AUTO PISTOL IN A DRAWER BEHIND THE COUNTER AND OPENING THE CHAMBER FOUND IT DID NOT HAVE A RND.IN THE CHAMBER ALTHOUGH THERE WERE RND.S.IN THE CLIP.

THE INTERIOR LIGHTING WAS GOOD,WITH GOOD INTERIOR VISIBILITY.THE WEATHER WAS COOL,CLOUDY.

SCENE PROCESSING:

OFF.TUTTLE,USING A 35MM NIKON 6006 CAMERA WITH FLASH,EXPOSED 1 ROLL OF 400 ASA FILM OF THE INTERIOR/EXTERIOR,INCLUDING THE COMPL.OFF.TUTTLE ALSO MADE A VIDEO TAPE OF THE SCENE USING A SONY 8MM VIDEO RECORDER AND A NEW FUJI 8MM VIDEO TAPE.

OFF.TUTTLE RECOVERED THE FIRED SHELL CASING AND A PARTIALLY SMOKED PALL MALL CIGARETTE.

OFF.TUTTLE ALSO TOOK SEVERAL SCENE MEASUREMENTS FOR A FUTURE DIAGRAM.

EVIDENCE DISPOSITION:

- (1)ROLL OF 35MM FILM-----TAGGED IN PHOTO LAB
 - (1)VIDEO TAPE-----TAGGED IN HOM.DIV
 - (1)PALL MALL CIGARETTE BUTT-----TAGGED IN PROP.ROOM
 - (1)FIRED R-P 380CAL.CASING-----TAGGED IN FIREARMS LOCK BX
- THIS EVIDENCE WAS KEPT IN POSSESSION OF OFF.TUTTLE UNTIL TAGGED.

SYSTEM ADVISORY: REPORT ENTERED USING PERSONAL COMPUTER VER-4.00-D

* ENTRY DEVICE: COMPAQ E500 169659 *
* ENTRY FROM DATE-122901 TIME-2351 TO DATE-123001 TIME-0048 *
* TRANSFER DEVICE: GATEWAY PENTIUM 226569 N82 VER. 4.00-W*
* TRANSFER DATE-123001 TIME-1501 LOAD DATE-123001 TIME-1506 *
* LOCATION OF OFFENSE: POLICE DISTRICT-DISTRICT 10 DIST-10 *

EVIDENCE WAS TAGGED-Y LATENT PRINTS WERE LIFTED AT A SCENE-N

Supplement entered by = 57054 Employee number-082821
Report reviewed by-DR
Date cleared- 03/06/02

No-0011

Offense- CAPITAL MURDER

Street location information
Number- 3235 Name-HOLMAN Type- Suffix-
Apt no- Name-VELASCO Type- Suffix-
Date of offense-12/08/01 Date of supplement-01/31/02
Officer(s) Last-HUYNH First-SON Middle-VINH
Recovery location- District- Beat- 00
Stored- by-
Officer1-C.Y. PARK Emp#-107338 Shift-2 Div/Station-HOMICIDE

SUPPLEMENT NARRATIVE

PROGRESS REPORT:

SGT. HOFFMASTER AND I, INVESTIGATOR PARK, WERE INFORMED BY INVESTIGATOR STRAUGHTER THAT HE WAS WORKING A CAPITAL MURDER AT A MOBIL GAS STATION WHERE THE CLERK WAS ROBBED AND KILLED AT 3300 YELLOWSTONE. INVESTIGATOR STRAUGHTER STATED HE HAD EVIDENCE TO LINK RONALD JAMES HAMILTON TO THE MURDER. INVESTIGATORS LEARNED THAT THE CAPITAL MURDER AT 3300 YELLOWSTONE AND 3036 HOLMAN HAD SIMILAR SUSPECT AND VEHICLE DESCRIPTIONS. SAME CALIBER GUN WAS USED IN BOTH SHOOTINGS.

WE THEN DECIDED TO PREPARE A PHOTOSPREAD WITH RONALD HAMILTON TO SHOW WITNESSES DOUGLAS AND JOHNSON.

JANUARY 29, 2002:

JANUARY 29, 2002 AT APPROXIMATELY 1315 HRS, I, INVESTIGATOR PARK, MET WITH WITNESS CHARLES DOUGLAS AT 3000 HOLMAN TO SHOW HIM A PHOTOSPREAD CONSISTING OF

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5 BLACK MALES AND 1 BLACK MALE IDENTIFIED AS RONALD HAMILTON.

I OBTAINED 5 HPD BOOKING PHOTOS OF SIMILAR LOOKING BLACK MALES AND A PHOTO OF RONALD HAMILTON. THE FOLLOWING ARE THE ORDER OF DIFFERENT BLACK MALES USED AS FILLERS IN THE PHOTOSPREAD ALONG WITH A PICTURE OF RONALD HAMILTON:

- 1 - HPD #734981
- 2 - RONALD HAMILTON, #700187
- 3 - HPD #765971
- 4 - HPD #621932
- 5 - HPD #647188
- 6 - HPD #821685

I STATED TO WITNESS CHARLES DOUGLAS THAT THE PHOTOSPREAD I'M ABOUT TO SHOW HIM MAY OR MAY NOT HAVE THE SUSPECT IN IT AND THAT HE IS IN NO OBLIGATION TO PICK ONE OUT. I ALSO STATED THAT THE COMPLEXIONS OF THE PHOTOS SHOWN IN THE PHOTOSPREAD WERE NOT ACCURATE AND FOR THE WITNESS TO CONCENTRATE ON THE FACIAL FEATURES. WITNESS DOUGLAS STATED HE UNDERSTOOD AND THEN LOOKED AT THE PHOTOSPREAD.

AFTER REVIEWING THE PHOTOSPREAD, WITNESS DOUGLAS PICKED OUT PHOTO #2 AS THE SUSPECT THAT SHOT THE OWNER AT THE TULSON CONVENIENCE STORE. I THEN HAD THE WITNESS SIGN AND DATE THE NUMBER 2 SLOT ON THE PHOTOSPREAD.

AT APPROXIMATELY 1930 HRS., SGT. HOFFMASTER AND I RECEIVED A PHONE CALL FROM WITNESS WANDA JOHNSON STATING SHE WAS AT HOME AND THAT WE CAN COME BY TO SHOW HER THE PHOTOSPREAD. WE ARRIVED AT APPROXIMATELY 1945 HRS AT 3710 TIERWEISTER #19C WHERE WITNESS JOHNSON RESIDES.

INVESTIGATORS STATED TO WITNESS JOHNSON THAT THE PHOTOSPREAD WE'RE ABOUT TO SHOW HER MAY OR MAY NOT HAVE THE PICTURE OF THE SUSPECT AND THAT SHE IS IN NO WAY OBLIGATED TO PICK OUT ANYONE. WE TOLD WITNESS THAT THE COLOR OF THE COMPLEXIONS ON THE PHOTOS WERE NOT ACCURATE AND FOR HER TO CONCENTRATE ON THE FACIAL FEATURES OF THE MALES. WITNESS JOHNSON STATED SHE UNDERSTOOD AND PROCEEDED TO VIEW THE PHOTOSPREAD. SHE LOOKED AT EACH PHOTO AND SHE STATED TO INVESTIGATORS THAT PHOTO #2 LOOKS LIKE THE SUSPECT THAT SHOT THE OWNER AT TULSON CONVENIENCE STORE. WITNESS JOHNSON SIGNED AND DATED THE NUMBER 2 SLOT OF THE PHOTOSPREAD.

SGT. HOFFMASTER ASKED WITNESS JOHNSON IF SHE WAS SURE IF THE SUSPECT HAD PICKED UP THE 40 OZ. GLASS BEER BOTTLE THAT NIGHT OF THE SHOOTING OUTSIDE THE CONVENIENCE STORE. WITNESS JOHNSON STATED THE SUSPECT DID NOT PICK UP THE GLASS BOTTLE BUT STOOD OVER IT WHEN HE URINATED AGAINST THE CONVENIENCE STORE WALL THAT NIGHT.

SYSTEM ADVISORY: REPORT ENTERED USING PERSONAL COMPUTER VER-4.00-D

 * ENTRY DEVICE: NEC PC 216340 *
 * ENTRY FROM DATE-013102 TIME-1455 TO DATE-013102 TIME-1456 *
 * TRANSFER DEVICE: COMPAQ PENUTIUM 177100 N57 VER. 4.00-W*
 * TRANSFER DATE-013102 TIME-1526 LOAD DATE-013102 TIME-1533 *
 * LOCATION OF OFFENSE: POLICE DISTRICT-CONFIDENTIAL DIST-CO *

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EVIDENCE WAS TAGGED-N LATENT PRINTS WERE LIFTED AT A SCENE-N

Supplement entered by = 107338
Report reviewed by-DR
Date cleared- 03/06/02

Employee number-082821

No-0012

Offense- CAPITAL MURDER

		Street location information	
Number-	3235	Name-HOLMAN	Type-
Apt. no-		Name-VELASCO	Type-
Date of offense-	12/06/01		Suffix-
Comp1(s) Last-	HUYNH	First-SON	Date of supplement-03/06/02
	Last-	Middle-VINH	

		Recovered stolen vehicles information	
Stored-		by-	Ph#- (000) 000-0000
Officer1-	L.W. HOFFMASTER	Emp#-	039866 Shift-2 Div/Station-HOM
Officer2-	C. PARK	Emp#-	107338 Shift-2

SUPPLEMENT NARRATIVE

CASE DISPOSITION 3/6/02

SERGEANT HOFFMASTER AND OFFICER PARK LEARNED THAT SERGEANT ANDERSON AND OFFICER STRAUGHTER ALSO HAD A ROBBERY HOMICIDE AT A CONVENIENCE STORE, WHERE A YOUNG, TALL, DARK BLACK MALE IN A GRAY CAR HAD ROBBED AND SHOT THE OWNER OF THE STORE, WITH A .380 CALIBER PISTOL. SGT. ANDERSON'S CASE # IS 154125801 F. IT OCCURRED AT 3300 YELLOWSTONE. IN SGT. ANDERSON'S CASE THE SUSPECT TOOK THE CASH REGISTER, IN THIS CASE WITNESSES REPORTED THAT THE SUSPECT TRIED TO TAKE THE CASH REGISTER. WE THEN SHOWED A PHOTO SPREAD CONTAINING A PICTURE OF THEIR SUSPECT, RONALD JAMES HAMILTON B/M DOB [REDACTED] TO THE TWO WITNESSES IN THIS CASE. BOTH WITNESSES IDENTIFIED RONALD HAMILTON AS BEING THE MAN THEY SAW ROB AND SHOOT THE COMPLAINANT IN THIS CASE.

SGT. ANDERSON'S CASE, 154125801 F IS THE STRONGER OF THE TWO CASE. CHARGES OF CAPITAL MURDER HAVE BEEN FILED IN THAT CASE. CHARGES HAVE NOT BEEN FILED IN THIS CASE; IT WILL BE USED IN THE PUNISHMENT PHASE OF THE TRIAL.

THIS CASE WILL BE CLEARED AS CHARGES FILE IN CASE 154125801 F. THE SUSPECT IS RONALD JAMES HAMILTON DOB [REDACTED] SOCIAL # [REDACTED] CHARGED WITH CAPITAL MURDER IN THE 180TH DIST. CT., CAUSE # 0901049.

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CASE DISPOSITION (MARK ONLY ONE CATEGORY) ANY SUSPECTS MUST BE LISTED ON PAGE 9
- ARRESTED AND CHARGED IN THIS CASE (INCLUDES JUVENILES ARRESTED AND REFERRED)
- ARRESTED AND CHARGED IN OTHER CASES (BUT NOT THIS CASE)
EXCEPTIONAL CLEARANCES -- MUST HAVE THE FOLLOWING CONDITIONS IN NARRATIVE:
IDENTITY OF OFFENDER IS ESTABLISHED, AND ENOUGH INFORMATION EXISTS TO SUPPORT AN ARREST, CHARGE, AND PROSECUTION, AND EXACT LOCATION OF THE OFFENDER IS KNOWN, AND THERE IS SOME REASON BEYOND LAW ENFORCEMENT CONTROL THAT PROHIBITS THE ARREST AND/OR CHARGING OF THE OFFENDER (MARK ONLY ONE).
- LACK OF PROSECUTION BY BY D. A. FOR NON-EVIDENTIARY REASON
- LACK OF PROSECUTION BY COMPLAINANT - ORAL CONFESSION WITH MINIMAL EVIDENCE
- MINOR OFFENSE (JUVENILE ONLY) - DEATH OF DEFENDANT
- OTHER
- UNFOUNDED - INACTIVE - CLEARED BY INVESTIGATION (INVESTIGATION CASES ONLY)
- CASE OPEN AND ACTIVE INVESTIGATION CONTINUING

Supplement entered by = 39866
Report reviewed by-DR Employee number-082821
Date cleared- 03/06/02

No-0013

Offense- CAPITAL MURDER

Street location information
Number-- 3235 Name-HOLMAN Type- Suffix-
Apt no- Name-VELASCO Type- Suffix-
Date of offense-12/08/01 Date of supplement-03/07/02
Comp1(s) Last-HUYNH First-SON Middle-VINH
Last-
Recovered stolen vehicles information
Stored- by- Ph#- (000) 000-0000
Officer1- D. BENNINGFIELD Emp#-053865 Shift-I Div/Station-ID 83050

SUPPLEMENT NARRATIVE

LL#7574-01

BELOW IS LISTED EVIDENCE SUBMITTED TO THE LATENT LAB BY SGT. L. W. HOFFMASTER #39866, ON 12-17-01, TO BE PROCESSED FOR LATENT PRINTS AS EVIDENCE IN CONNECTION WITH THIS OFFENSE:

- 1. FIVE (5) ONE-HUNDRED DOLLAR BILLS (SER #'S AL85268517B; AB25977198G; AB42794032Q; AK85494307A; AC17134487A)

EXAMINATION OF THIS EVIDENCE REVEALED NO SUITABLE LATENT PRINTS CONTAINING SUFFICIENT CHARACTERISTICS TO EFFECT AN IDENTIFICATION. DISPOSITION OF EVIDENCE: REL TO SGT. HOFFMASTER ON 3-5-02

D. BENNINGFIELD, 53865
LATENT PRINT EXAMINER

Supplement entered by = 53865
Report reviewed by-DR Employee number-082821
Date cleared- 03/06/02

Appendix G - Mr. Hamilton's Inmate Declaration

INMATE DECLARATION

State of Texas

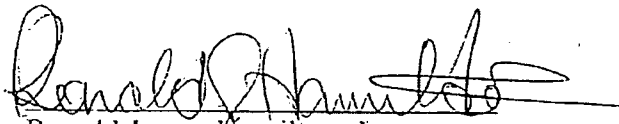
County of Polk

"My name is Ronald James Hamilton, Jr. My date of birth is 4/21/1977, and my TDCJ number is 999436. I am over 18 years of age and capable of making this declaration. I am currently incarcerated on Death Row at the Polunsky Unit. I declare that the following is true and correct:

I recently learned for the first time that my trial counsel, Loretta Muldrow, was law partners with Alvin Nunnery, the attorney for the co-defendant in my case, Shawon Smith. I learned that their office is called the "Law Office of Muldrow & Nunnery," and that they have been in practice together since 1990. This information was never made known to me until I was told about it by my federal writ attorneys Bryan Garris and Jonathan Landers.

I also have learned that there is untested physical evidence, including DNA, fingerprint, and ballistics evidence related to the murder of Mr. Son Vinh Huynh at 3235 Holman Street, Houston, Texas 77004. The State of Texas alleged that I committed this murder during the punishment phase of my trial in Harris County Cause No. 0901049. I did not murder Mr. Huynh and have no knowledge about who committed that crime. I, through my attorneys, have requested that the Harris County District Attorney's Office have this evidence tested because I firmly believe it would establish without a doubt that I had no involvement in Mr. Huynh's murder. I have learned that the Harris County District Attorney's Office has agreed to my request and will work to have this evidence tested."

Signed and declared on this the 14th day of June, 2017.


Ronald James Hamilton, Jr.

Appendix H - Marshall Knight Judgments for Aggravated Robbery, carrying a weapon, and criminal mischief

JUDGMENT ADJUDICATING GUILT

DEFENDANT'S EXHIBIT 21

CAUSE NO. 293741

PS

THE STATE OF TEXAS VS.

IN THE 200th DISTRICT COURT

Marshall Duwayne Knight (Name of Defendant)

COUNTY CRIMINAL COURT AT LAW NO.

AKA

OF HARRIS COUNTY, TEXAS

Date of Judgment: FEB 28 2002 Date Sentence Imposed: FEB 28 2002 Sentence to Begin: FEB 28 2002 Date of Offense: September 9, 1998

Attorney for State: Joni Kellman Date of Original Community Supervision Order: 12/13/13, 1999

Attorney for Defendant: John Clark Defendant Waived Counsel

Offense Convicted of: Aggravated Robbery

A MISDEMEANOR CLASS: A | B | C | X FELONY DEGREE: 1st | 3rd | 2nd | (1st)

Terms of Plea Bargain (In Detail): 5 years TDCJ State Standards Paragraphs: 11, 16, 12.1, 12.4, 21

Plea: (True) Not True

Affirmative Findings:

Deadly Weapon: Yes | No (No) Family Violence: Yes | No (No) Victim Selected by Bias/Prejudice: Yes | No (N/A) Victim Younger Than 17 years: Yes | No (N/A) Controlled Substance Used to Commit Crime: Yes | No (N/A)

Punishment Imposed and Place of Confinement: 5 years Institutional Division, TDCJ

Fine in the Amount of \$:

Time Credited: 251 days toward incarceration fine and costs COURT COSTS: \$ 306.35

(Mark appropriate selections below, if applicable)

- Name changed from Judgment Addendum incorporated herein by reference. Driver's license is suspended for a period of days/months/years. The Defendant is entitled to days credit toward suspension of driver's license. It is ORDERED by the Court, that any weapon(s) seized in this case is/are hereby forfeited. Educational program waived in accordance with Article 42.12 Sec. 13 (h), upon a finding of good cause by the Court. In accordance with Section 12.44(a), Penal Laws of Texas, the Court finds that the ends of justice would best be served by punishment as a Class A misdemeanor. The Defendant is adjudged to be guilty of a state jail felony and is assessed the punishment indicated above. In accordance with Section 12.44(b), Penal Laws of Texas, the Court authorizes the prosecuting attorney to prosecute this cause as a Class A misdemeanor. The Defendant is adjudged to be guilty of a Class A misdemeanor and is assessed the punishment indicated above.

RECORDER'S MEMORANDUM This instrument is of poor quality and not satisfactory for photographic recoding; and/or alterations were present at the time of filming

Certified Document Number: 42250793 - Page 1 of 2

On this day, in Harris County, Texas, unless otherwise referenced, came on to be heard the matter of the Defendant's obedience to the terms and conditions of the Deferred Adjudication of Guilt heretofore granted in the above styled and numbered cause. The State appeared by her District Attorney as named above and the Defendant appeared in person and either by counsel as named above or knowingly, intelligently and voluntarily waived the right to representation by counsel as indicated above in writing in open court, and the Court having heard the evidence submitted by both sides herein and having considered the same, finds: that on the date of community supervision order indicated above, this court deferred further proceedings and the Defendant was qualified for community supervision under Art. 42.12 (9) C.C.P. and that under the provisions of said act, the Court made no final finding of guilt, rendered no judgment and placed the Defendant on community supervision for a period of 9 DAYS/MONTHS/YEARS and assessed a fine of \$ 10. And that within the period of such community supervision, the Defendant violated the terms and conditions of said community supervision as set out in the State's ORIGINAL/AMENDED Motion to Adjudicate Guilt:

Defendant injected alcohol on JUNE 27, 2001
and April 9, 2001

Defendant Failed to report to his probation
officer on June 13, 2001; August 14, 2001;
September 2001, and October 2001

IT IS ORDERED AND ADJUDGED by the Court that the Defendant is guilty of the offense indicated above, and that the Defendant committed the offense on the date indicated above, and that the Defendant be punished as indicated above for the period indicated above, and that the State of Texas do have and recover of the Defendant all costs of the prosecution for which execution will issue. Further, the Court finds the Presentence Investigation, if so ordered, was done according to the applicable provisions of Art. 42.12, Sec. 9, Code of Criminal Procedure.

IT IS ORDERED by the Court that if the punishment assessed against the Defendant is confinement in the Institutional Division or the State Jail Division of the Texas Department of Criminal Justice (TDCJ) that the Defendant be delivered by the Sheriff of Harris County, Texas immediately to the Director of the Institutional Division or the State Jail Division, TDCJ, or any other person legally authorized to receive such convicts, and said Defendant shall be confined in the Institutional Division or State Jail Division, TDCJ for the period indicated above, in accordance with the provisions of the law governing the Institutional Division or State Jail Division, TDCJ. The Defendant is remanded to the custody of the Sheriff of Harris County until said Sheriff can obey the directions of this sentence.

IT IS ORDERED by the Court that if the punishment assessed against the Defendant is confinement in the Harris County Jail that the Defendant is remanded to the custody of the Sheriff of Harris County, Texas; unless the Defendant is instructed to voluntarily surrender to the Sheriff on the date the sentence is to begin, as indicated above. The Sheriff shall confine the Defendant in the Harris County Jail as required by law.

IT IS ORDERED by the Court that if the punishment assessed against the defendant is for a fine only, the Defendant is ordered to immediately proceed to the Office of the Harris County Sheriff and pay all fine and court costs as ordered by the Court in this cause; unless the Court orders the Defendant to be committed to the custody of the Sheriff of Harris County, Texas on the date the sentence is to begin, as indicated above, to be confined in the Harris County Jail until the fine and costs are fully satisfied in accordance with law; or as indicated above.

IT IS ORDERED by the Court that the sentence indicated above is to be executed, unless it is indicated above that the sentence is to be suspended, and if so, the Defendant is placed on community supervision for the period indicated above pending his abiding by and not violating the terms and conditions of his community supervision.

IT IS ORDERED by the Court that this sentence runs concurrent with any other sentence(s) unless it is indicated on the Judgment Addendum that the sentence is to run cumulatively.

Signed and entered on

FEB 28 2002

"Appeal waived. No permission to appeal granted."

x Denise Collins
Denise Collins

JUDGE PRESIDING

Community Supervision

Expires on: _____

Notice of Appeal: _____

Mandate Received: _____

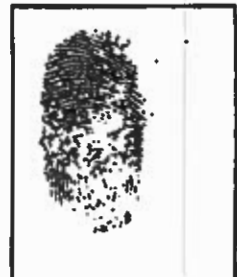
After Mandate Received, Sentence to Begin Date is: _____

Received on 2-28-02 at 12:00 AM | PM
Sheriff, Harris County, Texas

By: A. Miller #1967 Deputy

SPECIAL INSTRUCTION OR NOTES: _____

Entered _____
Verified _____
LCBT _____
LCBU _____



Right Thumbprint

Certified Document Number: 42250793 - Page 2 of 2



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this May 22, 2019

Certified Document Number: 42250793 Total Pages: 2



Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com



JUDGMENT ON PLEA OF GUILTY/NOLO CONTENDERE/NOT GUILTY BEFORE COURT - WAIVER OF JURY TRIAL

72

CAUSE NO. 9813439

THE STATE OF TEXAS

IN THE _____ DISTRICT COURT

VS. MARSHALL DWAYNE KNIGHT
(Name of Defendant)

COUNTY CRIMINAL COURT 11
AT LAW NO. 11

OF HARRIS COUNTY, TEXAS

AKA _____

Judge Presiding: <u>Hughes</u>	Date of Judgment: <u>JUN 05 1998</u>
Attorney for State: <u>C Driskell</u>	Date Sentence Imposed: <u>JUN 05 1998</u>
Attorney for Defendant: <u>D Wyburn</u>	<input type="checkbox"/> Defendant Waived Counsel
Offense Convicted of: <u>CARRYING A WEAPON</u>	Date of Offense: <u>4-2-98</u>
	Sentence to Begin Date: <u>JUN 05 1998</u>

A MISDEMEANOR, CLASS: (A) | B | C A FELONY, DEGREE: SJ | 3rd | 2nd | 1st | CAPITAL
Terms of Plea Bargain (In Detail):

10 DAYS - 1 DAY CREDIT

(Circle appropriate selection - N/A = not available or not applicable)

Plea to Enhancement Paragraph(s): 1st Paragraph True | Not True | (N/A) 2nd Paragraph True | Not True | (N/A) Charging Instrument: Complaint | Indictment | (Information)

Findings on Enhancement(s): 1st Paragraph True | Not True | (N/A) 2nd Paragraph True | Not True | (N/A) Plea: (Guilty) | Nolo Contendere | Not Guilty

Affirmative Findings: Deadly Weapon: Yes | No | (N/A) Family Violence: Yes | No | (N/A) Hate Crime: Yes | No | (N/A)

Punishment Imposed and Place of Confinement: 10 DAYS

(Mark all that apply)

Institutional Division, TDCJ Sentence suspended, Defendant placed on community supervision for _____

State Jail Division, TDCJ

Harris County Jail SEE SPECIAL INSTRUCTIONS, incorporated herein by reference.

Fine in the Amount of :\$ _____ Fine Only

Time Credited: _____ days toward incarceration _____ days toward fine and costs ONE days toward incarceration, fine and costs COURT COSTS: \$ 199.25

(Mark appropriate selections below, if applicable)

- Name changed from _____
- Judgment Addendum incorporated herein by reference.
- Driver's license is suspended for a period of _____ days/months/years.

RECORDER'S MEMORANDUM: This instrument is of poor quality and not satisfactory for photographic recodation; and/or alterations were present at the time of filming.

Certified Document Number: 32273193 - Page 1 of 2

V2428 P0264

- The Defendant is entitled to _____ days credit toward suspension of driver's license.
- It is ordered by the Court, that any weapon(s) seized in this case is/are hereby forfeited.
- Educational program waived in accordance with Article 42.12 Sec. 13 (h), upon a finding of good cause by the Court.
- In accordance with Section 12.44(a), Penal Laws of Texas, the Court finds that the ends of justice would best be served by punishment as a Class A misdemeanor. The Defendant is adjudged to be guilty of a state jail felony and is assessed the punishment indicated above.
- In accordance with Section 12.44(b), Penal Laws of Texas, the Court authorizes the prosecuting attorney to prosecute this cause as a Class A misdemeanor. The Defendant is adjudged to be guilty of a Class A misdemeanor and is assessed the punishment indicated above.

This cause being called for trial, the State appeared by her District Attorney as named above and the Defendant named above appeared in person with Counsel as named above; or the Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel as indicated above, and both parties announced ready for trial. The Defendant waived his right of trial by jury, and pleaded as indicated above. Thereupon, the Defendant was admonished by the Court as required by law. It appearing to the Court that the Defendant is mentally competent to stand trial, that the plea is freely and voluntarily made, and that the Defendant is aware of the consequences of his plea: the plea is hereby received by the Court and entered of record. The Court having heard the evidence submitted, found the Defendant guilty of the offense indicated above. The Defendant was granted the right of allocution and answered nothing in bar thereof. The Court proceeded in the presence of the Defendant to pronounce sentence against the Defendant.

IT IS CONSIDERED, ORDERED AND ADJUDGED by the Court that the Defendant is guilty of the offense indicated above, and that the Defendant committed the offense on the date indicated above, and that the Defendant be punished as indicated above for the period indicated above, and that the State of Texas do have and recover of the Defendant all costs of the prosecution for which execution will issue. Further, the Court finds the Presentence Investigation, if so ordered, was done according to the applicable provisions of Art. 42.12, Sec. 9, Code of Criminal Procedure.

IT IS ORDERED by the Court that if the punishment assessed against the Defendant is confinement in the Institutional Division or the State Jail Division of the Texas Department of Criminal Justice (TDCJ) that the Defendant be delivered by the Sheriff of Harris County, Texas immediately to the Director of the Institutional Division or the State Jail Division, TDCJ, or any other person legally authorized to receive such convicts, and said Defendant shall be confined in the Institutional Division or State Jail Division, TDCJ for the period indicated above, in accordance with the provisions of the law governing the Institutional Division or State Jail Division, TDCJ. The Defendant is remanded to the custody of the Sheriff of Harris County until said Sheriff can obey the directions of this sentence.

IT IS ORDERED by the Court that if the punishment assessed against the Defendant is confinement in the Harris County Jail that the Defendant is remanded to the custody of the Sheriff of Harris County, Texas; unless the Defendant is instructed to voluntarily surrender to the Sheriff on the date the sentence is to begin, as indicated above. The Sheriff shall confine the Defendant in the Harris County Jail for the period indicated above, and until the fine and costs are fully satisfied in accordance with law.

IT IS ORDERED by the Court that if the punishment assessed against the defendant is for a fine only, the Defendant is ordered to immediately proceed to the Office of the Harris County Sheriff and pay all fine and court costs as ordered by the Court in this cause; unless the Court orders the Defendant to be committed to the custody of the Sheriff of Harris County, Texas on the date the sentence is to begin, as indicated above, to be confined in the Harris County Jail until the fine and costs are fully satisfied in accordance with law.

IT IS ORDERED by the Court that the sentence indicated above is to be executed, unless it is indicated above that the sentence is to be suspended, and if so, the Defendant is placed on community supervision for the period indicated above pending his abiding by and not violating the terms and conditions of his community supervision.

IT IS ORDERED by the Court that this sentence runs concurrent with any other sentence(s) unless it is indicated on the Judgment Addendum that the sentence is to run cumulatively.

JUN 05 1998

Signed and entered on _____

Community Supervision

Expires on: _____

x Cherna Hughes
PRESIDING JUDGE

Notice of Appeal: _____

Mandate Received: _____

After Mandate Received, Sentence to Begin Date is: _____

Received on 6-5-98 at 12:00 AM | PM.
Sheriff, Harris County, Texas

By: _____ Deputy

SPECIAL INSTRUCTION OR NOTES: _____

Entered	<u>23/12/99</u>
Verified	<u>[Signature]</u>
LCBT	<u>[Signature]</u>
LCBU	<u>[Signature]</u>
<u>13/12/CF120</u>	



V2428 P0265

Right Thumbprint

Filed



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this May 22, 2019

Certified Document Number: 32273193 Total Pages: 2

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com



DEFENDANT'S EXHIBIT
23

JUDGMENT ON PLEA OF GUILTY/NOLO CONTENDERE/NOT GUILTY BEFORE COURT - WAIVER OF JURY TRIAL

P 2

CAUSE NO. 1056896

THE STATE OF TEXAS

IN THE _____ DISTRICT COURT

VS. Marshall Dewaine Knight
 (Name of Defendant)

COUNTY CRIMINAL COURT AT LAW NO. 10

AKA _____

OF HARRIS COUNTY, TEXAS

Date of Judgment: MAY 10 2001 | Date Sentence Imposed: MAY 10 2001 | Sentence to Begin: MAY 10 2001 | Date of Offense: 4-29-01

Attorney for State: B. Borrello

Attorney for Defendant: Rudwig

Defendant Waived Counsel

Offense Convicted of: Criminal Mischief, \$50 - \$500

A MISDEMEANOR, CLASS: A B C A FELONY, DEGREE: SJ | 3rd | 2nd | 1st | CAPITAL

Terms of Plea Bargain (In Detail):
15 days HCJ
12 days credit

(Circle appropriate selection - N/A = not available or not applicable)

Plea to Enhancement Paragraph(s): True | Not True | N/A | 2nd Paragraph: True | Not True | N/A | Charging Instrument: Complaint | Indictment | Information
 Findings on Enhancement(s): True | Not True | N/A | 2nd Paragraph: True | Not True | N/A | Plea: Guilty | Nolo Contendere | Not Guilty

Affirmative Findings:
 Deadly Weapon: Yes | No | N/A | Family Violence: Yes | No | N/A | Victim Selected by Bias/Prejudice: Yes | No | N/A | Victim Younger Than 17 years: Yes | No | N/A | Controlled Substance Used to Commit Crime: Yes | No | N/A

Punishment Imposed and Place of Confinement:
 (Mark all that apply)
 Institutional Division, TDCJ Sentence suspended, Defendant placed on community supervision for _____
 State Jail Division, TDCJ
 Harris County Jail SEE SPECIAL INSTRUCTIONS, incorporated herein by reference
 Fine (Amt.)

15 days

Fine in the Amount of \$ _____
 Time Credit: _____ days toward incarceration | _____ days toward fine and costs | 12 days toward incarceration, fine and costs | COURT COSTS \$ 200.00

- Name changed from _____
- Judgment Addendum incorporated herein by reference
- Driver's license is suspended for a period of _____ days months years
- The Defendant is entitled to _____ days credit toward suspension of driver's license
- It is ORDERED by the Court, that any weapon(s) seized in this case is/are hereby forfeited
- Educational program waived in accordance with Article 42.12 Sec. 13 (h), upon a finding of good cause by the Court
- In accordance with Section 12.44(a), Penal Laws of Texas, the Court finds that the ends of justice would best be served by punishment as a Class A misdemeanor. The Defendant is adjudged to be guilty of a state jail felony and is assessed the punishment indicated above
- In accordance with Section 12.44(b), Penal Laws of Texas, the Court authorizes the prosecuting attorney to prosecute this cause as a Class A misdemeanor. The Defendant is adjudged to be guilty of a Class A misdemeanor and is assessed the punishment indicated above

Certified Judgment Number: 4141728 Page 1 of 1

V8462 P0721



This cause being called for trial, in Harris County, Texas, unless otherwise referenced, the State appeared by her District Attorney as named above and Defendant named above appeared in person with Counsel as named above; or the Defendant knowingly, intelligently, and voluntarily waived the right to presentation by counsel as indicated above in writing in open court, and both parties announced ready for trial. The Defendant waived his right of trial by jury, and pleaded as indicated above. Thereupon, the Defendant was admonished by the Court as required by law. It appearing to the Court that the Defendant is mentally competent to stand trial, that the plea is freely and voluntarily made, and that the Defendant is aware of the consequences of his plea; the plea is hereby received by the Court and entered of record. The Court having heard the evidence submitted found the Defendant guilty of the offense indicated above. The Defendant was granted the right of allocution and answered nothing in bar thereof. The Court proceeded in the presence of the Defendant to pronounce sentence against the Defendant.

IT IS ORDERED AND ADJUDGED by the Court that the Defendant is guilty of the offense indicated above, and that the Defendant committed the offense on the date indicated above, and that the Defendant be punished as indicated above for the period indicated above, and that the State of Texas do have and recover of the Defendant all costs of the prosecution for which execution will issue. Further, the Court finds the Presentence Investigation, if so ordered, was done according to the applicable provisions of Art. 42.12, Sec. 9, Code of Criminal Procedure.

IT IS ORDERED by the Court that if the punishment assessed against the Defendant is confinement in the Institutional Division or the State Jail Division of the Texas Department of Criminal Justice (TDCJ) that the Defendant be delivered by the Sheriff of Harris County, Texas immediately to the Director of the Institutional Division or the State Jail Division, TDCJ, or any other person legally authorized to receive such convicts, and said Defendant shall be confined in the Institutional Division or State Jail Division, TDCJ for the period indicated above, in accordance with the provisions of the law governing the Institutional Division or State Jail Division, TDCJ. The Defendant is remanded to the custody of the Sheriff of Harris County until said Sheriff can obey the directions of this sentence.

IT IS ORDERED by the Court that if the punishment assessed against the Defendant is confinement in the Harris County Jail that the Defendant is remanded to the custody of the Sheriff of Harris County, Texas; unless the Defendant is instructed to voluntarily surrender to the Sheriff on the date the sentence is to begin, as indicated above. The Sheriff shall confine the Defendant in the Harris County Jail as required by law.

IT IS ORDERED by the Court that if the punishment assessed against the defendant is for a fine only, the Defendant is ordered to immediately proceed to the Office of the Harris County Sheriff and pay all fine and court costs as ordered by the Court in this cause; unless the Court orders the Defendant to be committed to the custody of the Sheriff of Harris County, Texas on the date the sentence is to begin, as indicated above, to be confined in the Harris County Jail until the fine and costs are fully satisfied in accordance with law; or as indicated above.

IT IS ORDERED by the Court that the sentence indicated above is to be executed, unless it is indicated above that the sentence is to be suspended, and if so, the Defendant is placed on community supervision for the period indicated above pending his abiding by and not violating the terms and conditions of his community supervision.

IT IS ORDERED by the Court that this sentence runs concurrent with any other sentence(s) unless it is indicated on the Judgment Addendum that the sentence is to run cumulatively.

MAY 10 2001

Signed and entered on _____

RECORDER'S MEMORANDUM.
This instrument is of poor quality and not satisfactory for photographic recordation; and/or alterations were present at the time of filing

X 
Sherman A. Ross
JUDGE PRESIDING

Community Supervision Expires on _____

Notice of Appeal _____


Mandate Received _____

After Mandate Received, Sentence to Begin Date is _____

Received on _____ at _____ AM PM
Sheriff, Harris County, Texas

By _____ Deputy

SPECIAL INSTRUCTION OR NOTES _____

Entered	23/04/99
Verified	
LCBT	
LCBU	



Right Thumbprint

Certified Document Number: 41411728 - Page 2 of 2

V0182 P0122



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this May 22, 2019

Certified Document Number: 41411728 Total Pages: 2

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

Appendix I - DNA Report



Houston Forensic Science Center

Forensic Biology Division

1200 Travis Street, Houston, Texas 77002
(713) 308-2600



Incident Number: 169781801

Report Date:

September 28, 2017

Forensic Case Number: 169781801

Laboratory Report #2

Offense: HOM - Homicide

ITEMS OF EVIDENCE:

10	Envelope containing known buccal swabs from Ronald Hamilton
10.1	Portion of known buccal swabs from Ronald Hamilton
H9JR\H9JS	Box containing malt beer bottle
H9JR\H9JS.1	Swab from mouth area of malt beer bottle
H9JR\H9JS.1.1	Portion of swab from mouth area of malt beer bottle
I0D5\I0D6	Envelope containing morgue evidence from Son Vinh Huynh (ML01-3937)
I0D5\I0D6.1	Known blood
I0D5\I0D6.1.1	Bloodstain card
I0D5\I0D6.1.1.1	Portion of bloodstain card from Son Vinh Huynh (ML01-3937)
I0D5\I0D6.2	Fingernail scrapings, right
I0D5\I0D6.2.1	Swab from fingernail scrapings, right
I0D5\I0D6.2.1.1	Portion of swab from fingernail scrapings, right
I0D5\I0D6.3	Fingernail scrapings, left
I0D5\I0D6.3.1	Swab from fingernail scrapings, left
I0D5\I0D6.3.1.1	Portion of swab from fingernail scrapings, left
I0D5\I0D6.4	Pulled head hair

SCREENING RESULTS AND INTERPRETATIONS:

Item H9JR\H9JS (Malt beer bottle), Item I0D5\I0D6.2 (Fingernail scrapings, right), and Item I0D5\I0D6.3 (Fingernail scrapings, left)

A swab was taken from each of the items for possible contact DNA.

The detection of human DNA was positive on these items. These items were processed further.

Item I0D5\I0D6.4 (Pulled head hair)

No analysis was performed on the item.

Incident Number: 169781801

Houston Forensic Science Center

Forensic Case Number: 169781801 (2)

Report Date: September 28, 2017

DNA RESULTS AND INTERPRETATIONS:

Item H9JR\H9JS.1.1 (Portion of swab from mouth area of malt beer bottle)

A partial male DNA profile was obtained from this item. This partial profile is not suitable for comparison due to insufficient data. Data was observed below threshold that could indicate an additional contributor.

Item I0D5\I0D6.2.1.1 (Portion of swab from fingernail scrapings, right)

A mixture of DNA from at least two contributors, at least one of whom is male, was obtained from this item. Major and minor components were identified. SON VINH HUYNH cannot be excluded as a possible contributor to the major component. RONALD HAMILTON is excluded as a possible contributor to the major component. The minor component is not suitable for comparison due to insufficient data.

Item I0D5\I0D6.3.1.1 (Portion of swab from fingernail scrapings, left)

A mixture of DNA from at least two contributors, at least two of whom are male, was obtained from this item. Major and minor components were identified. SON VINH HUYNH cannot be excluded as a possible contributor to the major component. RONALD HAMILTON is excluded as a possible contributor to the major component. The minor component is not suitable for comparison due to insufficient data.

Item I0D5\I0D6.1.1.1 (Portion of bloodstain card from Son Vinh Huynh (ML01-3937))

A single-source male DNA profile was obtained from this item.

Item 10.1 (Portion of known buccal swabs from Ronald Hamilton)

A single-source male DNA profile was obtained from this item.

The eligible DNA profile from Item 10.1 (Portion of known buccal swabs from Ronald Hamilton) has been entered into CODIS.

DISPOSITION STATEMENTS:

Item H9JR\H9JS (Box containing malt beer bottle) was processed by the Latents Section prior to receipt by the Forensic Biology Section.

Notes:

1. Presumptive tests are only an indication of the presence of a biological fluid, such as blood or semen, which means material other than blood or semen can also give a positive result.
2. Items screened for the presence of blood may be confirmed using the ABACard® HemaTrace® test which is a qualitative detection method specifically designed for forensic identification of human blood. Hemoglobin from the Family Mustelidae (ferrets) and higher primates also gives a positive result.
3. In cases where apparent hair(s)/fiber(s) are observed or collected, please contact this analyst for instructions should analysis and comparison be necessary.
4. Items screened for autosomal and male DNA were extracted and then tested using real-time PCR amplification, detection, and quantification. The Quantifiler® Trio kit uses three human-specific target loci: Small Autosomal, Large Autosomal, and a Y-chromosome target. Each consists of multiple copies dispersed on various autosomal chromosomes (Small Autosomal and Large Autosomal) or multiple copies on the Y-chromosome.
5. "The quantity of male DNA detected at quantification was insufficient" indicates that the amount of male DNA detected is below the minimum

Incident Number: 169781801

Houston Forensic Science Center

Forensic Case Number: 169781801 (2)

Report Date: September 28, 2017

interpretation threshold of 0.001 ng/ul. This item may be suitable for Y-STR analysis if consensual sex partner(s) and/or suspect known samples are made available for testing. Please contact the laboratory for further information.

6. "The quantity of human DNA detected at quantification was insufficient" indicates that the amount of human DNA detected is below the minimum interpretation threshold of 0.001 ng/ul.

7. In cases where a single assailant is indicated and no consensual sex partner within 48 hours of the exam is specified (per the sexual assault kit medical report) not all items positive for male DNA will be taken forward initially. Please contact the lab if further testing is required in this case.

8. If items were taken forward to DNA analysis, they were amplified using polymerase chain reaction (PCR). The following STR loci were analyzed: D3S1358, vWA, D16S539, CSF1PO, TPOX, D8S1179, D21S11, D18S51, DYS391, D2S441, D19S433, TH01, FGA, D22S1045, D5S818, D13S317, D7S820, SE33, D10S1248, D1S1656, D12S391, and D2S1338, along with gender determining markers Amelogenin and a Y indel.

9. All DNA extracts are being retained in the laboratory. Any other items will be returned to the submitting agency.



Jessica L Powers
Criminalist
Assigned Analyst

The prosecutor and defense counsel may obtain additional documents related to this case by submitting a request to Triage@HoustonForensicScience.org. Requests should state the requestor's connection to the case and include full contact information.

Incident Number: 169781801

Houston Forensic Science Center

Forensic Case Number: 169781801 (2)

Report Date: September 28, 2017

Case Items	D3S1358	vWA	D16S539	CSFIPO	TPOX	Yindel	AMEL	D8S1179	D21S11	D18S51	DYS391	D2S441	D19S433	TH01	FGA
H9JR\H9JS.1.1 Portion of swab from mouth area of malt beer bottle	15^,16^	15^	NR	NR	NR	2	X^,Y^	12^,14^	28^,30^	NR	NR	10^,14^	13^	NR	NR
I0D5\I0D6.2.1.1 Portion of swab from fingernail scrapings, right	15,17	17,18	11	10,11	8	1	X,Y	15 (11^)	30,32.2	13,18	10	11,11.3	12,15.2	9,10	19,21
I0D5\I0D6.3.1.1 Portion of swab from fingernail scrapings, left	15,17	17,18	11	10,11	8	1 (2)	X,Y	15 (12^)	30,32.2	13,18	10	11,11.3	12,15.2 (15^)	9,10	19,21
I0D5\I0D6.1.1.1 Portion of bloodstain card from Son Vinh Huynh (ML01-3937)	15,17	17,18	11	10,11	8	1	X,Y	15	30,32.2	13,18	10	11,11.3	12,15.2	9,10	19,21
10.1 Portion of known buccal swabs from Ronald Hamilton	15,16	15,17	11,14	7,10	6,10	2	X,Y	12,14	28,31	17,24	10	14,15	13,14	7	19,30

Case Items	D22S1045	D5S818	D13S317	D7S820	SE33	D10S1248	D1S1656	D12S391	D2S1338
H9JR\H9JS.1.1 Portion of swab from mouth area of malt beer bottle	11^,15^	12^,13^	NR	NR	NR	12^,15^	11^	NR	NR
I0D5\I0D6.2.1.1 Portion of swab from fingernail scrapings, right	15,17 (18^)	12,13	8 (12^)	8,11	23.2,30.2	14,15	14,15	18,22	18,25
I0D5\I0D6.3.1.1 Portion of swab from fingernail scrapings, left	15,17	12,13 (10^)	8 (12^)	8,11 (9^)	23.2,30.2 (27.2^)	14,15	14,15 (15.3^)	18,22	18,25 (16^,24^)
I0D5\I0D6.1.1.1 Portion of bloodstain card from Son Vinh Huynh (ML01-3937)	15,17	12,13	8	8,11	23.2,30.2	14,15	14,15	18,22	18,25
10.1 Portion of known buccal swabs from Ronald Hamilton	17	12,13	9,12	10,11	15,27.2	11,14	11,14	18,21	16,19

SF = Sperm Fraction; EF = Epithelial Fraction; NR = No interpretable result; INC = Inconclusive/activity that could not be confirmed as real or artifactual; ND = No deduction
 () = Minor allele; ^ = Allele below stochastic threshold; [] = Trace allele; ** = May be attributable to stutter; -- = Allelic dropout or masking may be possible

Appendix J - Remand Order

9/14/18 @ 12:33 pm

Per Mark @ CCA OK to strike a line over the case was an "A" instead of a "B" which it needs to reflect the "B"

pd



FILED
Chris Daniel
District Clerk
SEP 14 2018
9-14-18
Time: _____
Harris County, Texas
By _____
Deputy

**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

WR-78,114-02

EX PARTE RONALD JAMES HAMILTON, JR.

0901049-B

ON APPLICATION FOR WRIT OF HABEAS CORPUS
CAUSE NO. ~~0901049-A~~ IN THE 180TH DISTRICT COURT
HARRIS COUNTY

Per Curiam.

ORDER

This is a subsequent application for writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071, § 5.

On November 6, 2002, applicant entered a plea of guilty to the November 7, 2001 murder of Ismail Matlkah during the commission of a convenience store robbery. The trial court instructed the jury to find applicant guilty of the offense of capital murder

Certified Document Number: 81722665 - Page 1 of 2

2/10/18

committed in the course of committing or attempting to commit a robbery. At punishment, the jury answered the special issues submitted pursuant to Article 37.071, and the trial court, accordingly, set applicant's punishment at death. This Court affirmed applicant's conviction and sentence on direct appeal. *Hamilton v. State*, No. AP-74,523 (Tex. Crim. App. Oct. 13, 2004)(not designated for publication).

This Court denied applicant's initial post-conviction application for writ of habeas corpus. *Ex parte Hamilton*, No. WR-78,114-01 (Tex. Crim. App. June 25, 2015)(not designated for publication). Applicant's instant post-conviction application for writ of habeas corpus was received in this Court on December 11, 2017.

Applicant presents three allegations in his subsequent application. We have reviewed the application and supporting documents and find that one allegation satisfies the requirements for consideration of a subsequent application under Texas Code of Criminal Procedure Article 11.071, § 5. Claim number one, that recently tested fingerprint evidence establishes applicant's innocence of an extraneous capital murder introduced at punishment, is remanded to the trial court for consideration.

IT IS SO ORDERED THIS THE 12th DAY OF SEPTEMBER, 2018.

Do Not Publish

Appendix K - Investigator Memo Proving Trial Prosecutors
Knew of Fingerprint Elimination

[REDACTED]

HARRIS COUNTY DISTRICT ATTORNEY'S OFFICE
INVESTIGATOR'S REPLY

INVESTIGATOR: G.W. "BUDDY" BARRINGER

CAUSE #: 901049 DEFENDANT: Ronald James Hamilton Jr.

AGENCY / #: HPD / 154125801 COMPLAINT:

PROSECUTOR: Barnett DATE REC'D.: 2-4-02

Co Defendant Shawon Dee Smith / 901050

Ordered Autopsy Report and photos for 01-3559 & 01-3937
Received photos
Received report 01-3559

Check for print results 154125801 no prints found

Check for print results 169781801 prints found were compared to defendants and eliminated

4-15-02 ordered scene video and surveillance video

5-6-02 (154125801) ordered copy of defendant's statement from Anderson
c/c (169781801) Hoffmaster ordered copy of witness statements and artist sketch and two color copies of
the photo spread . printed supplements 12-13

6-6-02 ordered Juvenile History / No History Found

6-20-02 request to locate family of C/W and the witness
I traveled to 3300 Yellowstone and found the store to be under new management. I met the new owner ,
Andy, he directed me to the location of the previous owner.

Mohammed is the brother-n-law of the C/W [REDACTED]
I advised Waiel El-quran that we had left a message at that # but no one had call us. He said he will try to
contact Mohammed and have him contact us.

Waiel El-quran (previous owner of 3300 Yellowstone and roommate of Ahmad Naimi)

[REDACTED]
Pearland, Tx. 77584
TDL [REDACTED]
SS [REDACTED]
H/ [REDACTED]
C/ [REDACTED]

[REDACTED]

Ahmad M. Naimi
[REDACTED]
Pearland, Tx. 77584
TDL [REDACTED]
SS [REDACTED]
SID [REDACTED]
C/ [REDACTED]

H) [Handwritten signature]



Appendix L - Pages from Benningfield's Testimony

1 Q. And who was the victim of that murder? I
2 think it's listed on that first page.

3 A. Son Vinh, H-U-Y-N-H, Huynh.

02:01

4 Q. Right. And was December 29th the date that
5 that took place, of 2001? I'm sorry, December 9th,
6 if I said that incorrectly.

7 A. All I can see is that it says 12/8/01 is the
8 begin date.

02:02

9 Q. And did you look at page number 2.014 in the
10 upper right-hand corner?

11 A. Two point -- what, which?

12 Q. Let me show you. Fourteen. Does that look
13 like this is one of your supplements in this police
14 report?

02:02

15 A. Yes.

16 Q. Okay. So I'm going to ask you questions
17 about this supplement, but it's really if you have
18 an independent memory. That's fine as well. Okay.
19 Do you have an independent memory of anything that
20 happened here?

02:03

21 A. No.

22 Q. Okay. How many murder cases do you think
23 you worked in your career? A lot?

24 A. A lot.

02:03

25 Q. Okay. And so the offense report is probably

1 going to help you remember what was going on; is
2 that right?

3 A. It doesn't make me remember the crime scene if
4 that's what you're asking me.

02:03 5 Q. You wouldn't have put anything in the
6 offense report if it did not happen; is that right?

7 A. That's correct.

8 Q. Okay. So what day were you first called out
9 to the scene of this murder?

02:03 10 MS. HUTCHINS: Objection, Judge.
11 Asking about a document that's not in evidence.

12 The witness can certainly use the document to
13 refresh her memory, but we object to her, I guess,
14 reading from the document and whatnot.

02:03 15 THE COURT: Understood. Sustained.
16 You may proceed.

17 BY MR. LANDERS:

02:03 18 Q. Just feel free to refresh your memory from
19 the offense report as needed. Okay. If you need
20 any help, page numbers, suggestions, just let me
21 know.

22 So what date were you called out to the
23 scene of this murder?

24 A. According to my supplement, December 9, 2001.

02:04 25 Q. About what time?

1 A. 8:06 p.m.

2 Q. And what was the address?

3 A. 3235 Holman.

02:04

4 Q. And who did you meet with when you first
5 arrived at the scene?

6 A. Sergeant Hoffmaster and Investigator Park. And
7 then there was CSU Officer Tuttle.

8 Q. And what would your duty have been or your
9 role out at the scene?

02:04

10 A. Is to process it for fingerprints and collect
11 any evidence that could be brought back to the lab and
12 processed.

13 Q. Is that what you did?

14 A. Yes.

02:04

15 Q. Okay. Whenever you'd meet with Hoffmaster
16 and Park -- first off, who are those two people?

17 A. They were assigned to the Homicide Division.

18 Q. And you remember both of them?

19 A. Yes.

02:05

20 Q. So were they the, I guess, investigating
21 officers on this case?

22 A. I assume.

23 Q. Okay. Would they -- I'm not asking what
24 they would have told you, but would they generally
25 tell you what happened and maybe discuss what

02:05

1 should or shouldn't be collected with you?

2 A. They would generally do a walk-through of the
3 scene, but they -- every once in a while they might
4 point out a piece of evidence, but they didn't direct
02:05 5 me to go out and collect certain pieces of evidence.

6 Q. Okay. So you'd be the one to decide what to
7 fingerprint and what evidence was important?

8 A. Yes. And, again, sometimes the investigator
9 would point out something, a point of entry or a point
02:05 10 of exit or something that they had been told and may
11 point that out to me.

12 Q. Okay. Did you fingerprint certain pieces of
13 evidence that were at the scene that were not
14 collected?

02:05 15 A. Yes.

16 Q. Okay. What all was fingerprinted? For the
17 record, when I say fingerprinted, what all did you
18 collect prints from?

19 A. Well, that's different than what you're asking.

02:06 20 Q. What am I asking?

21 A. I assume you're asking me what I printed and
22 then what I collected.

23 Q. Okay. What did you print?

02:06 24 A. According to my -- you know, I'm doing this
25 strictly off the supplement. But according to the

1 supplement, the front door and side glass windows, the
2 front counters, the lotto stand and the cooler door and
3 rear storage room door and a displaced stand found
4 lying on the ground between aisles.

02:06

5 Q. Okay. Was there also evidence that was
6 actually taken from the scene, collected from the
7 scene?

8 A. Yes, there were.

02:07

9 Q. Okay. And feel free to refresh your memory
10 if needed. What evidence was collected from the
11 scene?

02:07

12 A. Again, according to my supplement, a Royal cash
13 register, some lotto tickets on the lotto ticket stand
14 and from the floor in front of the stand, one pack of
15 unopened Salem 100 cigarettes, one empty pack of Camel
16 100s.

02:07

17 MS. HUTCHINS: Objection, Judge.
18 Reading from a document not in evidence. I don't
19 want to offer a suggestion, but reading from a
20 document not in evidence.

21 THE COURT: Objection sustained.

22 BY MR. LANDERS:

02:07

23 Q. Ma'am, would you review your offense report,
24 page 2.015, to see what evidence was collected and
25 after reviewing it just tell us what evidence was

1 collected?

2 A. That's what I thought I was doing.

3 Q. Right.

4 A. Do I start over?

02:08 5 Q. No, no, read the remaining and tell us.

6 A. Let's see. One Schlitz Malt Liquor can, one
7 24-ounce Heineken bottle, one 40-ounce Schlitz Malt
8 Liquor beer bottle, and one 12-ounce Heineken bottle.

9 Q. And then just before asking anymore
02:08 10 questions, do you mind reading the last -- to
11 yourself -- the last three sentences on that page?

12 A. Okay.

13 Q. Okay. So my first question is, are you
14 aware this is a convenience store robbery type
02:08 15 situation based on your review of the offense
16 report?

17 A. Based on the review.

18 Q. Okay. Everything is going to be based on
19 your review of the offense report, right?

02:09 20 A. Correct.

21 Q. That's why we make them so you can remember
22 what happened later; is that right?

23 A. Yes.

24 Q. Okay. Whenever you would go out to a
02:09 25 convenient store, would you just randomly pick up,

1 you know, trash outside the store?

2 A. No.

3 Q. Okay. What would you use to help identify
4 what item should be collected?

02:09

5 A. Obviously I am going to look at the point of
6 entry and the point of exit if it's known. And
7 sometimes within the walk-through the investigators
8 might point something out to me. So just based on
9 that.

02:09

10 Q. Okay. In this case, based on what you
11 reviewed, you picked up bottles and cans outside of
12 the store?

13 A. Correct.

02:09

14 Q. Right? Based on your review of the offense
15 report, is there any reason that you might have
16 done that in this case?

02:10

17 MS. HUTCHINS: Objection, calls for
18 hearsay, Judge. The document she's reviewed, the
19 basis of that answer is in the document and it
20 calls for hearsay.

02:10

21 MR. LANDERS: I'm not going to offer
22 this for the effect -- I'm offering this for the
23 effect on the listener, why she might have picked
24 something up. Not for the truth of the matter,
25 sir.

1 THE COURT: Anything?

2 MS. HUTCHINS: As long as the record is
3 clear that counsel is not going to argue the truth
4 of the matter for it.

02:10

5 THE COURT: Understood. You may
6 proceed.

7 BY MR. LANDERS:

02:10

8 Q. Ma'am, is there anything in your supplement
9 here that might suggest why you thought it would be
10 important to pick up bottles found outside the
11 store?

02:10

12 A. If you're referring to the comment about the
13 daughter or the complainant informing me that the
14 business was kept clean by her father, if that's what
15 you're referring to, that might have been a reason.

16 Q. Okay. But you wouldn't just randomly pick
17 up trash that was outside the store?

02:10

18 MS. HUTCHINS: Objection, leading.
19 Asked and answered.

20 THE COURT: Sustained.

21 BY MR. LANDERS:

22 Q. Would you -- and I apologize if I asked it
23 -- would you just randomly pick up trash that was
24 found outside the store?

02:11

25 MS. HUTCHINS: Objection, asked and

1 answered.

2 THE COURT: Overruled.

3 THE WITNESS: If I felt that it was
4 important or could have an impact, I would of.

02:11

5 BY MR. LANDERS:

6 Q. Perfect. So the things that were collected
7 at the scene, were they submitted to the crime lab?

8 A. Some.

9 Q. Do you know which items?

02:11

10 A. Again, I'm just going by my -- what's in my
11 supplement. It says the above listed bottles were
12 submitted to the crime lab.

13 Q. And what was the reason for submitting them
14 to the crime lab?

02:11

15 A. Swabbing for possible DNA.

16 Q. And then what does it mean that an item
17 would be processed in the lab?

18 A. Are you referring to the latent lab?

02:12

19 Q. You just said I think that the evidence
20 would have been processed in a lab; is that right?

21 A. Again, are we referring to the latent lab?

22 Q. I assume so.

02:12

23 A. Yes, there were chemicals that we had access to
24 that were not at the scene that we would bring evidence
25 back to use.

1 Q. That's what that means, we're going to take
2 it to the lab and get what we need out of the
3 evidence?

4 A. Correct.

02:12

5 Q. Okay. Would you turn to -- well, I'm going
6 to ask you some questions. I'll suggest that maybe
7 in 2.021, if you don't remember the answers, it
8 will refresh your memory. First off, in this case
9 was there a latent lab number assigned to the
10 evidence in this case?

02:13

11 A. Yes.

12 Q. And what is a latent lab number?

13 A. When we developed any fingerprints that we would
14 retain, then they were assigned a latent lab number.

15 Q. Okay.

16 A. And that was for filing purposes.

17 Q. And what was the latent lab number in this
18 case?

19 A. 7574-01.

02:13

20 Q. Is there a physical file related to that lab
21 number somewhere?

22 A. There was.

23 Q. Okay. What would have been in that physical
24 file?

02:13

25 A. The lift cards or photographs and a copy of most

1 of the supplements. Well, maybe all. I don't know if
2 there would be a reason that all of the supplements
3 would not be put in the envelope. That's all I can
4 recall.

02:14

5 Q. Okay. So generally speaking, each
6 supplement made by you as the examiner would go
7 into that lab file and be retained?

02:14

8 A. I'm trying to think if there were no prints -- I
9 don't recall whether or not if there were no prints
10 developed that we actually put that supplement, because
11 sometimes the civilian clerk, if there were no prints,
12 we'd actually type the supplement.

13 Q. By no prints, you mean no prints found at
14 the scene, found on the items?

02:14

15 A. No prints of value, correct.

16 Q. Okay. But if we found prints of value,
17 there would be something?

18 A. There should be.

02:14

19 Q. Okay. Should there have been supplements
20 for everything done in the case by the examiner?

21 A. No.

22 Q. What was the policy back around 2000, 2001
23 for making supplements for a police report?

02:15

24 A. If we made the scene, then we had a supplement.
25 If we brought evidence back to the lab and processed

1 it, we did a supplement. If there was a comparison
2 request or if there was an identification in the case,
3 then a supplement was typed.

02:15

4 Q. Okay. So if there was a request --
5 comparison request -- who would that have generally
6 come from?

7 A. Generally from the investigators on the case.

8 Q. And would they generally give you a name of
9 who to compare a unknown print to?

02:15

10 A. Yes.

11 Q. If there was a request but no match, would
12 there still be a supplement made?

13 A. No.

02:16

14 Q. So was the policy around this time here,
15 2001, only to make a supplement if there was a
16 fingerprint match found?

17 A. Correct.

02:16

18 Q. Okay. How many fingerprints did you find on
19 the bottle that you recovered at the scene that
20 were suitable for identification?

21 MS. HUTCHINS: Objection, Judge, vague.
22 There's multiple bottles at issue.

23 THE COURT: Please restate your
24 question.

02:16

25 MR. LANDERS: Sure.

1 BY MR. LANDERS:

2 Q. On the 40-ounce Schlitz Malt Liquor bottle,
3 how many fingerprints did you find that were
4 suitable for comparison? I'll suggest page 21.

02:16 5 A. According to my supplement, three.

6 Q. And do you recall where that malt liquor
7 bottle was found?

8 A. According to the supplement, on top of the
9 outside ice cooler in front of the business.

02:17 10 Q. I think that might have been a can. Do you
11 see a different area for a malt liquor bottle?
12 I'll point it out to you.

13 A. I'm going to read it. And it says these prints
14 were developed on a 40-ounce Schlitz Malt Liquor bottle
02:18 15 recovered from around outside the business and from a
16 Schlitz Malt Liquor can recovered from on top of the
17 outside of the ice cooler in front of the business.

18 Q. The bottle came from a rail outside the
19 business?

02:18 20 A. According to the supplement.

21 Q. Did you take the bottle any place to have
22 special pictures made in this case? The 40-ounce
23 Schlitz Malt Liquor bottle? It may be on the next
24 page?

02:18 25 A. Yes, I did.

1 Q. Okay. When did that happen?

2 A. According to the supplement, December 18th of
3 2001.

4 Q. Why would you do that?

02:18

5 A. Sometimes the -- I didn't photograph the prints.
6 If we had developed prints on items, I would lift. But
7 if it was on a surface that had to be photographed, we
8 had somebody else in our department that did that.

02:19

9 Butch Emmons from the Montgomery County Sheriff's
10 Office was a very good photographer and had equipment.
11 So I just felt like I was going to take it out there
12 and ask him to photograph it to see if he could enhance
13 it.

14 Q. Okay. So the reason to do that is to help
15 get a better print for comparison?

02:19

16 A. Correct.

17 Q. And that was something that was done in this
18 case as well?

19 A. Yes.

02:19

20 Q. Okay. Do you have any independent
21 recollection of ever comparing any of the prints in
22 this case to anybody?

23 A. No.

24 Q. Do you have any independent recollection of
25 ever comparing any of the prints developed -- I'm

1 sorry -- entering any of the prints in this case
2 into AFIS?

3 A. No.

4 Q. Or Print Track?

02:19

5 A. No.

6 Q. Okay. And you've reviewed the complete
7 offense report in this case; is that correct?

8 A. I didn't -- I only read reference to my --
9 mine.

02:20

10 Q. Okay. You read all of your supplements in
11 the offense report in this case?

12 A. Correct.

13 Q. Did you see anything that led you to believe
14 in your supplements that you had actually compared
15 any prints to anybody in this case?

02:20

16 A. In the supplements themselves?

17 Q. Right.

18 A. Can you give me my supplement numbers?

19 Q. Sure. I believe they are 3, 8 and 9.

02:20

20 A. May I use this to --

21 Q. Sure. Whatever you need to refresh your
22 memory.

23 A. Okay. According to the supplement, there's no
24 indication that I compared any.

02:21

25 Q. Okay. According to the supplements, is

1 there any indication there is a request made to
2 compare any of the prints in this case?

3 A. No.

02:22

4 Q. Okay. All right. I am going to show you
5 what's been marked as Defendant's Exhibit No. 4.
6 Do you recognize what this is?

7 A. Yes, I do.

8 Q. What is that?

02:22

9 A. This is a latent print envelope that we would or
10 I would -- if we developed -- it's prints developed
11 from the evidence from the scene. So if we processed
12 evidence at the scene, that went in one envelope.

13 Q. Okay.

02:22

14 A. If we brought evidence back to the lab and we
15 developed prints, that went in a different envelope.
16 So this is evidence that was collected or evidence from
17 the scene.

18 Q. Okay. And then you -- whose handwriting is
19 on this envelope, the majority of it?

02:22

20 A. The majority is mine.

21 Q. Do you recognize your handwriting?

22 A. Yes, I do.

23 Q. I think on the top we see some initials and
24 some dates from 2017. You see that?

02:23

25 A. Yes.

1 Q. That's not yours, right?

2 A. No.

3 Q. All the rest of it is, right?

4 A. Yes.

02:23

5 Q. Okay. And is -- can you tell if this
6 envelope comes from the same case we've been
7 discussing the whole time? I think there's a
8 police report number on it.

9 A. I just want to match up the latent number. Yes.

02:23

10 Q. Okay. So this is an envelope of evidence
11 collected at the scene is what you're thinking?

12 A. It's evidence from the scene is what I noted.

02:24

13 Q. Okay. We've already got introduced into
14 evidence pictures of some items which are within
15 this envelope. If I show those to you, can you
16 tell us what they are or would you rather open up
17 that envelope to see what's in there yourself?

18 A. It doesn't matter.

19 Q. All right.

02:24

20 I'd ask opposing counsel if it's all right
21 if I just use the pictures that are already in
22 evidence for this envelope?

23 MS. HUTCHINS: Which pictures?

02:24

24 MR. LANDERS: The ones that are already
25 in evidence.

1 MS. HUTCHINS: Just so the record is
2 clear, you're referring to Defendant's Exhibit 4-C.

3 MR. LANDERS: 4-C, right.

02:24

4 MS. HUTCHINS: And these were a series
5 of pictures that Rebecca Green identified that she
6 saw in the envelope and she inventoried, correct?

7 MR. LANDERS: Right.

8 MS. HUTCHINS: I have no objection to
9 these photographs with that foundation laid.

10 THE COURT: You may proceed.

11 BY MR. LANDERS:

02:25

12 Q. Ma'am, if I asked you to cut that envelope
13 open and look what's in there, could you tell us
14 what you placed in there and then we can seal it
15 back up? Is that all right with you?

16 A. Yeah.

17 Q. Okay. Can I borrow a pair of scissors,
18 please?

19 A. I can -- the tape is --

02:25

20 Q. Hold on. Before you take the seal off, I
21 want to look at something. Let's talk about the
22 outside of the envelope first. Now I don't want
23 you to discuss who the suspects are in this case
24 from the front page, but there is a section on the
25 envelope for suspect data; is that right?

02:25

1 A. Yes.

2 Q. Okay. Where would that suspect data come
3 from?

02:25

4 MS. HUTCHINS: Objection, Judge. One,
5 calls for hearsay; two, outside of the scope of the
6 remand order. The section that he is talking about
7 deals with an issue we addressed yesterday and what
8 you sustained State's objections are.

02:26

9 MR. LANDERS: I just want to know where
10 the information came from, not who it is or what
11 she was told.

12 MS. HUTCHINS: Calls for hearsay,
13 Judge, and it invades the province of that specific
14 issue.

02:26

15 THE COURT: So let me make sure I
16 understand your question. So you just want to know
17 where this information came from.

02:26

18 MR. LANDERS: I want to know where the
19 information in the suspect data section comes from
20 on this envelope.

21 THE COURT: Understood. Overruled.

22 BY MR. LANDERS:

23 Q. So, ma'am, where would the information found
24 in suspect data have come from?

02:26

25 A. I don't recall.

1 Q. Okay. Would you just come up with suspects
2 yourself or would the investigating officers have
3 told you that?

4 MS. HUTCHINS: Objection, leading.

02:26

5 THE COURT: Sustained.

6 BY MR. LANDERS:

7 Q. Okay. Do you have any reason to believe
8 that you came up with these suspects yourself?

9 A. No.

02:26

10 Q. Okay. So someone else would have let you
11 know who the suspects were?

12 MS. HUTCHINS: Objection, leading and
13 she's already -- asked and answered. Calls for
14 hearsay.

02:27

15 THE COURT: What's your question again?

16 MR. LANDERS: Someone else would have
17 told her who potential suspects were.

18 THE COURT: Overruled.

19 BY MR. LANDERS:

02:27

20 Q. Okay. Is that correct, ma'am?

21 A. Yes. I mean, I wouldn't have come up with these
22 names.

02:27

23 Q. Okay. To the left of those names, I see
24 some writing on this envelope. Do you see what I'm
25 talking about? Here, I'll point it out. This is a

1 picture of the front of that envelope. This is
2 Defendant's Exhibit 4-A. On the left side I see
3 looks like pencil, a scriggly line with some
4 writing. Do you see that?

02:27

5 A. Yes.

6 Q. What does this tell us, this writing? Is it
7 your writing first off?

8 A. Yes.

9 Q. What does this tell us?

02:27

10 A. It's checked -- that there's a check mark, an
11 e-d, meaning checked. And then my initials and the
12 date.

13 Q. Okay. What's the date?

14 A. 12/29 of '01.

02:28

15 Q. What does that tell us?

16 A. That means that I compared those prints.

17 Q. Okay. To whoever these people are; is that
18 correct?

19 A. Correct.

02:28

20 Q. Okay. Do you see on the back of -- I'm
21 sorry -- on the bottom of Exhibit 4, also in 4-A,
22 something that says list additional suspects on the
23 back?

24 A. Yes.

02:28

25 Q. Okay. And was that the common practice back

1 then to list the additional suspects on the back?

2 A. Yes.

3 Q. And would you flip that over for me? And do
4 you see two additional suspects listed there?

02:28

5 A. Yes.

6 Q. And what names do you see there?

7 A. The tape interrupts part of it.

8 Q. All right.

02:29

9 A. It's somebody by the last name of Hamilton and
10 somebody by the last name of Smith.

11 Q. Okay. And the tape is in an unfortunate
12 area; would you agree with that? Are you able to
13 see underneath that tape at all?

14 A. No.

02:29

15 Q. I am going to show you Defendant's 4-B.
16 This is a close-up. And there's three pictures
17 there of the same envelope you're looking at. Are
18 you able to at least kind of see through the tape a
19 little bit on that picture?

02:29

20 A. I can see some writing.

21 Q. Okay. Does that writing look like the
22 writing that was on the front of the envelope for
23 the checked portion?

02:29

24 A. I mean, there's some writing and -- but I
25 couldn't tell you exactly what it's saying. I couldn't

1 -- I don't --

2 Q. Sure. Do you believe that you compared the
3 fingerprints in that envelope to Ronald Hamilton's?

02:29

4 A. If it's my handwriting, then I would have
5 compared.

6 Q. Okay. So if you wrote a suspect's name
7 down, then you would have compared?

8 A. Yes.

02:30

9 Q. So you also would have compared it to Mr.
10 Smith who is also on the back of the envelope?

11 A. Correct.

12 Q. Okay. So we don't have to see the writing
13 to know that, the writing under the tape?

14 A. No.

02:30

15 Q. Okay. Were there any -- have you seen any
16 supplement whatsoever to show you compared any
17 prints to Ronald Hamilton in this case?

18 A. No.

19 Q. Okay. Do you have any idea why that was?

02:30

20 A. Because if we did not identify the print, we did
21 not type a supplement if we excluded it.

22 Q. Okay. Would you relay that information to
23 anybody that it had been compared at least?

24 A. Yes.

02:30

25 Q. Who would that be relayed to?

1 A. Whoever requested it.

2 Q. Okay. And do you have any idea who
3 requested these prints be compared in this case?

4 A. No.

02:30

5 MR. LANDERS: Okay. May I have just a
6 moment, Judge?

7 BY MR. LANDERS:

02:31

8 Q. So without even looking inside the contents
9 of that envelope, we know that Mr. Hamilton's
10 prints were compared with the prints within the
11 envelope; is that correct?

12 A. And as long as those are the prints from the
13 evidence from the scene.

02:32

14 Q. Okay. At this point I'd like to ask you to
15 open up -- be very careful because I don't want to
16 mess up the writing. It looks like you're doing a
17 good job there. I just don't want to mess up the
18 writing on the bottom of the tape. And if you
19 wouldn't mind just taking the evidence out and
20 looking through it for me.

02:32

21 MS. HUTCHINS: Judge, if I may?

22 THE COURT: Sure.

23 MS. HUTCHINS: May I have a personal
24 break for just a few minutes?

02:32

25 THE COURT: Sure. Five minutes, 10

1 minutes?

2 MS. HUTCHINS: Two minutes.

3 THE COURT: We can do a 10 minute
4 break.

02:32

5 (Off the record.)

6 BY MR. LANDERS:

02:44

7 Q. For the record, while we were on break we
8 opened up envelopes -- Defendant's Exhibit 4 and
9 Defendant's Exhibit 3 -- to let the witness review
10 what's in them. So they're both open now.

02:45

11 So let's go back with Envelope No. 4, which
12 I believe is this one over here. And I'll move
13 these. Keep them altogether. So looking at the
14 contents -- first off, I think you told us this
15 already. Would there -- you compared Mr.
16 Hamilton's prints to the prints found within
17 Envelope No. 4, right? We know that from your
18 marking.

02:45

19 A. Yes.

20 Q. And he would have been excluded from leaving
21 those prints? You'd agree?

22 A. Yes.

02:45

23 Q. And we know that because there would have
24 been an offense report supplement made if his
25 prints matched any prints in that envelope?

1 A. Yes.

2 Q. Okay. And now have you had a chance to go
3 through the contents of Exhibit No. 4?

4 A. Yes.

02:45

5 Q. Okay. Originally, because of the notation
6 on the front of Exhibit 4, that says evidence from
7 the scene, we thought these would be print cards
8 lifted from the scene only. But as you look
9 through there, are there fingerprints also from the
10 bottles and cans collected? This might be easier.

02:46

11 Let's go through the contents of Exhibit No. 4.
12 And I'll start with the print card that has a
13 marking 4.1 on it.

14 A. Okay.

02:46

15 Q. What is that?

16 A. It's a latent print lift card that I've noted
17 that it's from the side of the cash register.

18 Q. If I touch these, am I going to mess them
19 up?

02:46

20 A. If your fingerprints are on them.

21 Q. Okay. And card number 4.4 --

22 MS. HUTCHINS: Judge, I'm sorry, for
23 the record, may I put -- can I put something on the
24 record?

02:47

25 THE COURT: Sure.

1 MS. HUTCHINS: That the witness is
2 touching the original latent lift cards and
3 photographs of them, as is counsel, without gloves.
4 So at this point these latent lift cards have now
02:47 5 been touched by different individuals without
6 covering.

7 THE COURT: Understood.

8 BY MR. LANDERS:

9 Q. Am I messing these up, ma'am, by touching
02:47 10 them?

11 A. You're not obliterating anything that I see.

12 Q. Okay. These prints could still be compared
13 if they needed to be compared?

14 A. Yes.

02:47 15 Q. Okay. What is on the card marked 4.4? What
16 does that represent?

17 A. It's another lift card of the 40-ounce Schlitz
18 Malt Liquor bottle.

02:47 19 Q. Okay. May I see that one more time? Do you
20 see any indication that you printed -- that you
21 compared any of these particular prints? Would you
22 have made a note on the print card itself?

23 A. No.

02:48 24 MS. HUTCHINS: Objection, Judge. He's
25 talking about documents that are not in evidence.

1 The envelope itself is in evidence. The contents
2 aren't. I guess if counsel wants to establish that
3 everything in that envelope is part of Defendant's
4 Exhibit 4-A, I believe it's called, we have no
5 objection to that. But for her to talk about the
6 cards that have not been admitted, we object to
7 that.

8 THE COURT: Objection sustained.

9 BY MR. LANDERS:

10 Q. Everything that you took out of Defendant's
11 Exhibit 4, is that something that you would have
12 put into it as well?

13 A. Yes.

14 Q. And we can see there's other writing in blue
15 pen. It's not yours; is that correct?

16 A. That's correct.

17 Q. Maybe another print examiner looked at these
18 more recently? That's not your writing?

19 A. That's not my writing.

20 Q. But everything else, other than the blue and
21 red pen, is your writing or prints that you
22 collected in this case?

23 A. Yes, including the photographs that were taken.

24 Q. All right. So the photos we see in there
25 are the photos you told us about from Montgomery

1 County?

2 A. Correct.

3 Q. Okay. And we have two -- is it two offense
4 report supplements that also came out of that
5 envelope?

6 A. Yes.

7 Q. And would you have also put those into the
8 envelope itself?

9 A. Yes.

02:49 10 Q. And that's because it's part of that latent
11 lab file you told us about, right?

12 A. Correct.

13 Q. So would you please look through 4-C, which
14 has already been entered in -- Defendant's 4-C --
02:49 15 and see if it's pictures of the things that are
16 within Envelope No. 4?

17 MR. LANDERS: I apologize, Your Honor.
18 I had her look at the other set prior to coming
19 out.

20 THE COURT: Sure.

21 THE WITNESS: Okay.

22 BY MR. LANDERS:

23 Q. Did you look at 4-E also?

24 So have you had time to review the evidence
02:59 25 in Envelope No. 4, Defendant's Exhibit No. 4 and

1 Defendant's Exhibit 4-C?

2 A. Yes.

3 Q. Okay. Is everything that is in 4-C also
4 contained inside the envelope? Everything that's
02:59 5 in these pictures --

6 A. Yes.

7 Q. -- is in that envelope?

8 A. Correct.

9 Q. We are missing from these pictures in 4-C
02:59 10 two offense reports supplements.

11 A. There was one, I think, at the back or in the
12 other stack.

13 Q. That's in the other thing. Okay. So 4-C,
14 two of the things we don't have are your
02:59 15 supplements?

16 A. In 4-C.

17 Q. We discussed those supplements earlier; is
18 that right?

19 A. I think so.

02:59 20 Q. Okay. If you want to fold all of that stuff
21 back and stick it in that envelope. We'll use
22 these pictures.

23 MS. HUTCHINS: Judge, may I approach?

24 THE COURT: Sure.

25 BY MR. LANDERS:

1 Q. I guess, for the record, why don't you tell
2 us which two supplements are in that envelope?

3 A. Supplement 8 and 9.

03:00

4 Q. These were contained in the offense report
5 we discussed earlier, right?

6 A. Yes.

03:01

7 Q. Okay. As you reviewed the documents that
8 were in Envelope No. 4, did you see any indication
9 on the latent print cards themselves that you had
10 compared those prints to anybody else?

11 A. No.

12 Q. Okay. From the front of that envelope can
13 you tell that you entered at least one of the
14 prints into the AFIS system?

03:01

15 A. Yes.

16 Q. Okay. Can you tell if that was the Print
17 Star or the NEC or both?

18 A. According to the notes, it's entered through --
19 print check in, NEC.

03:02

20 Q. Okay. And do you know whether or not you
21 obtained any hits on that?

22 A. No.

23 Q. Okay. Do you know which print it is that
24 you entered into Print Star?

03:02

25 A. Print Track?

1 Q. Print Track. I'm sorry. Print Track.

2 A. Not without looking at them.

3 Q. Okay. I am going to show you Exhibit 4.

4 It's marked page 24. I'm sorry, Exhibit 4-C, page

03:02 5 24. This is -- has 4.3 written on the bottom. Is
6 that writing in somebody else's handwriting?

7 A. Correct.

8 Q. Does anything on this show you which print
9 you entered into AFIS?

03:02 10 A. Yes.

11 Q. Okay. So is this the print that you entered
12 into AFIS?

13 A. Yes.

14 Q. How do you know that?

03:02 15 A. Because it has the A-F-S-0 on it.

16 Q. Okay. What does A-F-S-0 mean?

17 A. A-F-S just means it was entered into the
18 fingerprint system. And the zero correlates with the
19 zeros. Meaning that was the only print. So if there'd
03:03 20 been multiple prints that were suitable for AFIS, it
21 would have been 0, 1, 2, 3. So the 0 tells me the
22 number of prints.

23 Q. The number of prints you entered into AFIS?

03:03 24 A. That particular print. So if I had five prints
25 in this case that were suitable for AFIS, you would of

1 had 0, 1, 2, 3, 4, 5. The 0 correlates. So that is
2 that print.

03:03 3 Q. So the 0 doesn't mean 0 hits or whatever.
4 What do you call it when a suspect comes up on
5 AFIS, when there's some sort of correlation? So
6 whenever I put a print into AFIS, it's going to
7 spit out some names at me, right?

8 A. No.

03:03 9 Q. What is the point of putting a print into
10 AFIS?

11 A. It presents some fingerprint images.

12 Q. Of who?

13 A. Of people it compared it against.

14 Q. Potential contributors?

03:04 15 A. Right. But it doesn't present a name or any of
16 that.

17 Q. It gives you a number of prints that you can
18 then compare to see if they match?

03:04 19 A. It gives -- it presents you a candidate list and
20 the candidate list on the known impressions that it
21 compared it against has a unique identifier, which is
22 CHPD number, part of it.

23 Q. Okay.

03:04 24 A. And so it just presents the images of that
25 fingerprint.

1 Q. So if you put a print -- an unknown print
2 into AFIS, run it through AFIS, or Print Star,
3 it'll give you a candidate list?

4 A. Correct.

03:04

5 Q. That zero doesn't mean there were no
6 candidates?

7 A. Correct.

8 Q. It means that's the first print I ran
9 through AFIS?

03:04

10 A. Right.

11 Q. Okay. And from what you've seen, you only
12 ran the one print through AFIS?

13 A. Correct.

03:04

14 Q. Okay. Is there any way to tell if any
15 candidates come up from that print?

16 A. Well, we always ask for the top, I think, time
17 20. But it would have been candidates.

03:05

18 Q. If you would have matched that print that it
19 had, you had no reason to think it was a suspect in
20 the crime, would you have necessarily made an
21 offense report about the match?

22 A. Oh, yes.

23 Q. So any matches get an offense report?

24 A. Correct.

03:05

25 Q. So because we don't have an offense report

1 that tells us you did not come up with a match for
2 that print?

3 A. Correct.

03:05

4 Q. Okay. Whenever you are deciding what
5 fingerprints go into AFIS, how does that work -- to
6 enter into AFIS -- I'm sorry?

7 A. Well, you -- not every print that is good enough
8 to be identified is not necessarily suitable for AFIS.

9 Q. Okay.

03:05

10 A. Okay. So we can have prints that could be
11 compared, but just not good enough to be entered into
12 the fingerprint system.

13 Q. So it's kind of a discretionary call from
14 the examiner, is this a print that I want to enter
15 into AFIS or not?

03:05

16 A. Correct.

17 Q. Okay. So in this case you made the
18 discretion only to put the one into AFIS more or
19 less?

03:06

20 A. Yes. But there were times that I could have
21 tried -- attempted to enter, but they were not suitable
22 to be retained, so therefore, they would not of had an
23 AFIS number.

24 Q. Okay.

03:06

25 A. So only the prints that were going to be

1 suitable to be ran and retained would have been --
2 would of had a number.

3 Q. Okay. Do you know whether or not that
4 happened in this case, whether or not you
5 attempted?

03:06

6 A. I don't recall.

7 Q. We just know that one print was good enough
8 to run?

9 A. Correct.

03:06

10 Q. Okay. Based on the pictures in Defendant's
11 4-C and what you reviewed in Defendant's 4, would
12 -- do you agree that some of those prints are from
13 the bottle you collected at the scene, the 40-ounce
14 Schlitz Malt Liquor bottle?

03:07

15 A. I have an indication on one malt liquor can on
16 top of outside ice cooler. And then there's another
17 one, a 40-ounce Schlitz Malt Liquor bottle recovered
18 from the metal rail outside beside the store.

03:07

19 Q. And then you recall some polaroid pictures
20 also -- I think they were polaroids -- that were in
21 the actual envelope as well?

22 A. Yes.

23 Q. And that was matched back with the pictures
24 we had taken in Montgomery County?

03:07

25 A. Yes.

1 Q. I'm going to show you what's been marked as
2 Defendant's Exhibit No. 3-C. We can set those
3 aside. And I'll hand you Defendant's Exhibit 3,
4 which we removed the contents of. First I would
03:08 5 ask the question, all the contents within
6 Defendant's Exhibit 3, did you put those in there?

7 A. Yes.

8 Q. Okay. And during the break did you have an
9 opportunity to review Defendant's 3-C and check to
03:08 10 make sure that everything inside the envelope was
11 in Defendant's 3-C?

12 A. Yes.

13 Q. Okay. And I removed page 18 from that
14 because it had an extra sheet of paper; is that
03:09 15 right?

16 A. That's correct.

17 Q. Okay. So everything that remains in
18 Defendant's Exhibit 3-C is a picture of the
19 contents of Defendant's Exhibit 3?

03:09 20 A. Correct.

21 Q. Okay. Which you had put all those contents
22 into the envelope?

23 A. Correct.

24 MR. LANDERS: Okay. Your Honor, I'd
03:09 25 ask to admit Defendant's Exhibit 3-C into evidence.

1 MS. HUTCHINS: Judge, if we can take it
2 one by one. I don't have an objection to
3 everything. I do have objections to some of them.

4 THE COURT: That's fine.

03:09

5 MS. HUTCHINS: And, Judge, would you
6 like the pictures to follow along or no?

7 THE COURT: Sure.

03:10

8 MS. HUTCHINS: If you look, Judge,
9 there's red writing on the side that has the page
10 numbers on them. So as to 3-C, page one, the --
11 well, okay. 3-C, page 1, these show pictures of
12 the palm prints, the same thing with page 2, 3, 4,
13 5, 6, 7, 8, 9, 10, 11, 12, 13. Those are palm
14 prints which are outside the Court of Criminal
15 Appeals remand order, as well as the Court's ODI in
16 this particular case. The prints in this case at
17 issue are not the palm prints but rather the
18 fingerprints. So that's to the totality of those
19 pages first off.

03:10

20 THE COURT: Anything?

21 MR. LANDERS: The prints, I believe,
22 we'll figure out were compared to Mr. Hamilton's.

23 THE COURT: Say again.

24 MR. LANDERS: Were compared to Mr.

03:11

25 Hamilton. So I can ask that question real quick.

1 And the reason it's relevant is there's no offense
2 reports --

3 THE COURT: You say you want to ask a
4 question.

5 MR. LANDERS: Yeah, I'll ask one
6 question.

7 BY MR. LANDERS:

03:11

8 Q. Ms. Benningfield, on Exhibit 3, the actual
9 envelope -- sorry, you were right -- do you see the
10 same suspects listed on both the front and back of
11 that envelope?

12 A. Yes.

03:11

13 Q. Okay. And so related to the back, we know
14 that Ronald Hamilton and Shawn Smith's prints would
15 have been compared to any usable prints within this
16 envelope?

17 A. Yes.

18 MR. LANDERS: Okay. And so that's why
19 it's relevant, Your Honor.

03:11

20 MS. HUTCHINS: Judge, it's still
21 outside the scope of the remand order and the ODI.
22 And also just specific to page 1, page 1, one of
23 the images is of an offense report, and I have an
24 objection at least that portion would be hearsay.

25 THE COURT: Understood.

1 MR. LANDERS: We could, once again, put
2 a limiting instruction on that.

3 THE COURT: So your objection was with
4 regards to all the palm prints, correct?

03:12 5 MS. HUTCHINS: Correct.

6 THE COURT: And your response?

7 MR. LANDERS: Well, my response is just
8 because the fingerprint is what matched Marshall
9 Knight doesn't mean that the fact that other
03:12 10 prints that do not match Mr. Hamilton should not
11 have been turned over to the Defense. Part of the
12 reason we're here is on Brady claim. I know --
13 trust me, Your Honor, if I'd of known what I know
14 now, which is that the State's going to take this
03:12 15 that palm prints and fingerprints are different
16 things, I could have thrown palm prints in there as
17 well. But what it is is identifying prints on your
18 hand that, once again, don't match Mr. Hamilton. I
19 think it's relevant to the Brady.

03:12 20 MS. HUTCHINS: Judge, I believe Defense
21 counsel himself has just laid the foundation for my
22 objection. He did not plead it in his writ
23 application. The writ application specifically
24 talked about fingerprint evidence and that's why
03:13 25 it's irrelevant and outside the scope of the remand

1 order.

2 MR. LANDERS: And, to clarify, I think
3 fingerprints includes hand prints.

03:13

4 MS. HUTCHINS: May I clarify with the
5 witness?

6 THE COURT: Go ahead.

7 BY MS. HUTCHINS:

03:13

8 Q. Ms. Benningfield, in the field of latent
9 print examination, do you differ between
10 fingerprints, digital prints, and prints of palms?

11 A. When you say digital, what do you mean?

12 Q. Like fingers, actual fingers, as opposed to
13 palms.

14 A. Yes.

03:13

15 Q. Was your ability to test fingerprints as
16 opposed to palm prints different in 2001 and 2002?

17 A. Can you clarify test?

03:13

18 Q. Absolutely. You were able to test
19 fingerprints in an AFIS system in 2001 and 2002,
20 correct, in general, in theory?

21 A. Fingerprints and palms prints?

22 Q. Just fingerprints.

23 A. Yes, fingerprints.

03:14

24 Q. You were not able to run palm prints through
25 AFIS in 2001, 2002, correct?

Appendix M - Marshall Knight Invokes the Fifth, Through Counsel

1 THE COURT: Okay. I can just answer
2 your question. So you're going to make your
3 objection. I'm going to not -- we'll get it on the
4 record and be done. If you want to go over it, you
5 can.

09:59

6 MR. LANDERS: I was simply going to say
7 there's not a jury and, you know, you could assign
8 the correct weight. So with that in mind --

9 THE COURT: Let me just take care of
10 him and then we'll start, unless you guys have
11 anything else.

09:59

12 MR. LANDERS: Take care of it
13 afterwards.

14 (Off the record.)

15 (Back on the record.)

10:06

16 THE COURT: We are back on the record
17 for cause number 0901049. You may proceed, sir.

18 MR. LANDERS: Your Honor, can we just
19 call Marshall Knight with his attorney before the
20 bench?

10:06

21 THE COURT: Sure.

22 MR. LANDERS: Mr. Knight.

23 THE COURT: You can come on up. Can I
24 get you to announce your name for the record,
25 please?

10:06

1 MR. HAYNES: My name is Gemayel Haynes,
2 spelled G-E-M-A-Y-E-L, last name H-A-Y-N-E-S. And
3 I represent Mr. Knight.

4 THE COURT: All right.

10:06

5 MR. LANDERS: And, for the record, we
6 also have Marshall Knight with us before the Court.
7 I've spoken with Mr. Knight's counsel and I have
8 six questions that I would like to ask Mr. Knight
9 today. And with your permission, Your Honor, I
10 would like to read those in the record and ask he
11 will answer any of these questions or if he'll take
12 the Fifth Amendment.

10:06

13 THE COURT: Sure. Let's let the State
14 make their objections.

10:07

15 MS. HUTCHINS: Judge, I just want to
16 renew my prior objection.

17 THE COURT: Understood. It's renewed
18 and overruled. Proceed.

10:07

19 MR. LANDERS: First, I would ask Mr.
20 Knight if he was at the Tulson Convenience Store at
21 3235 Holman Street on December 8th of 2001. I
22 would show him Defendant's Exhibit No. 31 for the
23 purpose of this record to show him what the store
24 looked like back in 2001. I would ask Mr. Knight
25 did you set down a 40-ounce beer bottle on the rail

10:07

1 outside of the store on December 8th of 2001. I
2 would ask Mr. Knight can you explain how your
3 fingerprints were found on the bottle sitting
4 outside the store on the railing on December 8th of
10:07 5 2001. I would ask, did you have possession of or
6 access to a .380 auto handgun on December 8th of
7 2001; did you enter the store at 3235 Holman Street
8 on December 8th of 2001; and did you shoot the
9 clerk inside 3235 Holman on December 8, 2001.

10:08 10 Those are the questions I intend to ask Mr. Knight
11 and I would ask that counsel and Mr. Knight would
12 be willing to answer those questions.

13 MR. HAYNES: Your Honor, Mr. Knight is
14 not willing to answer those questions. He invokes
10:08 15 his right against self-incrimination under the
16 Fifth Amendment of the United States Constitution
17 and also under the Texas Constitution.

18 THE COURT: Understood.

19 MR. LANDERS: And I would just ask
10:08 20 counsel if he discussed these matters with Mr.
21 Knight and have been informed that Mr. Knight would
22 indeed invoke the Fifth Amendment to each question.

23 MR. HAYNES: Yes, Mr. Knight will
24 indeed invoke his right against self-incrimination
10:08 25 to each question.

1 MR. LANDERS: With that, Your Honor,
2 that's all I have. There's no reason to put Mr.
3 Knight on just to invoke the Fifth once again. And
4 so we believe that he's free to leave this hearing.

10:08

5 THE COURT: Anything further from you,
6 sir?

7 MR. HAYNES: Nothing further, Your
8 Honor.

9 THE COURT: Nothing further. Thank
10 you.

11 MR. HAYNES: Thank you.

12 THE COURT: You said you had a defense
13 exhibit?

10:09

14 MR. LANDERS: Yes, Your Honor. Defense
15 Exhibit No. 8, Ms. Hutchins has seen it before, is
16 the offense report from the Holman murder.

17 THE COURT: This it?

10:09

18 MR. LANDERS: It is, Your Honor, yes.
19 So long story short is we had Ms. Park, the lead
20 investigator -- her name is listed on the front of
21 the -- what they used to call the blue back. I
22 intend to call Ms. Park still. As we know,
23 yesterday her mother, we were told, had a stroke.
24 I'm assuming that's what's going on and that's why
25 we can't get ahold of her today. This is the same

10:09