

DESIGNATION OF APPENDIX

Appendix A Order Denying Re-Consideration (March 22, 2022)

Brown v. Curtin, #14-1876 (R. 103-2)

Appendix B Order Denying Recall of the Mandate (October 1, 2021)

Brown v. Curtin, #14-1876 (R. 96-2)

Appendix C Amended Order & Opinion in the Sixth Circuit

Court of Appeals (On Re-Hearing) (November 4, 2016)

Brown v. Curtin, 661 Fed. App'x 398 (CA6, 2016)

Appendix D Order & Opinion Denying Writ of Habeas Corpus

Granting in Part A Certificate of Appealability,

From the Eastern District of Michigan (June 12, 2014)

Brown v. Bergh, 2:209 -cv-14850 (ECF #109)

Appendix E Jury Trial Transcripts (2/7/03)

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Appendix I Diagram of House/Scene and Photographs

APPENDIX
“A”
Order Denying Re-Consideration (March 22, 2022)

Nos. 14-1876/15-2126

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Mar 22, 2022
DEBORAH S. HUNT, Clerk

PHILLIP ANTHONY BROWN.

Petitioner-Appellant,

7

CINDI CURTIN, et al.,

Respondents-Appellees.

ORDER

Before: MOORE, GRIFFIN, and THAPAR, Circuit Judges.

We affirmed the denial of Phillip Anthony Brown's petition for a writ of habeas corpus, *Brown v. Curtin*, 661 F. App'x 398 (6th Cir. 2016). Brown moved to recall the March 10, 2017, mandate. Relying in part on *Porter v. Zook*, 803 F.3d 694 (4th Cir. 2015), Brown asserted that this court lacked jurisdiction to review the district court's order denying his habeas petition because the district court failed to address all of his claims on the merits. (No. 14-1876, Doc. 94, Mot.; Doc. 95, Mem. in Supp.). We denied the motion. Brown petitions for panel rehearing and rehearing en banc, which we construe as a motion for reconsideration. *See* 6 Cir. R. 27(g).

Reconsideration is not warranted if we did not misapprehend or overlook any point of law or fact. *See* 6 Cir. R. 27(g); Fed. R. App. P. 40(a)(2). In asserting we lacked jurisdiction to consider the denial of his habeas petition, and thus that we should recall the mandate, Brown relies on cases where the jurisdictional issue was raised during initial review. *Adams v. United States*, No. 19-1563, 2021 WL 1984896, at *2 (6th Cir. Mar. 10, 2021) (order); *see United States v. Fazel*, 808 F. App'x 209, 209 (4th Cir. 2020) (per curiam); *Zook*, 803 F.3d at 696-97;

Nos. 14-1876/15-2126

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Prellwitz v. Sisto, 657 F.3d 1035, 1037–38 (9th Cir. 2011). Courts have recalled the mandate when it is discovered during the course of an active appeal that jurisdiction is absent. *See Snow v. United States*, 118 U.S. 346, 354 (1886). Here, however, Brown raised the issue after the conclusion of his appeal, when he sought reopening on this basis. The district court denied that motion and both the district court and this court declined to issue a certificate of appealability. These intervening events support our denial of the motion to recall the mandate. *See Calderon v. Thompson*, 523 U.S. 538, 550 (1998) (the power to recall a mandate “is one of last resort, to be held in reserve against grave, unforeseen contingencies.”); *see also United States v. Saikaly*, 424 F.3d 514, 517–18 (6th Cir. 2005) (collecting cases holding that failure to succeed on prior challenges is not a basis for recalling the mandate); *In re Evans*, 506 F. App’x 741, 745 (10th Cir. 2012) (distinguishing *Snow* because it was “decided during the same term of court, which gave the Court plenary power to change the judgment.”). The State also has a strong interest in finality “[w]hen lengthy federal proceedings have run their course and a mandate denying relief has issued.” *Calderon*, 523 U.S. at 556.

Nor did we err in concluding that we had jurisdiction over the initial order. We generally have jurisdiction to review only final orders. 28 U.S.C. § 1291. An order is final when it “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” *Catlin v. United States*, 324 U.S. 229, 233 (1945). In determining whether a judgment is final, we look to “substance, not form. Regardless of the label given a district court’s decision, if it appears from the record that the district court has not adjudicated all of the issues in a case, then there is no final order.” *Porter*, 803 F.3d at 696. Here, the district court collectively addressed the claims at issue and denied them. That was sufficient for purposes of establishing finality when this court reviewed the order. *See Tyler v. Anderson*, 749 F.3d 499, 509 (6th Cir. 2014). Cf. *Chevron, U.S.A., Inc. v. Natural Res. Def. Council*, 467 U.S. 837, 842 (1984) (“[T]his Court reviews judgments, not opinions”); *McClung v. Silliman*, 19 U.S. 598, 603 (1821) (“The question

Nos. 14-1876/15-2126

-3-

before an appellate Court is, was the judgment correct, not the ground on which the judgment professes to proceed.").

The motion for reconsideration is **DENIED**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

APPENDIX
B
Order Denying Recall of the Mandate (October 1, 2021)

Nos. 14-1876/15-2126

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUITFILED
Oct 01, 2021
DEBORAH S. HUNT, Clerk

PHILLIP ANTHONY BROWN,)
)
Petitioner-Appellant,)
)
v.)
)
CINDI CURTIN, et al.,)
)
Respondents-Appellees.)

ORDER

Before: GIBBONS, Circuit Judge.

This court affirmed the denial of petitioner Phillip Anthony Brown's petition for a writ of habeas corpus. *Brown v. Curtin*, 661 F. App'x 398 (6th Cir. 2016). He now moves to recall the mandate, which issued on March 10, 2017, asserting that this court lacked jurisdiction to review the district court's order because the district court failed to address all of his claims on the merits.

The court has inherent authority to recall its mandate. *Patterson v. Haskins*, 470 F.3d 645, 661–62 (6th Cir. 2006). But "such power should only be exercised in extraordinary circumstances because of the profound interests in repose attached to a court of appeals mandate." *United States v. Saikaly*, 424 F.3d 514, 517 (6th Cir. 2005) (order). The power to recall a mandate "is one of last resort, to be held in reserve against grave, unforeseen contingencies." *Calderon v. Thompson*, 523 U.S. 538, 550 (1998). A party seeking to recall a mandate must show exceptional circumstances that override the strong public policy in favor of the finality of judgments. See *Saikaly*, 424 F.3d at 517; *BellSouth Corp. v. F.C.C.*, 96 F.3d 849, 851 (6th Cir. 1996) (order).

Nos. 14-1876/15-2126

-2-

In considering a motion to recall the mandate in a criminal action, the court considers "the statutory and jurisprudential limits applicable in habeas corpus cases." *Calderon*, 523 U.S. at 553. Otherwise a defendant could evade the procedural bars for filing a collateral attack on his conviction by seeking to recall the mandate. See *Saikaly*, 424 F.3d at 517 (noting "that the proper remedy to attack a sentence in a final criminal proceeding lies under [28 U.S.C.] § 2255, and the fact that such remedy is no longer available does not warrant a recall of the mandate"). That is particularly true here, given that Brown has challenged the district court's purported failure to consider all of his claims on the merits in various motions and has been denied relief each time. Further, Brown's contention that this court lacked jurisdiction over his appeals in the absence of a ruling on some of his claims lacks merit, as this court has jurisdiction over final orders of the district court, 28 U.S.C. § 1291, and the district court issued a final order disposing of the entirety of Brown's habeas petition.

The motion to recall the mandate is **DENIED**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

APPENDIX C

Amended Order & Opinion in the Sixth Circuit
Court of Appeals (On Re-Hearing) (November 4, 2016)
Brown v. Curtin, 661 Fed. App'x 398 (CA6, 2016) (#14-1876); r. 82-1)

APPENDIX D

Order & Opinion Denying Writ of Habeas Corpus
Granting in Part A Certificate of Appealability,
From the Eastern District of Michigan (June 12, 2014)
Brown v. Bergh, 2:209 -cv-14850 (ECF #109)

APPENDIX
E
Jury Trial Transcripts (2/7/03)

THE COURT: Please sit down.

MR. PROSECUTOR, are you satisfied with the instructions given by the Court to the jury?

MR. BARRON: Yes.

THE COURT: Defense counsel, are you satisfied with the instructions given by the Court to the jury?

MR. LARSON: Yes.

THE COURT: Clerk, please show the prosecution and defense the verdict form.

THE CLERK: Yes, your Honor.

(Court Exhibit No. 1 marked.)

THE COURT: Counsel, if you approve the verdict form, please initial it bottom left-hand corner.

The record should note that both the prosecution and defense have approved the verdict form.

The record should further note that the court reporter has marked the jury instructions, Court Exhibit 1.

Clerk, you're to give the verdict form and the jury instructions to the jury and tell them to commence deliberations.

THE CLERK: Yes, your Honor.

THE COURT: Members of the audience, please

remain seated while the defendant is taken out of the courtroom by the deputies.

Court stands recessed.

THE CLERK: Please rise.

Court stands recessed.

FRIDAY 2-7-02 (At 9:47 a.m., recess taken.)

(11:57 a.m., proceedings reconvened.)

THE CLERK: Court is in session. Please be seated.

Calling Case No. 02-184580-FC, People versus Phillip Brown.

MR. LARSON: Herb Larson on behalf of Phillip Brown.

MR. BARRON: Marc Barron on behalf of the People.

THE COURT: I believe it's time to allow the jury to go to lunch, but before we do, I think we had some housekeeping matters.

I received a message earlier this morning that the jury wanted the video and the diagram showing the blood found, layout the premises. We sent in the video and two of the exhibits. Is that correct, prosecutor?

MR. BARRON: Yes.

THE COURT: Defense counsel?

MR. LARSON: That's correct.

THE COURT: And received another message that says: Forensic report, fingerprints on knife.

And I answered in writing by saying:

Fingerprint report was not introduced into evidence.

MR. BARRON: Yes.

THE COURT: Any objection to that note?

MR. BARRON: No.

THE COURT: Any objection to that note?

MR. LARSON: No objection.

THE COURT: Bring in the jury and we'll send them to lunch.

THE CLERK: Yes, your Honor.

(At 11:58 a.m., jury enters courtroom.)

THE COURT: Please be seated. The jury is present.

Members of the jury, it's 12 noon, you're permitted to go to lunch. There are several instructions that I have to give you when you're deliberating.

The first one is that there is to be no discussion about this case outside the jury room.

The second portion of the rule is that there's to be no discussion about this case, even in the jury room, unless all 12 of you are present.

So you have to remember, all discussion concerning this case must take place in the jury room and only in the jury room, and only when all 12 of you are present.

Be very careful of your conduct when in the building. Avoid anyone that has anything to do with this case. They will avoid you, you avoid them.

Clerk, take the jury out.

I expect you back at 1:30.

Just a moment, please. When all 12 of you are present in the jury room, have your foreperson notify the court officer and start your deliberation.

Thank you very much.

Take them out.

THE CLERK: Yes, your Honor.

(At 11:59 a.m., jury leaves courtroom.)

THE COURT: Please be seated.

Anything further from the prosecution?

MR. BARRON: No.

THE COURT: Defense?

MR. LARSON: No.

THE COURT: Are there any additional instructions you desire that I give the jury, prosecutor?

MR. BARRON: No.

THE COURT: Defense?

MR. LARSON: No.

THE COURT: We'll recess for lunch. Court will resume at 1:30.

THE CLERK: Please rise.

Court stands recessed.

(At 12:00 p.m., recess taken.)

(At 3:00 p.m., proceedings resumed.)

THE CLERK: Court is session. Please be seated.

Calling Case No. 02-184580-FC, People versus Phillip Brown.

MR. LARSON: Herb Larson on behalf of Phillip Brown.

MR. BARRON: Marc Barron on behalf of the People.

THE COURT: Please be seated.

We received another note from the jury and the note reads as follows:

"Testimony of sheriff department? Re: fingerprints on knife."

I wrote back the jury and said:

"Please rephrase your question. You need to be more specific."

Because I don't know what testimony from what

sheriff's department they want in re: fingerprints on knife. What is the question? That's a statement, it's not a question.

I believe that both sides saw the answer, is that correct?

MR. BARRON: Yes. I have no objection.

THE COURT: Any objection?

MR. LARSON: No objection.

THE COURT: I've been waiting for a message to come back, but none has come so far.

I might also put on the record that I was notified by the sheriff's department there are not enough deputies in the building after 3:00 to handle this case, because it is a first-degree murder case. So I'm going to have to adjourn, because I couldn't take a verdict even if we got one this afternoon. So it will have to be put over until Monday morning.

Clerk, bring in the jury.

THE CLERK: Yes, your Honor.

(Pause in proceedings.)

THE COURT: We do have another message. I believe the message reads as follows:

"Is there any testimony regarding Randy Pardy's fingerprints on the hunting knife that was used in the murder? Some of the jurors seem to remember

testimony about the knife, but there is some uncertainty."

Prosecutor?

MR. BARRON: In all honesty, I don't recall exactly at this point whether there was, I don't believe there was. I don't know.

As the Court's going to dismiss the jury at this point anyway, I think I can talk about it with counsel and we can try to come up with an answer. The Court's going to dismiss them now. I don't think we have to answer the question now anyway. I think you can say use your collective memories.

MR. LARSON: My thoughts were to use your collective memory and the testimony. I seem to remember some testimony, but I can't say certainly that there was.

MR. BARRON: So then I think both of us don't object to say use your collective memories as to what the testimony was.

THE COURT: Well, I believe I owe a duty to search the record as best I can to see if there is some testimony.

MR. BARRON: Either way, if you say use your collective memories, that just allows them to just rely on what record. That is the record, use your memory as

to what the testimony was.

If counsel doesn't object, unless he --

MR. LARSON: I concur with the Court, if we can check it.

THE COURT: I'll try and check it.

MR. LARSON: And then we can deal with this Monday morning.

THE COURT: Thank you.

Bring in the jury.

THE CLERK: Yes, your Honor.

(At 3:05 p.m., jury enters courtroom.)

THE COURT: The record should note the jury is present. Please sit down.

Members of the jury, I received the first note from you which said:

"Testimony of sheriff's department? Re:
fingerprints on knife."

And I wrote you a note and said:

"Please rephrase your question. You need to be more specific."

I don't mean to be insulting, but, you know, testimony of sheriff's department, there were a lot of officers that testified, and that's really a statement, it's not a question in a form that I could respond to it. I understand re: fingerprints on knife.

I received a second message from you which reads:

"Is there any testimony regarding Randy Pardy's fingerprints on the hunting knife that was used in the murder? Some of the jurors seem to remember testimony about the knife, but there is some uncertainty."

Well, I'm going to have to search the record. I would pray that you would all try to use your collective memories because, you know, we went through about 18 witnesses. But if you can't, I'll have to search the record.

One other thing. For reasons that I cannot tell you at the moment, that have nothing to do with this case, just court administration, we're going to have to adjourn court and court will resume on Monday morning at 8:30 for you.

I apologize for the inconvenience, but it must be this way. And by then I will have searched the record. Thank you very much.

You are to remember not to discuss this case among yourselves or with any other person.

Take the jury out.

THE CLERK: Yes, your Honor.

(At 3:07 p.m., jury leaves courtroom.)

THE COURT: I'll have the clerk file these with the records and files.

Please sit down.

Prosecution satisfied with the answer given?

MR. BARRON: Yes.

THE COURT: Defense?

MR. LARSON: Yes.

THE COURT: Is there anything further?

MR. BARRON: No.

THE COURT: Anything further?

MR. LARSON: 8:30.

THE COURT: My recollection is that there was no testimony on the issue. None. There was no testimony as to whether Randy Pardy's fingerprints were on the knife. I'm not sure, but that's my recollection.

MR. BARRON: I'm not sure either. I think counsel and myself will agree by Monday on a way to answer the question that we're both satisfied.

MR. LARSON: There was no testimony that his fingerprints were on. Whether someone was asked, were there any fingerprints found, that's where I think the jury is going with it.

THE COURT: Okay. Well, thank you very much.

Gentlemen, because there are no deputies and

I promised that we would terminate court, everyone remain seated while the deputies take the defendant out.

Inasmuch as I made them stay last night, I think that it's only fair that I reciprocate today.

Thank you. Court stands adjourned.

THE CLERK: Please rise.

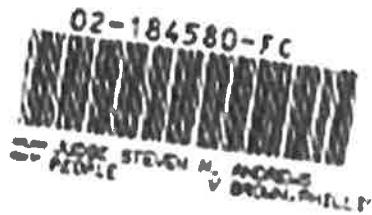
Court stands adjourned.

(At 3:09 p.m., proceedings adjourned to
Monday, February 10, 2003.)

- - - -

APPENDIX
F
Certified Jury Questions (Notes) & Responses

①



1) Video

2) Diagram Showing Blood found/Layout
of premises

03 11 1994

1
July 18
1994

02-18658A-PP

UNIDENTIFIED SUBJECT

①

Forensic Report -
finger prints on knife

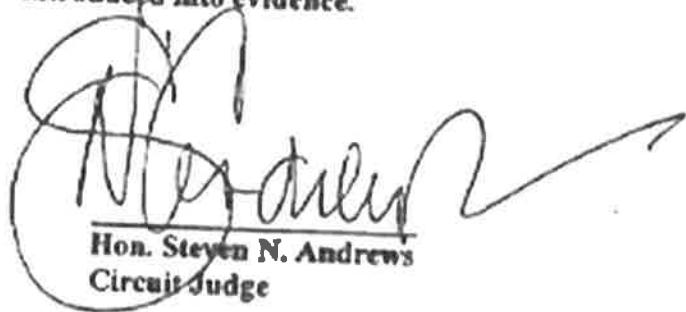
②

Question:

21. **Forensic Report.**
Finger prints on knife

Answer:

A fingerprint report was not introduced into evidence.



A handwritten signature in black ink, appearing to read "Andrews". Below the signature, the text "Hon. Steven N. Andrews" is printed in a smaller, sans-serif font, followed by "Circuit Judge" in a slightly smaller font.

02-184580-PC

(3)

testimony of
Sheriff Department?
Re: finger prints on knife

44-184580-8P
LAW OFFICES OF
STEVEN N. ANDREWS

44-184580-8P

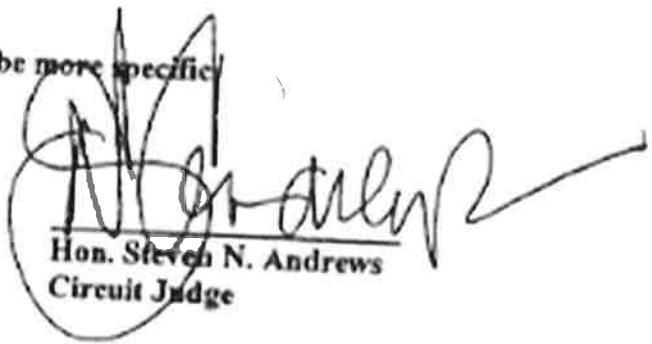
LP

Question:

Testimony of Sheriff Department?
Re: fingerprints on knife?

Answer:

Please rephrase your question. You need to be more specific.


Hon. Steven N. Andrews
Circuit Judge

Is there any testimony regarding
Hardy Parry's fingerprints on the
hunting knife that was used in
the murder? Some of the jurors
seem to remember testimony about
the knife, but there is some uncertain-

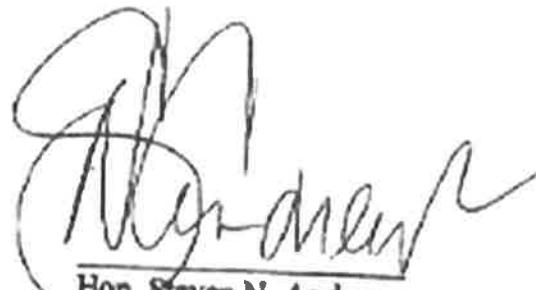
02-184580-FC

Question:

Is there any testimony regarding Randy Pardy's fingerprints on the hunting knife that was used in the murder? Some of the jurors seem to remember testimony about the knife, but there is some uncertainty.

Answer:

There were no fingerprints found on the knife.



Hon. Steven N. Andrews
Circuit Judge

八九-184680-SC

the two students in Germany

APPENDIX
G
Counsel's Affidavit of Fact (November 18, 2011)

STATE OF MICHIGAN)
COUNTY OF OAKLAND)

AFFIDAVIT OF FACT

(1)

RE: People v. Brown, #02-184580-FC

I, J. Herbert Larson, being first duly sworn, depose and say these facts are true to the best of my knowledge, information, and belief:

1. I was Mr. Brown's counsel during trial on 2/3/03-2/10/03.
2. I was present for the side bar for supplemental instruction on 2/10/03.
3. Mr. Brown was not present for the hearing or the instruction.
4. Mr. Brown was in custody of the Oakland County Sheriff Department.
5. Mr. Brown did not consult with me before or at this side bar.
6. Judge Andrew reseated the deliberating jury in response to their vote.
7. I did not waive Mr. Brown's right to confrontation at this stage.
8. The trial court did not examine Mr. Brown for any waiver.

Further Affiant Sayeth Not.

J. Herbert Larson (P30189)

Subscribed and sworn to me this 18th day of November, 2011.

GAYLEN CURTIS
Notary Public, State of Michigan
County of Oakland
My Commission Expires Apr. 18, 2011
Acting in the County of Oakland

Notary Public -

Gaylen Curtis

APPENDIX
H
Counsel's Affidavit of Fact (December 10, 2009)

PEOPLE OF THE STATE OF MICHIGAN

vs

PHILLIP BROWN

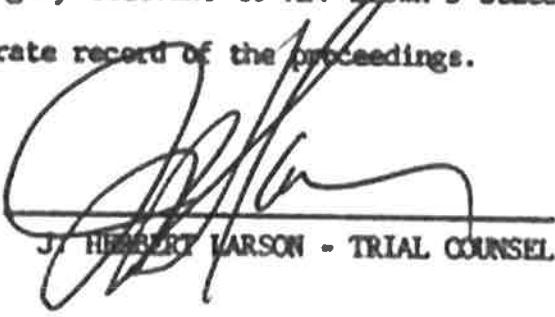
No. #02-184580-PC

STATE OF MICHIGAN)
COUNTY OF OAKLAND) ss:
)

I, J. Herbert Larson, P30189, being duly sworn, depose and say that I was the trial counsel in the above entitled criminal case. I was in the Oakland County Circuit Court during trial on the days of February 7 th and February 10 th, in 2003, regarding this matter.

The following affidavits concern both the transaction relative to the supplemental jury hearing and instruction, as well as those facts which occurred at the side bar / bench conference before the hearing and instruction on February 10 th, 2003, for which there is no transcript or verifiable state record.

These extraneous facts, not being shown in the state record, and to which I have personal knowledge, are highly relevant to Mr. Brown's state conviction and are necessary for an accurate record of the proceedings.


J. HERBERT LARSON - TRIAL COUNSEL

Subscribed and sworn to before me
this 14th day of December, 2009

Nita Tibbal
Notary Public NITA TIBBAL

Oakland County, MI 1

My Commission expires: 8/31/2014

AFFIDAVIT OF FACT

STATE OF MICHIGAN }
COUNTY OF OAKLAND } 38:

I, J. Herbert Larson, P30189, being duly sworn, depose and say that the following is true to the best of my knowledge, information, and belief:

1. That I represented Phillip Brown, the Defendant in Oakland County Circuit Court docket number #02-184580-FC.
2. That I was present in Court during trial on February 7 th, 2003, and February 10 th, 2003, during which the relevant facts took place.
3. That upon jury deliberations, Friday February 7, 2003, the jury asked several questions concerning the record of evidence and testimony.
4. Judge Andrews instructed the jury that no fingerprint report was admitted into evidence. Appendix 'F' & 'G' (TIV-29)
5. The deliberating jury later requested: "Testimony of Sheriff Department: Fingerprints on knife." (TIV-31)
6. Judge Andrews instructed the jury to: "Please rephrase your question. You need to be more specific." (TIV-31) He continued: "Because I don't know what testimony from what sheriff's department they want in re: fingerprints on knife. What is the question? That's a statement, it's not a question." (TIV-32)
7. The deliberating jury responded by asking: "Is there any testimony regarding Randy Pardy's fingerprints on the hunting knife that was used in the murder? Some of the jurors seem to remember testimony about the knife, but there is some uncertainty." (TIV-32-33)
8. During discussions absent the jury, Judge Andrews indicated: "Well, I believe I owe a duty to search the record as best I can to see if there is some testimony." (TIV-33)

9. At this time, I clearly made the following statement on the record:
"I concur with the Court, if we can check it." (TIV-34)

10. Judge Andrews brought the jury into Court and instructed them:
"Well, I'm going to have to search the record. I would pray that you would all try to use your collective memory because, you know, we went through about 18 witnesses. But if you can't, I'll have to search the record."

"One other thing. For reasons that I cannot tell you at the moment, that have nothing to do with this case, just court administration, we're going to have to adjourn court and court will resume on Monday morning at 8:30 for you."

"I apologize for the inconvenience, but it must be this way. And by then I will have searched the record. Thank you very much." (TIV-35)

SUPPLEMENTAL HEARING & INSTRUCTION ON MONDAY

11. At the supplemental hearing and instruction on Monday, the Defendant, Phillip Brown, was not present. (TV-3) Appendix 'H'

12. Judge Andrews sent a note to the deliberating jury before the hearing, concluding that: "There were no fingerprints found on the knife."

13. Prosecutor Marc Barron clearly stipulated to this instruction.

14. I did not stipulate or expressly approve the jury instruction.

15. I also did not object to this supplemental jury instruction.

16. My sincere belief at the time, and perception was, that the jury instruction was extremely detrimental to the defense. The instruction concluded an unsupported material fact. This evidentiary presumption had the effect of contradicting or impeaching Mr. Brown's testimony; proving an unsupported fact; and supplanting for evidence on an essential element. The answer directly affected the burden of proof and critical facts associated with the jury's deliberation on the issue of self-defense.

For these reasons, I believe the instruction was highly prejudicial.

AFFIDAVIT OF FACT

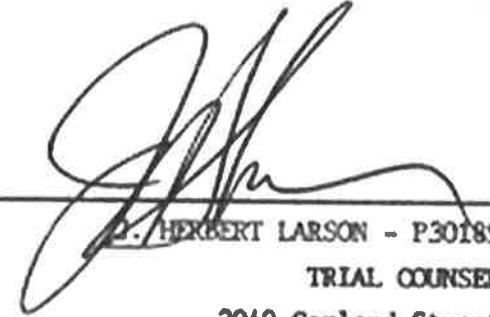
STATE OF MICHIGAN }
COUNTY OF OAKLAND } 55:

I, J. Herbert Larson, P30189, being duly sworn, depose and say that the following is true to the best of my knowledge, information, and belief:

FACTS CONCERNING THE SIDE BAR CONFERENCE AT SUPPLEMENTAL HEARING

1. On Monday morning, February 10 th, 2003, I appeared for a supplemental jury instruction hearing in the matter of People v. Brown.
2. The deliberating jury had previously requested evidentiary exhibits and was currently requesting specific testimony on a question.
3. At the hearing on Monday, a side bar / bench conference ensued which is not recorded in the transcript. At this conference, Judge Andrews indicated his intention to provide the jury with the instruction given.
4. At this time, I indicated my concerns about the substance of the instruction in the presence of Judge Andrews and the Prosecutor. My belief at the time was that the response / instruction could be very damaging to my client, and his defense.
5. Prosecutor Barron openly admitted that he had no objection.
6. Judge Andrews then sent the response to the jury in a note.
7. After the side bar / bench conference, the hearing on the record reflects what transpired. I proceeded to waive Mr. Brown's presence. Judge Andrews then announced the answer in open court. At this time, Prosecutor Barron clearly stipulated to approval of the instruction. After that point, I remained silent. (IV-3) Appendix 'H'
8. My thoughts at the time were that the Court and Prosecutor overpowered me and I was bound by the Court's response to the jury question under the circumstances as they appeared to me.

Further, affiant sayeth not.



J. HERBERT LARSON - P30189
TRIAL COUNSEL
2040 Garland Street
Sylvan Lake, Michigan 48320

Subscribed and sworn to before me
this 10th day of December, 2009

Nita Tibbals
Notary Public NITA TIBBALS
OAKLAND COUNTY, MI
My commission expires: 8/31/2014



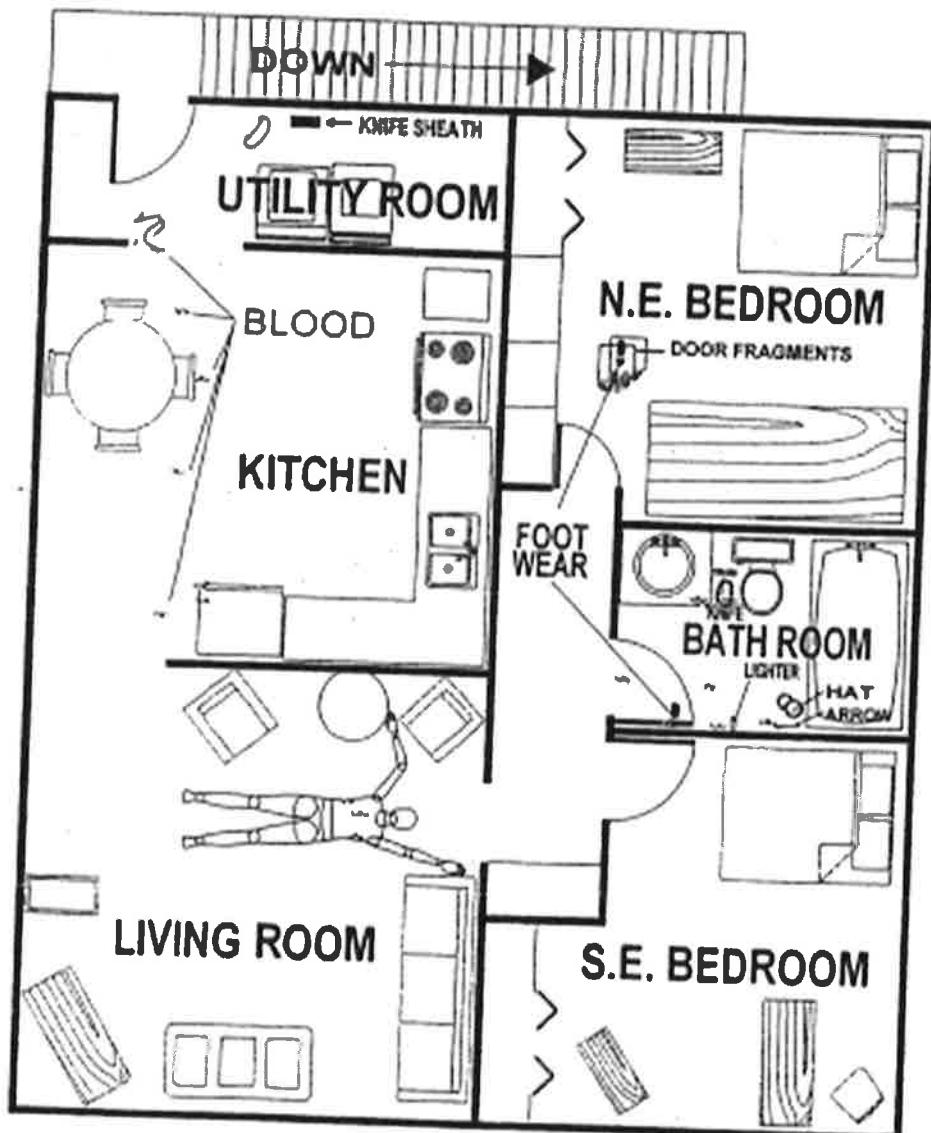
APPENDIX
I
Diagram of House/Scene and Photographs

MURDER INVESTIGATION

591 LAKEVILLE

OXFORD

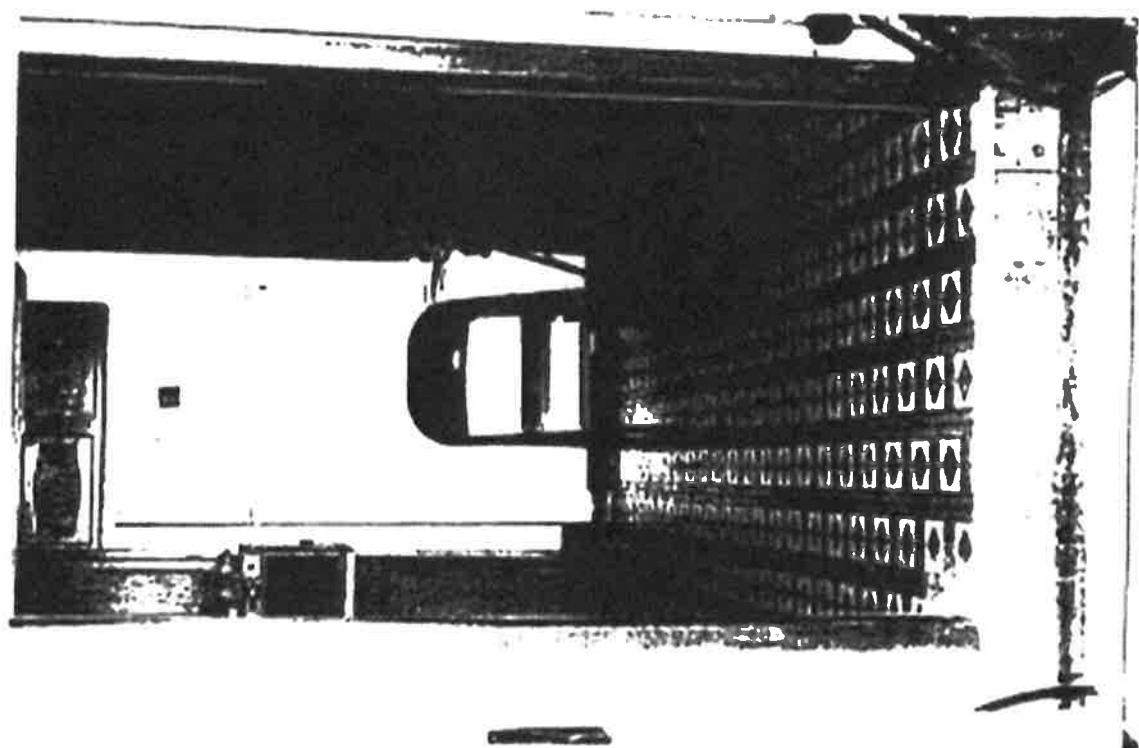
OAKLAND COUNTY

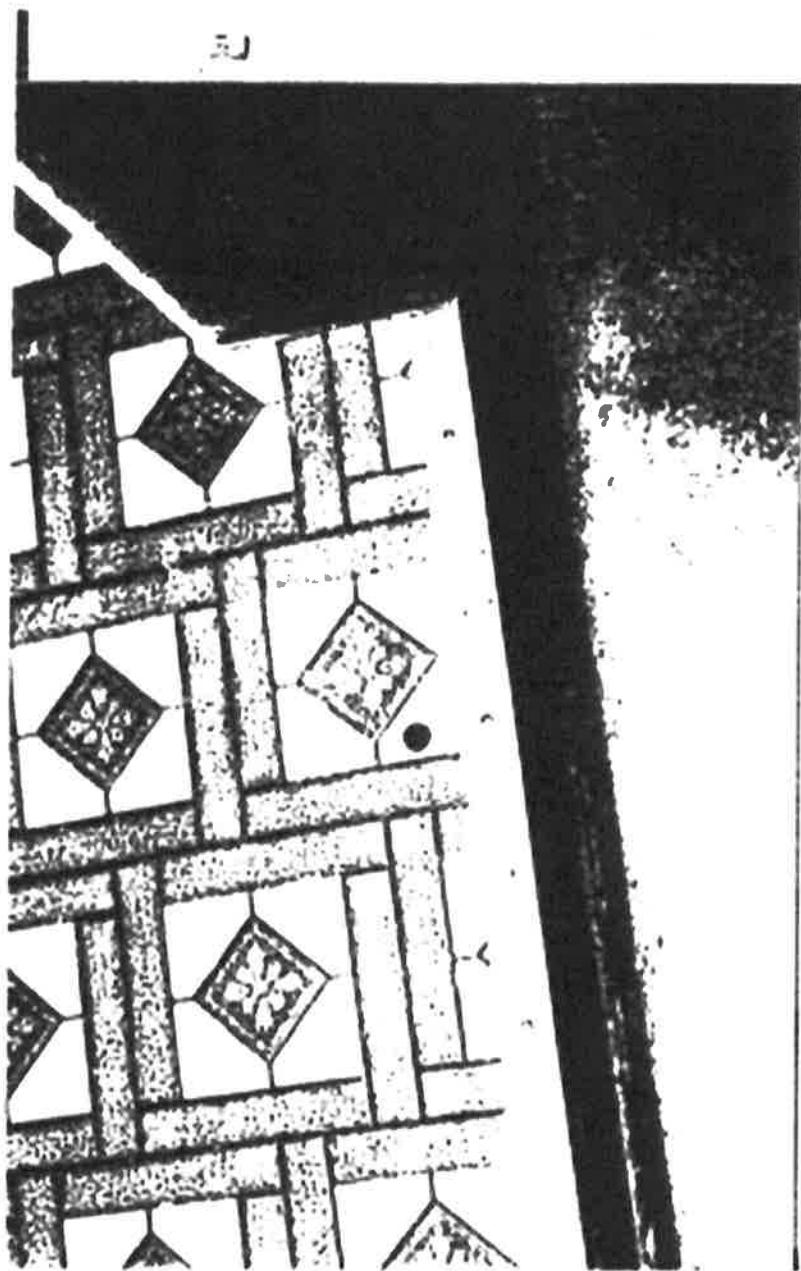


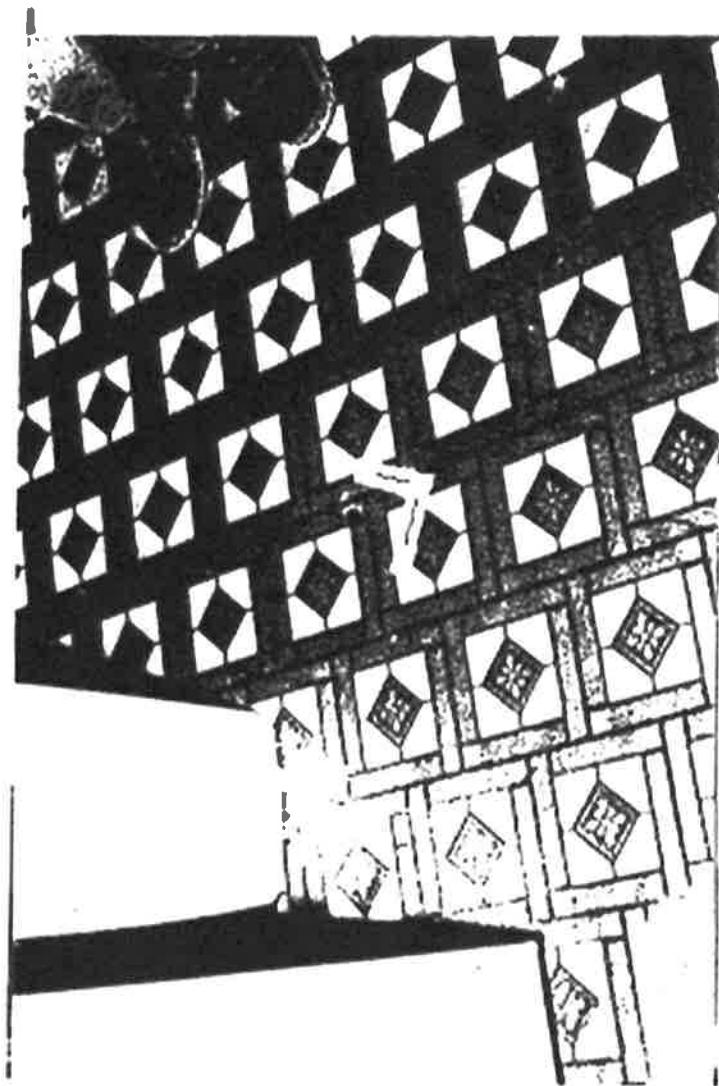
CSD LAB#
02-0618

4-4-02

DET. MILES | CLS. HORSMAN | N.T.S.





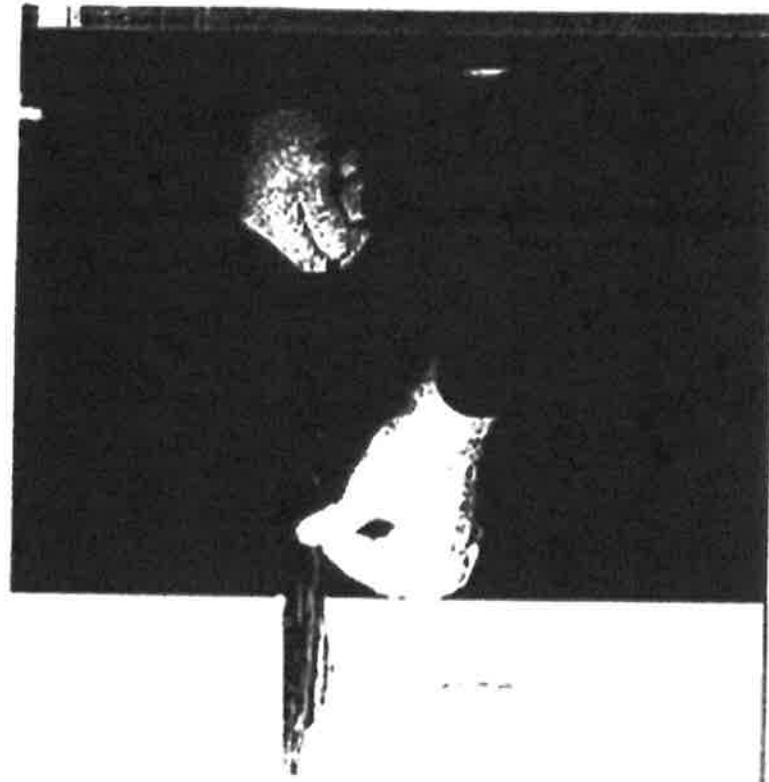


TOP

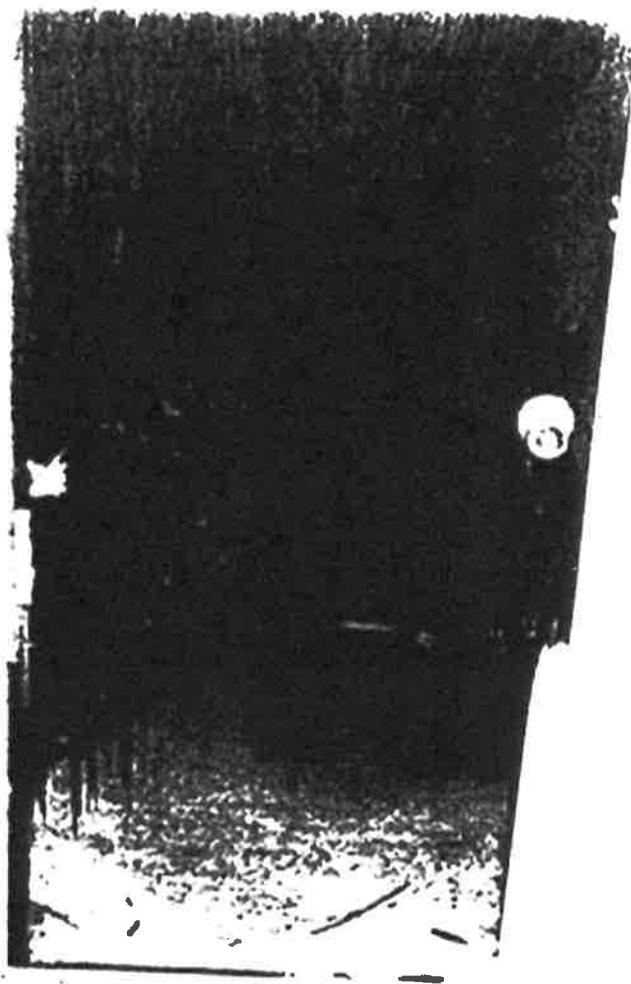
LEFT (EAST)

RIGHT
[WEST]

BOTTOM



TOP



BOTTOM