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RECANTATIONS RECONSIDERED: A NEW FRAMEWORK FOR RIGHTING WRONGFUL CONVICTIONS

Forward

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It is an honor for the University of Utah to publish one of Professor Michael Goldsmith's last research projects before his untimely death. Michael was a devoted member of the state's criminal justice community, a first-rate scholar, a terrific teacher, and an even better human being. Generations of law students had the good fortune to study with him at Brigham Young University, and countless scholars have benefited from the wisdom contained in his scholarship. We are grateful to Adam Heder for completing this paper and, most of all, to Michael for being a mensch in all aspects of his life.

Introduction

Even the most ardent supporters of our criminal justice system must acknowledge that wrongful convictions do occur and that innocent people suffer the consequences. [1] During the past decade, DNA exonerations have exposed this unfortunate truth. [2] But DNA-based exonerations are likely to decrease as the ***100** availability of DNA evidence at the pretrial stage increases. [3] This decline, however, threatens to mask the realities that wrongful convictions also stem from nonbiological evidence. [4] Indeed, according to at least one study, nearly eighty-four percent of all wrongful convictions result from mistaken witness identification, false statements, and witness confusion. [5]

Thus, as DNA exonerations decline, other potentially reliable sources acquire heightened importance in reducing and overturning wrongful convictions. In many cases, for example, recanted testimony provides compelling evidence of innocence. [6] However, a long tradition of judicial skepticism towards recanted ***101** testimony has prompted courts to summarily reject recantations as grounds for winning exoneration. [7] Modern courts have maintained this tradition, even in the face of corroborating evidence and other mitigating factors. [8] As a result, recanted testimony has rarely served as the basis for judicial exonerations. This Article challenges this judicial trend and proposes remedies for reform.

Two recent cases highlight the difficult judicial atmosphere surrounding witness recantations and provide glimpses of potential avenues of reform. The first concerns the murder trial of Fernando Bermudez. In 1991, Bermudez was arrested, tried, and convicted for the murder of Raymond Blount. [9] The prosecution's entire case rested on the testimonies of five eyewitnesses, [10] as there was no physical evidence linking Bermudez to the crime. [11]

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Two years after trial, these same five witnesses recanted their testimony and supported Bermudez's claim of innocence. [12] They provided affidavits stating that police and prosecutors had manipulated and pressured them into identifying Bermudez. [13] The state court denied even a hearing on the matter, basing its ***102** decision "upon the long standing reluctance of courts to overturn a jury conviction on the basis of recantation evidence." [14] The trial court observed, "[i]t strains credulity to believe that five unshaken trial witnesses would suddenly claim that they had testified falsely under oath." [15] Remarkably, the judge maintained that, if Bermudez had presented fewer than five recanting witnesses, his claim would have been more credible. [16] Without addressing this anomaly, an appellate court unanimously affirmed Bermudez' conviction, again "relying on the inherent unreliability of recantations." [17]

In 2004, Bermudez again relied on these recantations, this time to support his petition for a writ of habeas corpus in federal court. [18] Though the court held an evidentiary hearing, it was bound both by the limited nature of federal habeas review and the state court's factual findings. [19] Despite some rather compelling corroborating evidence, [20] the court rejected the recanted testimony as a basis for habeas relief, [21] again reciting the judicial mantra that recantations are "looked upon with utmost suspicion." [22]

This did not mark the end of Fernando Bermudez's epic legal battle. In 2009, Bermudez sought additional post-conviction relief in New York state courts, arguing that the results of an investigation by the district attorney's office (which ***103** revealed the existence of a man who more fully matched the description of the murderer given at trial) constituted newly discovered evidence. [23] In a remarkable turn of events, the New York state court found the new evidence material and corroborative of the earlier recantations. [24] Based on that, the court found Bermudez had "demonstrated his actual innocence," vacated his conviction, and dismissed the indictment with prejudice. [25]

The second case involves the murder trial of Troy Davis. In 1991, Davis was convicted for the 1989 murder of a police officer in Georgia. [26] A jury convicted him largely on the basis of eyewitness accounts and without any corroborating physical evidence. [27] Five years later, and well after Davis lost his direct appeal, [28] seven of the nine witnesses against him recanted their testimony; [29] all claimed the police pressured them to testify falsely. [30] Georgia courts, however, declined to hold an evidentiary hearing to consider the recantations. [31] In affirming this outcome, the Georgia Supreme Court relied on case law holding recantations admissible for purposes of granting a new trial only if the previous testimony was "in every material part . . . purest fabrication." [32] Just as the courts had done in Bermudez, the Georgia Supreme Court emphasized the recantations' "general lack of credibility" and concluded the original trial testimony was not "purest fabrication." [33] After Davis succeeded in postponing his execution due to a number of last-minute appeals, [34] the United States Supreme Court, in a very rare move, ordered the case back to the federal district court in Georgia to hold an evidentiary hearing to examine the validity and credibility of the recanted statements. [35] Nearly ***104** fifteen years after the recanting witnesses came forward, Troy Davis finally succeeded in obtaining a hearing on that evidence.

Recantations often warrant judicial scrutiny, [36] but these two cases reflect the judiciary's tendency to reject recantations based more on historic skepticism, or unduly burdensome procedural barriers, than on careful consideration of whether a particular recantation is reliable. This unfortunate trend stands inapposite to a fundamental premise of Anglo-American criminal justice: "It is better that ten guilty persons escape than one innocent suffer." [37] This Article demonstrates that modern courts have uncritically deferred to conventional wisdom debunking recanted testimony, and it proposes a new analytical framework. This new framework acknowledges grounds for judicial skepticism but requires courts to consider whether corroborating circumstances lend credence to any particular recantation.

Part I of this Article reviews the reasons the courts have historically viewed recantations with suspicion and why some of those reasons have become outdated. Part II considers the principal procedural contexts in which recantations arise, the differing legal standards that correspond to each procedural setting, and some problems inherent with those procedures. Part III examines the Bermudez and Davis cases as a vehicle for highlighting some of the problems with judicial practice in this area. Part IV discusses various scholars' past efforts to address this problem. Part V offers this Article's proposed framework for analyzing recantations, in which we suggest statutory reform that could help mitigate the effects of courts' reluctance to consider recanted

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testimony. Part VI applies the proposed framework to the Davis and the Bermudez cases to show how those two cases could have been handled differently.

There are many competing interests in this area of law. It is our hope that under the statutory scheme proposed in this Article, we can create a more precise system of filtering the unreliable recantations from the reliable ones, and come one step closer to our society's ultimate goal of convicting only the truly guilty.

I. Basis for Judicial Skepticism

One commentator has observed that judicial skepticism of recantations "has become so universal that it appears to have given rise to an inference that recantation evidence is not trustworthy and should be treated as such absent the movant's ability to persuade otherwise." [38] That courts mistrust recantations can hardly be doubted. [39] As the New York Court of Appeals bluntly stated: "There is ***105** no form of proof so unreliable as recanting testimony. In the popular mind it is often regarded as of great importance. Those experienced in the administration of the criminal law know well its untrustworthy character." [40]

Such reluctance to credit recantations stems from a variety of legal and policy considerations that can generally be grouped into two categories: (1) lack of trustworthiness and (2) the principle of finality. [41]

***106** A. Lack of Trustworthiness

Judges have historically viewed recantations as inherently unreliable based on several principles that reflect common sense and prior experience. First is the intuitive notion that witnesses who have perjured themselves cannot be trusted. [42]

Second, recanting witnesses often have ample "incentives" to change their stories. [43] Bribery, coercion, threats, and other impropriety are among the incentives most often cited. [44]

Finally, courts have found recantations especially untrustworthy when a close relationship exists between the defendant and the recanting witnesses; depending on the circumstances, such relationships often prompt an inference of intimidation or coercion [45] or foster a protective instinct.

B. Preserving the Principal of Finality

The principle of finality is fundamental to every system of justice, and all courts have a strong interest in preserving the integrity of their verdicts and conserving scarce judicial resources. [46] With the passage of time, witnesses become ***107** unavailable, memories fade, and evidence is no longer preserved. [47] These factors often preclude retrials or render them highly problematic. For these reasons, the Supreme Court of the United States has stated that "[d]ue process does not require that every conceivable step be taken, at whatever cost, to eliminate the possibility of convicting an innocent person." [48] Otherwise, chaos and systemic paralysis would ensue. [49] These concerns are especially salient in recantation cases, given the judiciary's distrust of such testimony.

C. Problems with this Judicial Suspicion

Judicial reluctance to credit recantations reflects very real concerns. The difficulty, however, is that not all recantations are unreliable. [50] Simply because many recantations are false does not preclude the possibility that some recantations are true. Yet the judiciary's historic concerns lead to dismissals even when certain factors are present that lend credence to a particular recantation. [51]

There are good reasons to reject broad application of such judicial skepticism of recantations. There is often no justifiable reason to presume a recantation unreliable. For instance, in one case, the recanting witness came forward years after the trial and, under

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threat of perjury, testified that he was "tired of lying and did not want another man's blood on his hands." [52] In that case, the recanter was convicted on charges arising from the same conduct and was also on death row. The state court noted the recanter's interest in the case, stating that "[i]f this was not a planned murder but simply a robbery gone bad, then [the recanter] is probably not eligible for the death penalty, so his recantation could potentially affect the imposition of the death penalty . . . ." [53] On the other hand, the chances that the recantation would have actually led to a reduction in the recanter's sentence were small and the recanter may, as he claimed, have been motivated simply by guilt. In sum, it would have been difficult, relying on nothing more than ***108** the inherent unreliability of the recantation, to conclude that the statements were incredible on their own terms. [54]

In his article on this topic, Shawn Armbrust agrees with the premise that a presumption against recantations can be problematic and lead to questionable results. [55] He gives four basic reasons. First, he discusses the various cognitive biases that affect judges, noting past psychology studies that suggest judges are not likely to find their own previous decisions false. [56] Second, he notes that recanting witnesses are often those that were incentivized to testify against the defendant in the first place (such as a jailhouse informant testifying in exchange for a reduced sentence), and because such testimony is unreliable in the first place, it makes little sense to presume that the recantation is equally unreliable. [57] Third, he notes that police and others are sometimes guilty of coercing witness statements. [58] Therefore, it is illogical to presume that recantations are always the product of defendant coercion and not simply the consequence of earlier police coercion. [59] Finally, Armbrust remarks that experience shows "trial judges are not always adept at judging the demeanor of recanting witnesses." [60] He thus concludes, and we concur, that there are often just as many reasons to trust a recantation as there are to mistrust one. [61]

Moreover, reliance on judicial mistrust is not always an altogether logical approach to recantations. For all the reasons just discussed, there are good reasons to mistrust recantations. Broad invocation of those reasons to dismiss a recantation, however, ignores logical flaws in the historical approach. Examination of Rule 804(b)(3) of the Federal Rules of Evidence provides a helpful illustration on this point. Rule 804(b)(3) governs the admissibility of hearsay statements made against the declarant's penal interests (i.e., statements against interest). Historically, hearsay statements, like recantations, are presumed invalid and untrustworthy. [62] Statements made against the declarant's penal interests were no exception. As the advisory notes to the Rule 804(b)(3) state, the common law distrusted "evidence of confessions by third persons offered to exculpate the accused." [63] Courts suspected ***109** defendants could fabricate both the confession and its contents and then rely on the unavailability of the witness to more easily admit the fabricated hearsay evidence. [64] Nevertheless, the Federal Rules of Evidence allow statements made against the declarant's penal interest to be admitted (subject to several prerequisites, which are discussed infra) [65] upon the "assumption that persons do not make statements which are damaging to themselves unless satisfied for good reason that they are true." [66] Thus, notwithstanding historical mistrust of such statements against interest, jurists now recognize that such statements can, and often do, bear indicia of reliability which may justify their occasional admission.

Recantations often bear these same indicia of reliability. Recanting witnesses expose themselves to perjury charges by admitting that they lied at trial. And just as courts presume that individuals will not make damaging statements about themselves "unless satisfied for good reason that they are true," [67] they could similarly conclude that witnesses will not recant and expose themselves to perjury charges unless the recantations are true. [68]

The challenge, of course, is to develop a standard for assessing recantation reliability that will not unduly impinge upon the principle of finality. In short, courts need a more precise filtering system for distinguishing between recantations involving wrongful convictions and those suffering from classic defects of unreliability. Before delving into our proposal, however, it is necessary to detail the procedures surrounding recantations and how those processes further complicate defendants' efforts in this regard.

II. Procedural Contexts

Standards governing judicial review of recanted testimony depend upon when the defense first learns of the recantation. The timing of this event determines the corresponding procedure for raising this issue, which, in turn, dictates the applicable standard of review. This section reviews the role of timing in determining the procedures and standards that govern this issue.

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In the typical case, a criminal judgment becomes final when the jury has rendered a verdict and the defendant has exhausted his direct appeals.[69] ***110** Recognizing, however, that defendants might discover exculpatory evidence after the fact, most jurisdictions (though not all) allow defendants a period of time to move for a new trial.[70] Once the applicable timeframe has passed, the process of introducing recanted testimony becomes much more difficult. In those cases, defendants have only limited opportunities to introduce the newly discovered evidence through state and federal collateral remedies.[71] Thus, the nature of the remedy available to criminal defendants depends on whether they have made their motion for a new trial within the applicable timeframe.

A. Motions for Newly Discovered Evidence

When a recantation comes to a defendant's attention, he may file a motion for a new trial based on newly discovered evidence (unless the respective jurisdiction does not allow such motions).[72] Federal and state criminal justice systems employ a variety of statutory and common-law standards for considering such motions.[73] For example, federal law requires the motions be filed within three years of a verdict and provides that "[u]pon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires."[74] Both state and federal courts generally derive their standards from two leading cases, Berry v. State[75] and Larrison v. United States.[76] With slight variations, the Berry and ***111** Larrison tests focus principally on whether the newly discovered evidence would have produced a different result if it had been presented at trial.[77]

B. Collateral Review

If a defendant's motion for a new trial on the basis of newly discovered evidence fails, or if a defendant has not come forward with the newly discovered evidence until after the applicable timeframe has passed, defendants are typically limited only to whatever collateral remedies exist in the respective jurisdiction. Every state offers some form of collateral relief to convicted criminals, though the ***112** rules involved differ slightly in some states.[78] In federal court, the writ of habeas corpus constitutes the foremost collateral remedy.[79] An analysis of that writ, therefore, provides a helpful tool for illustrating the procedural challenges facing a defendant attempting to introduce newly discovered evidence via a collateral challenge.

As a general matter, habeas relief is available only for defendants who can establish a constitutional error with their convictions.[80] In 1996, Congress enacted the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"), which limited the scope of habeas corpus by narrowing the constitutional claims cognizable in a federal habeas proceeding. AEDPA precludes habeas relief to persons whose claims were decided on the merits in state court, unless the judgment.

> ***113** (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.[81]

The Supreme Court has interpreted this statute as allowing federal habeas relief if one of two circumstances has been met. First, federal courts may grant the writ if the "state court arrives at a conclusion opposite to that reached by [the Supreme Court] on a question of law or if the state court decides a case differently than [the Supreme Court] has on a set of materially indistinguishable facts."[82] Second, federal courts may grant the writ if the "state court identifies the correct governing legal principles from [the Supreme Court's] decision but unreasonably applies that principle to the facts of the prisoner's case."[83]

Therefore, if courts have denied a defendant's motion for a new trial, the defendant may seek habeas corpus only if the state court's denial of the motion either (1) produced a result inapposite to one reached by the United States Supreme Court or (2) the state court's application of the law was unreasonable. This is significant, because a freestanding claim of innocence based on newly discovered evidence may or may not involve a constitutional challenge. As the Supreme Court explained:

> Claims of actual innocence based on newly discovered evidence have never been held to state a ground for federal habeas relief absent an independent constitutional violation occurring in the underlying state criminal

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> proceeding. . . . This rule is grounded in the principle that federal habeas courts sit to ensure that individuals are not imprisoned in violation of the Constitution--not to correct errors of fact. [84]

***114** Thus, absent constitutional grounds, habeas relief is not ordinarily available to challenge a state court's denial of a new trial based on recanted testimony. [85]

This is not to say criminal defendants may never be able to tether their recantations to a constitutional violation. For example, witness recantations could accompany allegations of police coercion, as in the Bermudez and Davis cases. [86] Such allegations lend themselves to claims that the prosecution either knowingly proffered false testimony or failed to disclose exculpatory evidence--both of which qualify as constitutional claims. [87] These are well-established constitutional principles, but require proof beyond the recantation itself. Other less well-established grounds based on due process and ineffective assistance of counsel claims also exist. [88] In any event, because a freestanding claim of innocence based ***115** on a witness recantation rarely warrants habeas relief, the "Great Writ" does not stand out as an altogether effective means of obtaining postconviction relief on the basis of witness recantations. [89]

Where a jurisdiction does not allow motions for a new trial on the basis of newly discovered evidence or where the defendant fails to move for a new trial within the relevant timeframe, these procedural difficulties become even more acute. The general rule holds that a defendant may seek federal habeas relief only if he is not procedurally barred from doing so in state or federal court. [90] Of course, a defendant who fails to introduce a witness recantation within the applicable timeframe or is simply disallowed by the respective jurisdiction from making such a motion altogether would be procedurally barred from pursuing habeas relief in a federal court. Though this rule is subject to several exceptions, [91] the fact remains: ***117** Obtaining collateral review of recanted statements is difficult, and often impossible.

C. Practical Problems with the Procedural Schemes

Our examination of the procedures in this realm demonstrates that a substantial portion of defendants asserting recantations will never, indeed can never, have a day in court. First, not all jurisdictions within the United States allow for postconviction relief on the basis of newly discovered evidence, [92] while others impose strict time limits. [93] Though many of these jurisdictions may have some other mechanism available, criminal defendants in those jurisdictions nevertheless have either no or limited initial procedural mechanisms for introducing newly discovered evidence like witness recantations. [94] Aside from the harshness of ***118** entirely arbitrary deadlines, there is simply no reason to presume a recanter would come forward shortly after the trial instead of some significant amount of time later. [95]

Finally, habeas relief is not generally available to those asserting freestanding claims of innocence based on recantations. [96] Only where the defendant has tethered the recantation to a constitutional claim is he entitled to federal habeas review. Thus, where a defendant may only seek collateral review of a recantation, in the absence of a constitutional error, his efforts will generally be unavailing. But there is no reason to presume that a defendant who can tether his recantation to a constitutional argument has a more compelling case of innocence than the defendant who cannot.

***119** Without receiving any review of the recantations, therefore, defendants falling into any one of these categories are essentially precluded from relief on the basis of such recantations. Because we accept that not all recantations are false, this preclusion is unacceptable.

III. Judicial Practice

This Article proceeds on the following premise: even if most recantations are false, not all are. [97] Allowing summary rejection of recantations, therefore, is problematic. Unfortunately, the combination of intensely complex procedural requirements and judicial skepticism has at times effectively produced this result.

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Though there are many examples, [98] the Bermudez and Davis cases illustrate just how far the effects of the judicial suspicion of recantations reach. In neither case was there any physical evidence linking the defendants to the crime. [99] In Bermudez, all of the eyewitnesses recanted, [100] and in Davis, seven of the nine recanted. [101] Undoubtedly, the recantations, if true, would have materially affected the jury's verdicts, as the recantations entirely undermined the only factual bases for the verdicts. Yet neither defendant received a hearing in state court. [102] Instead, the judges in the respective cases judged the credibility of the statements on the basis of their suspicion of recantations in general. [103] This was particularly true in Bermudez, where the trial court stated that "it strains credulity to believe that five unshaken trial witnesses would suddenly claim that they had testified falsely under oath," [104] and denied even a hearing "based upon the long standing reluctance of courts to overturn a jury conviction on the basis of recantation evidence." [105] In the absence of a factual finding regarding the credibility of the recantations, it hardly ***120** makes sense to dismiss recantations that, if true, would undermine the entire basis of the jury's finding. [106] Thus, it is the case that judicial suspicion of recantations can lead to the absurd result where a defendant who was convicted in the absence of any physical evidence and whose sole accuser recants stands no greater chance of exoneration than the defendant convicted largely on the basis of physical evidence who had only one of ten accusers recant. [107]

***121** In Davis, Georgia state courts relied on little more than the inherent unreliability of recantations in affirming a death sentence. [108] Relying entirely on "the general lack of credibility that should be assigned to recantation testimony," [109] the Georgia Supreme Court stated that it would credit the recanting testimony only if it could show "that the State's witness' [trial] testimony in every material part [was] purest fabrication." [110] Because recantation testimony merely "impeaches the witness' prior testimony," the court found it was "not the kind of evidence that proves the witness' previous testimony was the purest fabrication." [111] Moreover, the court concluded, without weighing the cumulative effect of the recantations, that each individual recantation would only undermine the relevant testimony, not the overall case. [112] This conclusion was dubious, as the entire case was built on the testimonies of those same eyewitnesses--indeed, there was no other evidence. But perhaps the conclusion was justified legally under the "purest fabrication" standard erected by Georgia state courts.

The approach pursued by the Georgia state courts in Davis is worrisome, because it effectively allows summary dismissal of recantations. Every recantation, by its very definition, is impeachable by prior trial testimony. [113] Thus, it is difficult (if not impossible) to imagine an instance where a recantation could ever warrant relief under the "purest fabrication" standard. [114] Accepting our premise that not all ***122** recantations are false, Georgia's "purest fabrication" test, and others like it, lead to unacceptable results.

Another example is a 1984 death penalty case, for which the U.S. Supreme Court denied certiorari, Dobbert v. Wainwright. [115] That case involved a man convicted of murdering his daughter based solely on the eyewitness testimony of his son. [116] Eight years after trial, the son recanted his testimony, citing his fear of his father, pressure from the staff of a children's home where he was staying, and an intense regimen of medication as his reasons for lying at trial. [117] Echoing the approach from the Davis case, the state trial court there dismissed the recantation based entirely on its discussion of the prerecantation statements. [118] The state court reached its conclusion without any discussion of the son's recantation--this despite the fact that the recantation corroborated statements the son had made shortly after the death of the victim. [119] Providing further illustration of the difficulties facing similarly situated defendants, the federal courts in Dobbert's case were more or less bound by the factual determinations of the state courts. [120] Thus, the Supreme Court denied certiorari in that case and Dobbert's motion to stay the execution was not granted. [121]

In a heated dissent, Justice Brennan argued that the execution should have been stayed in order to allow analysis of "the appropriate ground rules for considering the materiality and credibility of [the son's] recantation." [122] Justice Brennan focused largely on the state court's "complete failure to analyze the recanting evidence itself." [123] He also noted reasons one could, at least arguably, credit the recantations over the original trial testimony. [124] For example, the son was terrified of his abusive father as a young boy at the time of the trial, at the time of the recantation, however, the son was "a grown man . . . [with] no reason to fear his father and has . . . recovered from the trauma to which he was subjected." [125] As a legal matter, Justice Brennan's

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conclusion was questionable, as one can hardly argue that federal appellate courts are the best forum for challenging state courts' ***123** factual conclusions. [126] Nevertheless, his dissent highlights some important consequences of judicial practice in this area.

That a man could be executed in the face of a recantation without ever receiving any sort of meaningful review of the exact contents of that recantation seems "absurd on its face." [127] Yet judicial suspicion coupled with precedent that requires courts to focus exclusively on the prerecantation material can drive this result. Just as in Davis, Dobbert was denied any meaningful review of the recantation, because in both cases the state courts focused on the prerecantation testimony and largely ignored the contents of the recantation itself. This was particularly problematic in Dobbert, where the recanter's testimony corroborated earlier statements and there were reasons to believe the recantation over the trial testimony. [128] Again, accepting our premise that not all recantations are false, this is an unacceptable reality in our justice system. As Justice Brennan noted in his Dobbert dissent:

> There may well be numerous reasons why [the son's] recantation should not be entitled to controlling weight, but there is nothing here to suggest that [the trial court] considered those possible reasons, let alone relied upon them in reaching his conclusion. In the face of a specific recantation of critical testimony, a court must evaluate the recantation itself and explain what it is about that recantation that warrants a conclusion that it is not credible evidence. [129]

The subtext underlying these three cases is simple: courts mistrust recantations. In Bermudez, the trial court refused to hold an evidentiary hearing, relying entirely on the inherent unreliability of recantations. In Davis, the Georgia courts, while noting the same principle, relied on precedent that makes it all but impossible to obtain meaningful review of a recantation. Such precedent alone stands out as evidence of the long-standing judicial skepticism of recantations. More importantly, it highlights the ease with which most courts can simply dismiss recantations. A simple principle can be derived from these cases: momentum drives courts to dismiss recantations based on only the historic reasons discussed in this Article. Thus, absent extraordinary circumstances, we can expect courts to presume recantations unreliable and dismiss them accordingly.

The combination of intensely complex procedural requirements and judicial skepticism has effectively allowed courts to categorically deny recantations. The solution, therefore, lies first in an honest recognition that "the recantation on occasion represents the truth," [130] and second, and more importantly, in ensuring ***124** that courts reject recantations only after properly granting "the process that attends a valid credibility assessment." [131] For courts to summarily dismiss recantations as unbelievable would be, in no trite sense, "bothersome." [132] The proper solution lies in crafting a system that, while not imposing an undue burden on courts that would both disturb judicial economy and the finality of judgments, makes it more difficult for judges to summarily dismiss recantations based only the historic mistrust of them.

IV. Existing Scholarship

Before delving into the specifics of our recommended framework, we first examine various proposals that other authors have made. Generally, we are concerned the existing proposals do not go far enough in addressing the underlying sources of the problem: judicial suspicion and procedural complexities.

Many scholars have written at length about the problems inherent with the preexisting judicial standards, namely the Berry and Larrison standards. Daniel Wolf, for example, has criticized the existing frameworks as too burdensome and unjust. [133] He puts forward an alternative standard, which he entitles the "significant chance" rule. [134] He proposes that

> [i]n order to grant a rule 33 motion for a new trial based upon newly discovered evidence of false testimony at trial, the court must be reasonably well satisfied that (a) testimony given by a material witness at trial was false or that the witness has become so thoroughly discredited that the court is unable to determine whether the testimony was true or false; (b) there is a significant chance that a jury with knowledge that the witness testified falsely would return a different verdict; and (c) the defense was taken by surprise by the false testimony and was unable to meet it or know of its falsity at the time of the trial. [135]

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In a similar vein, Sharon Cobb argues that the present standards inappropriately shift the underlying factual question--i.e., whether the recanting witness is credible--to the judge.[136] Thus, she argues for a new standard, wherein "new trial motions should be granted whenever there is substantial doubt as to ***125** which of the witness's statements [i.e., the original trial statement or the recanting statement] is true . . . ."[137]

Similarly, Janice Repka proposes the "reasonable possibility approach."[138] Like most other commentators on the subject, she agrees that the judicial presumption that recantations are untrustworthy has become too broad.[139] To combat judicial standards that she views as too loose in this area, she proposes that "[w]here the recanting occurred under specific circumstances reasonably free from suspicion of duress or improper motive, and, upon a new trial the original trial testimony reasonably could be found false, a new trial will be granted . . . ."[140]

We agree with several of the premises underlying these authors' scholarship, namely that the judicial suspicion of recantations has become too broad and that the existing standards do not adequately equip courts to weigh recantations. Our concern, however, is that the approaches advocated by these scholars all suffer the same defect. As evidenced by the cases highlighted in this Article's introduction,[141] courts have an inherent suspicion and mistrust of recantations. Thus, any solution that seeks to compensate for this suspicion merely by articulating for judges another imprecise standard seems to miss the point. The focus, rather, should be on crafting a scheme with a built-in mechanism to compensate for the judicial tendencies that drive denials of recantations.

This is not to say that new judicial standards would have no effect; they likely would. For example, the Georgia courts in the Davis case might no longer be bound by the "purest fabrication" test, which, for the reasons discussed in Part III,[142] could have made a significant impact in that case. Nevertheless, we merely emphasize that, regardless of the standard to be employed, courts do not trust recantations. Therefore, in the absence of exceptional circumstances, the presumption against recantations will prevail. For example, under Repka's proposed "reasonable possibility" standard, a judge must determine whether "upon a new trial the original trial testimony reasonably could be found false."[143] In making this determination, however, we can expect judges to resolve evidentiary doubts against the recantations--both because of the judicial suspicion of recantations and to protect the finality of judgments.[144] Likewise, Wolf's proposed ***126** "significant chance" rule focuses on whether "there is a significant chance that a jury with knowledge that the witness testified falsely would return a different verdict."[145] But of course, given the mistrust of recantations (which would remain unaffected by the new standard), it will rarely be the case that a judge would conclude, in the absence of extraordinary circumstances, that there is a significant chance that a jury would come to a different result than it already did in the first trial. Finally, Cobb's proposed standard, which would grant a new trial anytime "there is substantial doubt as to which of the witness's statements [i.e., the original trial statement or the recanting statement] is true . . .,"[146] suffers the same tragic flaw. Because long-established precedent forces courts to view recantations with great suspicion, we can expect courts to err on the side of finding that there is no substantial doubt about the witness's statements.

We submit that, while these authors have crafted creative and helpful ways for courts to examine recantations, they fail to properly measure the effect of generations' worth of judicial tradition as well as complex procedures. We thus view the proper solution as more mechanical than merely proposing a new standard--something courts could not overlook through simple invocation of the historical suspicion of recantations.

In a 2008 article, Shawn Armbrust advances a proposal, which, in our view, comes closer to achieving this goal than the other aforementioned proposals.[147] Armbrust criticizes those standards that force a defendant to either prove the truth of the recantation or the falsity of the trial testimony.[148] He notes several cases where the defendants were eventually exonerated through the use of DNA evidence, even though their accusers had recanted years earlier.[149] He explains that, "[i]n those scenarios, proving the absolute truth of the recantation or absolute falsity of the trial testimony was virtually impossible until each defendant could use DNA evidence."[150] He continues, "[t]he simple explanation for this is that when only the witness knows the real truth, the courts essentially are forced to guess based on credibility judgments and other subjective factors."[151] Thus, he concludes that a new standard is necessary "to balance the interests in judicial economy with the reality that discerning truth based on witness demeanor is incredibly difficult."[152] He therefore proposes a corroboration requirement, in which a

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defendant's motion for a new trial based on recanted statements will fail, unless that defendant corroborates the recantation with other independent evidence.

***127** Armbrust relies on Wisconsin state court precedent to articulate a two-pronged corroboration requirement.[153] "The first element of Wisconsin's . . . corroboration requirement is evidence of a feasible motive for providing false testimony at trial."[154] "The second element of Wisconsin's corroboration requirement is circumstantial guarantees of trustworthiness."[155] Armbrust proceeds to outline a nonexhaustive list of factors to consider in determining whether there are sufficient circumstantial guarantees of trustworthiness, such as "the spontaneity of the statement, . . . the extent to which the statement is self-incriminatory and against the penal interest of the declarant, and the declarant's availability to testify under oath and subject to cross-examination."[156] Armbrust concludes that under this approach of "objectively consider[ing] reliability both in the traditional context articulated by the Wisconsin courts and in the context of what we now know about the fallibility of the justice system, [judicial decisions] are likely to be fairer and to balance more appropriately the interests of defendants with interests of finality."[157]

Armbrust recognizes that, in order for there to be meaningful change in this area of law, a more mechanical mechanism must be put in place to counterbalance judges' natural tendencies in this area.[158] We agree. Though the judicial standards articulated by the aforementioned authors are novel and would certainly effect change, in the absence of some structural counterweight to judicial disapproval of recantations, meaningful review in this area will remain inconsistent.

We worry, however, that Armbrust's proposed method for determining corroboration ultimately suffers from the same defect as the other proposals. He urges courts to focus on "evidence of a feasible motive for providing false testimony,"[159] and on "circumstantial guarantees of trustworthiness."[160] As we have discussed throughout, there are almost always reasons to infer a recanter is lying. Thus, even if there is evidence of a feasible motive for providing false testimony, there will surely almost always be evidence of a feasible motive for lying in the recantation as well. Consequently, we fail to see how the first prong of the corroboration requirement compensates for the historical judicial trends.

***128** Likewise, for all the reasons discussed in Parts I and III, there are almost always reasons to infer that a recantation is untrustworthy. It would be a rare case indeed that a recantation suffered none of the traditional defects. Even if Armbrust's proposed corroboration requirement forces courts to consider the potentially truthful implications of a recantation, it certainly does not require those courts to ignore all the traditional indicia of reliability associated with recantations. Thus, adopting Armbrust's proposed corroboration requirement would simply place courts in a position where they are forced to recognize that there is competing evidence on both sides. Because a court's inertia will push that court to dismiss the recantation and defer to the jury's earlier factual findings, there is little reason to presume the courts, under the standard proposed by Armbrust, will change their behavior in this regard in any significant way. Thus, while we agree with Armbrust that a corroboration requirement is necessary, we would push harder and recommend the corroboration requirement be a more easily verifiable bright-line test. Though bright-line tests are not always preferred, it would provide the most guaranteed way of balancing judicial practice in this area.

These concerns lead us to a few simple conclusions. First, a court's path of least resistance, when presented with a recantation, is to disregard it. Second, even where there are multiple explanations for why a witness would have recounted, we expect courts will, for the historical and policy reasons noted throughout this Article, defer to the explanation that discredits the recantation. Third, unless there is an automatic mechanism in place to compensate for this judicial gravity, we cannot expect meaningful change in this area.

Working from the scholarship and taking a practical view of judicial practice in this area, we outline a framework we believe would best accomplish this goal.

V. Recommended Framework

Being sensitive to the need to preserve final judgments and protect scarce judicial resources, courts and legislatures can nonetheless craft mechanisms that will force judges to more precisely and validly distinguish between false recantations and truthful ones.

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As an initial measure, courts can weed out a substantial amount of recantation cases through a simple "materiality" analysis. [161] In other words, where a recantation, even if assumed true, could not materially affect a jury's verdict, courts could easily dispose of such cases. [162] Courts frequently do this already. [163] Moreover, the Berry and Larrison standards, of which most jurisdictions have already adopted some variation, include such a requirement. [164] Thus, imposition of ***129** a strict requirement to consider materiality would not pose an administrative obstacle for most courts.

Furthermore, the U.S. Supreme Court has offered guidance on the implementation of this rule in an analogous setting. In Franks v. Delaware, [165] the Court specifically addressed challenges to affidavits supporting a search warrant--an approach easily applicable in the recantation scenario. [166] In concluding that a defendant may, in the rare circumstance, challenge the validity of affidavits, the Court held:

> There is, of course, a presumption of validity with respect to the affidavit supporting the search warrant. To mandate an evidentiary hearing, the challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. They should point out specifically the portion of the warrant affidavit that is claimed to be false; and they should be accompanied by a statement of supporting reasons. . . . [I]f these requirements are met, and if, when material that is the subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause, no hearing is required. On the other hand, if the remaining content is insufficient, the defendant is entitled, under the Fourth and Fourteenth Amendments, to his hearing. [167]

The challengers' attacks, like recantations, are presumed to be untrustworthy. [168] Nevertheless, the Court has articulated a specific standard for overcoming this presumption. The Court requires two things: (1) claimants must first point to the "specific" portions of the affidavit claimed to be false; and (2) claimants should accompany their allegations with a statement of supporting reasons. [169] Then the court proceeds by assuming the allegations are true. If even in the absence of the false portions, probable cause would remain, the challenge fails. If, however, probable cause would no longer exist, then a hearing is warranted.

Courts could work from this precedent. As in Franks, courts would first require that the moving defendant point out how the recantation would specifically affect both the witness's trial testimony and the overall evidence presented against him. Then the court would determine whether the recantation is material by asking whether, assuming the recantation is true, the recantation would alter the guilty verdict. [170] If the answer is no, the motion for a new trial is denied. If the answer is ***130** yes, however, the court proceeds to the more important step of determining the credibility of the recantation.

Pursuant to our earlier discussion, [171] we believe that the most appropriate method for determining the credibility of a recantation must seek to counterbalance courts' impulses to summarily deny recantations. Thus, instead of merely offering a new formulation of a court's discretion in this area, the more precise response must effect a fundamental structural change--one that will force courts to consider the veracity of a recantation independent of its historic untrustworthiness. Because of judicial cognitive biases, [172] we do not expect that the same judges who presided over the original trials will be ideally suited to be the final arbiters of a recantation's trustworthiness. Rather, there needs to be a system in place, which automatically weeds out clearly unreliable recantations. Where there remains plausible doubt about the credibility of a recantation, the ultimate resolution of the question is better left in the hands of a different fact finder. [173] We therefore second Armbrust's proposal to add a corroboration requirement to the review process here. In other words, where a recantation has been sufficiently corroborated, determinations of that recantation's credibility will go to a fact finder. Where a recantation is not sufficiently corroborated, the judge may dismiss the recantation as incredible.

The corroboration requirement should not be left to the discretion of the trial judge. Instead, we encourage courts, together with the relevant legislative and judicial committees in charge of drafting and approving the respective jurisdictions' rules governing the use of evidence in postconviction hearings, to consider grouping recantations with other forms of unreliable evidence. Grouping recantations with other forms of evidence that are subject to their own set of ***131** legislative guidelines and case law would remove them from their current limbo, and instead place them with other forms of traditionally unreliable evidence that

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have, for one reason or another, received more attention over the years. [174] This would certainly go a long way in promoting uniformity in courts' treatment of certain historically unreliable forms of evidence. It would also provide the requisite automatic mechanism to offset judicial momentum in this area.

We refer here to both the "prior inconsistent statement" and "statements against interest" rules of the Federal Rules of Evidence. Federal Rule 801(d)(1) exempts from the "hearsay rule" certain prior inconsistent statements. It makes admissible statements where, "[t]he declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . . inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition . . ." [175] Logically, there is very little reason to distinguish prior inconsistent statements from subsequent inconsistent statements. As one commentator noted, "[t]he only difference is in the timing of the alteration of the witness's testimony; in one case it occurs before trial, and in the other, afterwards." [176] Therefore, "[i]f our legal system deems it important that juries have knowledge of prior inconsistent statements by witnesses, it is difficult to understand why so many obstacles are placed in the path of a defendant who wishes to acquaint a jury with subsequent inconsistent statements." [177]

Federal Rule 804(b)(3), which governs the admissibility of hearsay statements made against the declarant's penal interests (i.e., statements against interest), also provides useful comparisons. Historically, statements against interest constituted one subset of hearsay statements, which, like recantations, are presumed invalid and untrustworthy. [178] Both types of statements, however, can bear indicia of reliability. Regarding statements against interest, the advisory notes to the Federal Rules of Evidence allow these statements against interest to occasionally be admitted upon the "assumption that persons do not make statements which are damaging to themselves unless satisfied for good reason that they are true." [179] Under this same logic, recantations bear similar indicia of reliability. Recanting ***132** witnesses often expose themselves to perjury charges by admitting that they lied at trial, or at least leave themselves vulnerable to individuals sympathetic to the accused. And just like courts presume that individuals will not make damaging statements about themselves "unless satisfied for good reason that they are true," [180] they could similarly conclude that witnesses will not recant and expose themselves to perjury charges, or any other threats, unless the statements are true.

Admittedly, courts have traditionally viewed these realities of recantations as reasons to disbelieve them. As noted earlier, courts worry about the effect that the subsequent coercive threats could have on a recantation. [181] That consideration merely underscores the conclusion that there are frequently competing and compelling reasons to both allow and disallow recantations, just as there are with statements against interest. That such considerations exist is not, of course, a reason to disallow recantations altogether.

We submit that recantations are logically very similar to both "prior inconsistent statements" and "statements against interest." [182] Recantations often arise from suspicious circumstances, but nevertheless as a whole, can bear some indicia of reliability. We recognize, however, that simply allowing all recantations in the same way that many prior inconsistent statements are admitted at trial would disrupt the finality of judgments and vindicate many of the concerns discussed earlier. Fortunately, the Federal Rules of Evidence provide further insight into how to more precisely filter the reliable recantations from the unreliable.

For statements against interest, the Federal Rules of Evidence struck this balance by adding, among other things, a "requirement of corroboration." [183] The corroboration requirement is an attempt to filter the reliable statements from the unreliable. The rule was drafted to read that an out-of-court statement against the declarant's penal interest is admissible if (1) the declarant is unavailable as a witness, (2) the statement so far tends to subject the declarant to criminal liability that a reasonable person in the declarant's position would not have made the ***133** statement unless he or she believed it to be true, and (3) corroborating circumstances clearly indicate the trustworthiness of the statement. [184] Consequently, courts may not summarily dismiss statements against interest as unreliable. Rather, they must base their decisions to accept or dismiss statements against interest on whether there has been corroboration.

A similar calculus may be applied to recantations. Instead of merely allowing all recantations that materially contradict a trial statement or that could conceivably expose the declarant to liability, we recommend the adoption of a "corroboration" requirement in the recantation context. Such a requirement would provide the appropriate automatic and mechanical counterbalance to historical suspicion of recantations and would not be a far break from precedent (inasmuch as courts already apply such a requirement to statements against interest, which are analytically similar to recantations). Courts could, therefore,

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justify imposing a corroboration requirement for recantations under the same logic that they have done so for statements against interest.

To be sure, we are not recommending the wholesale adoption of the "statement against interest" test for evaluating recantations. They are, in the end, different forms of evidence requiring different modes of evaluation. The first requirement--that the declarant be unavailable--is likely irrelevant when it comes to recantations. A recanting witness will be required to offer the recanting testimony either at a hearing or as an affidavit--under oath in either event. And like with prior inconsistent statements, the previous statement--i.e., the trial testimony--must also have been given under oath and subject to cross-examination. [185] Likewise, the second step can also be relaxed in the recantation context, because, notwithstanding their similarities, there are important contextual differences between a recantation and a statement against interest. First, recantations are not actually hearsay, and thus the normal rules regarding when hearsay does and does not bear indicia of reliability are not entirely relevant. Of course, inasmuch as the recantation involves the restatement of hearsay, the typical hearsay rules would apply. Second, and perhaps more importantly, determining motive would again put this question back within the broad discretion of a judge, who, for all the reasons noted throughout this Article, has every reason to dismiss the recantation. As we have noted, we seek to counterbalance that inertia with a more mechanical test, because there are often reasons to both allow and disallow any given recantation based on the declarant's perceived motive. Therefore, leaving this question in the hands of the same trial judge to preside over the trial would suffer the same tragic flaw that the other approaches did. Finally, there is little logical reason to allow only those recantations where the recanters expose themselves to criminal liability. Such an approach would fail to account for situations where witnesses change testimonies as a result of seeing some new extrinsic evidence, which causes them to reevaluate what they claim to have seen.

***134** The more difficult question examines the specifics of the proposed corroboration requirement. [186] In order to provide more objective, easily administrable, and easily verifiable results, the required corroboration ought to come in the form of an independently verifiable piece of evidence, such as another testimony, a piece of physical evidence, or compelling circumstantial evidence. Hinging the admissibility of recantations on the existence of independent evidence will resolve several aspects of the debate. First, courts can easily identify whether such evidence exists. This would create a very easily administrable bright-line test--one that would weed out those recantations most likely unreliable while not requiring courts to expend too many resources. It would also allow those criminal defendants with compelling evidence of innocence a more reasonable chance to have their evidence reviewed. It would mitigate the generally unreliable nature of recantations by requiring independently verifiable evidence. Finally, it would provide an automatic mechanism for shifting the factual determination to a different judge (from the original trial judge) or a jury. [187]

In sum, our proposal seeks to add elements of objectivity and precision to the review process of recantations. Because judges may currently dismiss recantations without any sort of meaningful review solely by relying on recantations' general suspicious nature, our proposal seeks to counterbalance judges' natural incentives to dismiss recantations. It accomplishes this by defining a concrete test for determining both the materiality and credibility of a recantation. The review process will become more transparent, as it will hinge upon the existence of corroborating evidence. Such a system, we hope, will sufficiently resolve the ***135** demands of judicial economy while accommodating the need to locate and expose the occasional truthful recantation.

In substance, our proposal comes quite close to that proposed by Armbrust. We both agree that a corroboration requirement is "necessary to balance the interests in judicial economy with the reality that discerning truth based on witness demeanor is incredibly difficult." [188] However, whereas Armbrust's corroboration requirement examines "evidence of a feasible motive for providing false testimony at trial" and "circumstantial guarantees of trustworthiness," our corroboration requirement attaches the body of law surrounding Rule 804(b)'s corroboration requirement to witness recantations. By doing so, we hope our approach does not suffer the same flaw past approaches have; instead of merely articulating another vague standard subject to the wide discretion of judges already inclined to reject recantations, we seek to have recantations treated the same as another similar form of historically unreliable evidence. Thus, in contrast to Armbrust's approach, ours adds an element of uniformity and predictability that has heretofore been lacking in this area of jurisprudence.

In addition to the corroboration requirement, we recommend several procedural reforms. We have noted several procedural complexities, which preclude a significant number of defendants from ever presenting their recantations. As noted, defendants have a limited time frame, in which to "discover" recantations. [189] Such statutory schemes risk ignoring the psychological complexities of a recanting witness. [190] If a witness has perjured himself at trial, there is generally no compelling reason he would be more willing to come forward with his recantation sixty days, instead of say ten years, after the end of the trial. A

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defendant whose accusers recant after the applicable time limit has no remedies but to seek habeas relief, which is, as discussed, limited to constitutional claims. [191]

Because a typical recantation scenario would not necessarily involve a constitutional violation, defendants in this situation remain incarcerated with no recourse. Imposing no limit is, of course, one possible solution, though this option may be less appealing to some concerned with efficiently obtaining a final judgment. [192] States could consequently take the less dramatic step of eliminating a ***136** time limit for discovering nonphysical evidence. [193] Either option would significantly reduce the possibility that the "occasional truthful" recantation will go unspotted. [194]

VI. Application of Recommended Framework to the Bermudez and Davis Cases

We next examine how our proposed standard would have affected the Bermudez and Davis cases.

In Bermudez, there is no question that the recantations, if believed, would have had a material effect on the verdict. There was no physical evidence in that case, and every eyewitness recanted. [195] Moreover, the prosecution's key witness, Efraim Lopez, recanted his testimony, in which he identified Bermudez as "Wool Lou"--it being accepted that the individual known by the nickname Wool Lou was the killer. [196] Two years after trial, Lopez recanted that testimony and identified a man named Luis Munoz as "Wool Lou." [197] None of the other four recanting witnesses testified about the identity of Wool Lou, but all claimed that the police had used suggestive identification procedures and that they had only ever had ***137** fleeting observations of the killer at night. [198] Consequently, they all recanted. [199] It is thus quite clear that, if believed, these recantations would have had a material effect on the jury's verdict. Indeed, without those trial testimonies, there would have been no evidence with which to convict Bermudez.

Moving to the second part of the framework, the judge would have next considered whether there was corroborating evidence for the recantations. This determination will largely depend on the specifics of the "corroboration requirement" in the relevant jurisdiction. Nevertheless, however one looks at it, there was corroborating evidence in the Bermudez case. Aside from the fact that every single witness recanted independent of each other, the state judge ultimately found unduly suggestive procedures were used to obtain the testimonies, based on evidence available when the witnesses initially recanted. [200] More importantly, there was significant evidence that Luis Munoz was Wool Lou, and not Bermudez. Lopez had identified Munoz as Wool Lou before the trial, and he had given what was, at least in part, an inconsistent testimony. [201] Moreover, Bermudez's attorney discovered the existence of a man shortly after trial that more fully matched the name and description of the killer given by the prosecution's main witness. [202] Additionally, three female acquaintances of Lopez testified after trial, independent of Lopez, that Bermudez was not Wool Lou. [203] More importantly, Luis Munoz's sister identified her brother as Wool Lou. [204] Upon identifying the corroborating evidence, the trial judge would have allowed the ultimate question of the recantations' credibility to go to a jury or a different judge from the original trial judge, which in turn would have determined the fate of Fernando Bermudez. Instead, the trial court dismissed the recantations "based upon the long standing reluctance of courts to overturn a jury conviction on the basis of recantation evidence." [205] In the end, Bermudez received a day in court and was exonerated. Unfortunately, it took nearly twenty years to do so. Our hope is that, under the framework we propose here, that timeframe could be reduced from twenty years to potentially months after the initial verdict is rendered.

We are loath to second-guess trial counsel's strategy or to presume we better understand the record before the district court in each instance. We merely wish to highlight that, given the significant amount of corroborating evidence, Bermudez could have, and should have, secured an earlier chance at exoneration. At the very least, we wish to highlight the absurdity that can often result from simple dismissals of recantations on the basis of long standing reluctance to credit recantations.

***138** We next look at the case of Troy Davis. As with Bermudez, there was no physical evidence tying Davis to the crime--only the testimonies of nine witnesses. [206] Five years later, seven of those nine witnesses recanted their trial testimonies. [207] Of the two who did not recant, one was the individual the defense had targeted as the actual killer. [208] Though not as material as the recantations in the Bermudez case, these recantations, if believed, would have certainly tilted the verdict in Davis's favor. The trial court, however, simply dismissed the recantations due to "the general lack of credibility that should be assigned to recantation testimony . . . ." [209] In fact, Davis was denied a hearing altogether. [210] Under the second step of the analysis, the

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court would have considered the presence of any corroborating circumstances. The lack of physical evidence and the sheer number of recanters--all of whom testified independent of each other--could have provided this. This would have sent the question back to a jury or a different judge for ultimate resolution. Instead, the case languished in the appeals courts for fifteen years, finally resulting in the Supreme Court taking the unusual move of ordering an evidentiary hearing. [211]

Again, we do not purport to understand all the complexities of the factual record in this case better than the respective state courts. We merely suggest that there is a more efficient, and more effective, process for weeding these recantation cases out. While it appears that in the end there was not enough evidence to prove Davis's innocence, [212] that does not change the reality that it took fifteen years for a man to obtain his day in court for recantations that, at least if believed, would have had a material effect on the original verdict.

Conclusion

Recanting witnesses face both judicial skepticism and complex procedural hurdles. This Article recognizes the validity of this skepticism. It also recognizes the valid judicial interest in preserving the finality of judgments. Nevertheless, just because most recantations lack credibility does not mean they all lack credibility. Thus courts, legislatures, and jurists alike have a common interest in ensuring that standards are in place that will precisely filter the reliable from the unreliable. This Article has identified a number of structural disadvantages facing recantations, ***139** though the larger problem remains in the dogmatic skepticism perpetuated by so many courts. Instead of relying on the judicial standards in place for properly analyzing recantations, courts have too often summarily dismissed recantations as "inherently unreliable." Thus, in order to compensate for such skepticism, we propose a corroboration requirement modeled after the one contained within Rule 803(b) of the Federal Rules of Evidence.

We see no reason that in the future our criminal justice system cannot either prevent injustices similar to that suffered by Fernando Bermudez or expedite processes similar to that endured by Troy Davis. Through the collaborative efforts of state judiciaries and legislatives, we believe our criminal justice system can.

Footnotes

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aa1 Prior to the completion of this Article, Professor Michael Goldsmith passed away on November 1, 2009 after a lengthy and courageous battle with Lou Gehrig's disease (Amyotrophic lateral sclerosis). With the permission of his gracious widow, Carolyn, and pursuant to his wishes, I have completed the Article that he and I set out to write before his passing. Prof. Goldsmith was a tremendous personal example of integrity. He gave his fullest efforts to his scholarship, his students, his teaching, and his efforts to raise money and promote awareness of Lou Gehrig's disease in the final years of his life. He blessed the lives of all of his students, and I am fortunate to count myself as one of them.

1 See, e.g., Press Release, George H. Ryan, Governor Ryan Declares Moratorium on Executions, Will Appoint Commission to Review Capital Punishment System (Jan. 31, 2000), available at http:// www.illinois.gov/PressReleases/ShowPressRelease.cfm?SubjectID=3&RecNum=359 ("'I now favor a moratorium, because I have grave concerns about our state's shameful record of convicting innocent people and putting them on death row,' Governor Ryan said. 'And, I believe, many Illinois residents now feel that same deep reservation. I cannot support a system, which, in its administration, has proven to be so fraught with error and has come so close to the ultimate nightmare, the state's taking of innocent life. Thirteen people have been found to have been wrongfully convicted.'").

2 Daniel S. Medwed, Up the River Without a Procedure: Innocent Prisoners and Newly Discovered Non-DNA Evidence in State Courts, 47 Ariz. L. Rev. 655, 656 (2005) ("Over the past fifteen years, the use of deoxyribonucleic acid (DNA) testing in criminal cases has helped to expose the problem of wrongful convictions in the United States, resulting in the post-conviction exoneration of 162 innocent defendants. Indeed, dozens of state legislatures have recently enacted laws implementing procedures through which prisoners may request and secure access to post-conviction testing of biological evidence available in their cases. By creating mechanisms that allow for the possibility that factually innocent prisoners

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may have entrée to DNA testing and thereby gain their freedom, these statutes both further the cause of justice at the individual level and bolster the institutional credibility of the criminal justice system as a whole." (footnotes omitted)).

3 Id. at 657 ("Post-conviction innocence claims based on DNA testing therefore represent a small proportion of innocence claims generally, and this percentage is bound to diminish in the future. That is, the growing availability of DNA technology at the pre-trial stage should filter out a greater number of innocent defendants up-front and, in so doing, decrease the volume of post-conviction exonerations via DNA." (footnotes omitted)).

4 Id. at 657-58.

5 See Barry Scheck, Peter Neufeld & Jim Dwyer, Actual Innocence: Five Days to Execution and Other Dispatches from the Wrongly Convicted 42-44, 73 (2000) (examining seventy-four wrongful conviction cases); see also id. at 42 (citing Hugo Munsterberg, On the Witness Stand (1908)). Munsterberg argued in 1908 that scientific evidence showed eyewitnesses were just as likely to be wrong as right. Id. Other studies showed that even the best recollection of an event erred on about twenty-six percent of significant details; the worst recollection erred on nearly eighty percent of these same details. Id. at 42-43. In a separate experiment with 2,145 participants, only 14.1 percent correctly identified the "thief" in a lineup. Id. at 43-44; see also Edwin M. Borchard, Convicting the Innocent: Errors of Criminal Justice, at xiii (1932). Edwin Borchard, in his groundbreaking work, found witness misidentification contributed to more than half of the sixty-five cases of "completely innocent" persons convicted. Id. Borchard's research concluded that identification of the accused by the victim or other witness as the "major source" of the conviction of innocent persons. Id. In his research, juries readily credited the "veracity and reliability of the victims of an outrage more than any amount of contrary evidence by or on behalf of the accused." Id. (emphasis added). Victims or eyewitnesses, Borchard claimed, were "so disturbed by [their] extraordinary experience that [their] powers of perception become distorted and [their] identification most untrustworthy." Id. In eight of the cases he studied, the accused and the real criminal bore no semblance to each other; in twelve other cases, the resemblance was fair, "but not at all close." Id.

6 Recantations, had they been addressed, could have exonerated at least some of the defendants later cleared through DNA evidence. See Shawn Armbrust, Reevaluating Recanting Witnesses: Why the Red-Headed Stepchild of New Evidence Deserves Another Look, 28 B.C. Third World L.J. 75, 75-79 (2008) (noting the story of Gary Dotson, whose accuser in a rape case recanted, but was not exonerated until DNA evidence was presented); see also id. at 87-98 (discussing a number of cases where courts erroneously discredited recanted statements, while also noting that "200-plus DNA exonerations have provided sound bases to reevaluate the current treatment of recanting witnesses."); Medwed, supra note 2, at 657-58 ("Although post-conviction innocence claims hinging on DNA testing have captured the attention of state legislators and the broader public, the far more pervasive issue of innocence claims in cases that lack biological evidence has largely escaped notice. The same problems that led to the wrongful convictions of those innocent prisoners later freed through DNA--erroneous eyewitness identifications, false confessions, witness perjury, ineffective assistance of counsel, and the like-- presumably appear in the scores of convictions procured without biological evidence. In these non-DNA cases, prisoners must find alternative means to support their innocence claims, frequently, 'newly discovered evidence' not susceptible to a test tube, such as confessions by the actual perpetrator, statements by previously unknown witnesses, and/or recantations by trial participants." (citations omitted)).

7 See infra Part I. There are a number of reasons for this skepticism, which will be explained later in the Article, but rest mainly on the notion that recantations typically lack credibility, are often coerced, and disturb the finality of judgments.

8 See infra Part III.

9 Bermudez v. Portuondo (Bermudez I), No. 00 Civ. 4795, 2004 U.S. Dist. LEXIS 5427, at *18-19 (S.D.N.Y. Mar. 29, 2004). For a thorough discussion of the complexities of this case, see Scott Christianson, Innocent: Inside Wrongful Conviction Cases (2004).

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10 Bermudez I, 2004 U.S. Dist. LEXIS 5427, at *14-18.

11 Id. at *14.

12 Id. at *22-32.

13 Id. at *51, *55-56, *63. Three of the witnesses claimed that police or prosecutors told them that the prosecutor could "either make [him] or break [him]" or that charges would be brought against them individually. Id. at *55-56 (alterations in original). Bermudez raised issues in his appeal alleging Fifth and Fourteenth Amendment violations, ineffective assistance of counsel, perjury by prosecution witnesses, witness recantations by criminals, investigator misconduct, and prosecutorial misconduct in withholding evidence. Id. at *1-2.

14 People v. Bermudez (Bermudez II), No. 8759/91, 2009 WL 3823270, at *8 (N.Y. Sup. Ct. Nov. 9, 2009).

15 Paul von Zielbauer, Accusers Recant, but Hopes Still Fade in Sing Song, N.Y. Times, Apr. 13, 2007, at B2.

16 Id. The trial court characterized Bermudez's motion as a "scattershot" of arguments and innuendo that sought to "locate a valid attack on the guilty verdict." Bermudez I, 2004 U.S. Dist. LEXIS 5427, at *33-34.

17 People v. Bermudez (Bermudez III), 667 N.Y.S.2d 901, 901 (1997) ("The motion was based entirely on the affidavits of recanting witnesses, which the court properly rejected, relying on the inherent unreliability of recantations as well as the highly suspicious circumstances, viewed in context of events at the trial, under which these recantations occurred. Since the affidavits are unworthy of belief, we reject each of defendant's various claims that rely upon facts asserted therein." (citations omitted)).

18 Bermudez I, 2004 U.S. Dist. LEXIS 5427, at *1-2.

19 Id. at *138 ("[A]t the habeas corpus hearing held in connection with the instant application for a writ, the Court had the opportunity to observe the demeanor of each of the recanting witnesses, to assess each witness' testimony and to reach a determination about each witness' credibility.").

20 For example, after the trial, Bermudez's attorney discovered the existence of a man that more fully matched the name and description of the killer given by the prosecution's main witness. Bermudez II, 2009 WL 3823270, at *6. Even though the prosecutor's office eventually conceded in 2009 that Bermudez was not the man implicated in their main witness's testimony, the existence of this man was brought to the attention of the state courts well before then. Id.

21 Bermudez I, 2004 U.S. Dist. LEXIS 5427, at *135-36.

22 Id. at *138-39.

23 Bermudez II, 2009 WL 3823270, at *1, *8.

24 Id. at *8.

25 Id. at *38.

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26 Davis v. State (Davis I), 426 S.E.2d 844, 845 & n.1 (Ga. 1993).

27 Davis v. State (Davis II), 660 S.E.2d 354, 356-60 (Ga. 2008).

28 Davis I, 426 S.E.2d at 845 n.1, 849.

29 Davis II, 660 S.E.2d at 359-60.

30 Id.

31 Id. at 357.

32 Id. at 358 (quoting Norwood v. State, 542 S.E.2d 373, 374 (Ga. 2001)).

33 Davis II, 660 S.E.2d 354, 358 (Ga. 2008).

34 Two hours before Davis's scheduled execution, the United States Supreme Court stayed his execution pending review of Davis's appeal. Davis v. Georgia (Davis III), 555 U.S. 967 (2008); Tristan Smith & Elliot C. McLaughlin, Execution Put on Hold for Man Convicted in Cop's Murder, CNN (Oct. 24, 2008, 1:47 PM), http:// www.cnn.com/2008/CRIME/10/24/ troy.davis.stay.execution/index.html. The Court denied certiorari, but Davis immediately filed a new habeas claim in the Eleventh Circuit. Id.

35 In re Davis (Davis IV), 130 S. Ct. 1, 1 (2009). Ultimately, Davis lost that challenge and, after a last minute appeal to the United States Supreme Court was denied, Davis was executed in Georgia by lethal injection on September 21, 2011. Colleen Curry & Michael S. James, Troy Davis Executed After Stay Denied by Supreme Court, ABC News (Dec. 21, 2011), http:// abcnews.go.com/US/troy-davis-executed-stay-denied-supreme-court/story? id=14571862.

36 See infra Part I.

37 Christianson, supra note 9, at 17 (quoting 4 William Blackstone, Commentaries 358 (1765-1769)).

38 Christopher J. Sinnot, Note, When Defendant Becomes the Victim: A Child's Recantation as Newly Discovered Evidence, 41 Clev. St. L. Rev. 569, 574-75 (1993) (footnotes omitted).

39 See, e.g., Armbrust, supra note 6, at 82 (noting the extreme suspicion with which courts view recantations). Indeed it can hardly be doubted that this skepticism is virtually universal amongst both federal and state courts. See, e.g., United States v. Provost, 969 F.2d 617, 619-20 (8th Cir. 1992) (holding that statements made under oath when pleading guilty are conclusive, and the judge may reject without a hearing a defendant's later contention that his sworn statements were untrue); United States v. DiPaolo, 835 F.2d 46, 49 (2d Cir. 1987) ("Courts are particularly reluctant to grant such motions [for new trials based on newly discovered evidence] where the newly discovered evidence consists of a witness recantation as such recantations are 'looked upon with the utmost suspicion.'" (citation omitted)); United States v. Ramsey, 726 F.2d 601, 605 (10th Cir. 1984) ("[R]ecanted testimony is properly viewed with suspicion."); Lemire v. McCarthry, 570 F.2d 17, 21 (1st Cir. 1978) ("[Recantations] are viewed with considerable skepticism."); United States v. Mackin, 561 F.2d 958, 961 (D.C. Cir. 1977) ("[R]ecantations by witnesses for the prosecution are viewed with suspicion."); United States v. Johnson, 487 F.2d 1278, 1279 (4th Cir. 1973) (citing United States v. Lewis, 338 F.2d 137, 139 (6th Cir. 1964)) ("Where a motion for a new trial is based upon recantation of testimony given at the trial, such recantation is 'looked upon with the utmost suspicion.'"). See generally Tim A. Thomas, Annotation, Recantation of

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Testimony of Witnesses as Grounds for New Trial--Federal Criminal Cases, 94 A.L.R. Fed. 60, §1(a) (1989) (listing numerous examples of judicial reluctance to recanted testimony). This skepticism has led to a large burden for any defendant wishing to introduce recantations post-trial as a means of exoneration. Consequently, both federal and state courts have erected high evidentiary standards through which an appealing defendant must pass. See generally R.P.D., Annotation, Statements by a Witness after Criminal Trial Tending to Show That his Testimony was Perjured, as Grounds for New Trial, 158 A.L.R. 1062 (1945) (discussing standards and applicable cases). In short, courts disfavor recantations and afford them virtually no weight upon review.

40 People v. Shilitano, 112 N.E. 733, 736 (N.Y. 1916).

41 See Sharon Cobb, Comment, Gary Dotson as Victim: The Legal Response to Recanting Testimony, 35 Emory L.J. 969, 981-982 (1986) (discussing the roots of "[t]his distrustful attitude toward recantations"); see also Armbrust, supra note 6, at 82 (noting the extreme suspicion with which courts view recantations). Armbrust outlines the reasons for this suspicion as follows:

(1) the perception that any witness who recants is untrustworthy, (2) determinations about the demeanor of the witness during an evidentiary hearing, (3) findings that the other evidence in the case supports the initial guilty verdict, (4) fears that the witness has recanted under duress or because of coercion, (5) close relationships between defendants and witnesses, (6) a desire for finality and concerns about judicial economy, and (7) the desire to prevent the manipulation of courts.

Id.

42 As the Second Circuit observed in upholding a trial court's denial of a new trial motion based on recanted statements, the judge "had no reason to believe that on one occasion more than another he was telling the truth." United States v. Troche, 213 F.2d 401, 403 (2d Cir. 1954).

43 See, e.g., United States v. Johnson, 487 F.2d 1278, 1279 (4th Cir. 1973) (listing "coercion, bribery, or misdealing" as common means of obtaining recanted testimony).

44 See United States v. Goodwin, 496 F.3d 636, 641 (7th Cir. 2007) (noting that inmate composed the recanting affidavit under threat of coercion and later withdrew it); United States v. Leibowtiz, 919 F.2d 482, 483 (7th Cir. 1990) (describing affidavit as "not worthy of belief" in light of affiant's psychological frailty and the threats likely communicated by defendant); see also Armbrust, supra note 6, at 82; Cobb, supra note 41, at 983-87. This view is so wide spread it led one commentator to remark that courts view recantations "as untrustworthy, acts not of conscience, but of sympathy or bribery or coercion." Zielbauer, supra note 15, at A1. In a particularly illustrative case, a man convicted for rape appealed to the Minnesota Supreme Court the trial court's denial of a new trial based on the recanted testimony of his accuser. After the trial, the prosecution's witness received a number of threats, some over the phone and others through the intimidating behavior of some of the convicted's acquaintances. Cobb, supra note 41, at 983-84 (citing State v. Hill, 253 N.W.2d 378, 383-84 (Minn. 1977)). The court remarked, "[c]ourts have traditionally looked with disfavor on motions for a new trial founded on alleged recantations unless there are extraordinary and unusual circumstances. This rule is particularly relevant where possible changes in testimony have been occasioned by threats, pressure, and intimidation." State v. Hill, 253 N.W.2d 378, 384 (Minn. 1977) (citations omitted). In light of the evidence of coercion and intimidation, the court found the recanted statements untrustworthy and did not reverse the trial court's denial of a new trial. Id.

45 Armbrust, supra note 6, at 82 (noting that courts often distrust recantations because of the close relationships between defendants and the recanting witnesses).

46 Daniel Wolf, Note, I Cannot Tell a Lie: The Standard for New Trial in False Testimony Cases, 83 Mich. L. Rev. 1925, 1925-26 (1985) ("[Courts'] reluctance to grant new trials on the basis of newly discovered evidence reflects the legitimate interest in protecting the finality of judgments. Because of the great importance accorded this interest, the vast majority

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of courts have steadfastly adhered to the long-established rule that newly discovered evidence will not entitle the accused to a new trial unless that evidence would probably produce a different verdict." (footnotes omitted)).

47 See, e.g., Herrera v. Collins, 506 U.S. 390, 417 (1993) (noting that the need to protect finality of judgments is linked to the burdens of litigating with stale evidence).

48 Id. at 399 (alterations in original) (quoting Patterson v. New York, 432 U.S. 197, 208 (1977)).

49 Id.

50 See discussion supra note 7.

51 See infra Part III.

52 Archer v. McDonough, No. 3:06-cv-00312-RS, 2008 WL 616115, at *28 (N.D. Fla. Mar. 3, 2008).

53 Id. at *29.

54 The district court did hold an evidentiary hearing in that case and based its decision on evidence brought out at the adversarial proceeding. Id. at *30 ("Based on the Court's experience, common sense, and personal observations of Patrick Bonifay [the recanter], the Court is satisfied that this new testimony is false. After listening to Mr. Bonifay, observing his demeanor, and analyzing his testimony, the Court does not believe his recantation.").

55 See Armbrust, supra note 6, at 89-98.

56 Id. at 89-91 (relying heavily on Medwed, supra note 2, at 700-08).

57 Id. at 91-94.

58 Id. at 94-97.

59 Id.

60 Id. at 97.

61 See id. at 98-102, 104.

62 See, e.g., Fed. R. Evid. 802 ("Hearsay is not admissible unless any of the following provides otherwise: a federal statute; these rules; or other rules prescribed by the Supreme Court.").

63 Id. at 804 advisory committee's note to subdivision (b).

64 Id.

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65 See infra notes 178-180 and accompanying text.

66 Fed. R. Evid. 804 advisory committee's note to subdivision (b).

67 Id.

68 Of course, where some of the factors lending credence to a particular recantation are absent (i.e., the statute of limitations for perjury has expired, etc.), the indicia of reliability which justify admission of a recantation (in the same way it does for statements against interest) would also be absent. Nevertheless, it is sufficient to note that the logical underpinnings of the judicial suspicion of recantations are not entirely sound.

69 For example, the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"), see infra note 81 and accompanying text, defines the finality of a judgment by "the conclusion of direct review or the expiration of the time for seeking such review." 28 U.S.C. § 2244(d)(1)(A) (2006). American Jurisprudence defines a final judgment in the criminal setting as one where "availability of direct appeal to the state courts has been exhausted and the time for filing a petition for a writ of certiorari has elapsed or a timely petition has been finally denied." 46 Am. Jur. 2d Judgments § 174 (2006).

70 See 23A C.J.S. Criminal Law § 1931 (2006); see also discussion infra notes 92-95.

71 See 6 Wayne R. LaFave, Jerold H. Israel & Nancy J. King, Criminal Procedure § 28.1(a) (2d ed. 1999) (describing the nature of collateral remedies and the typical situations when they are sought).

72 See Janice J. Repka, Comment, Rethinking the Standard for New Trial Motions Based Upon Recantations as Newly Discovered Evidence, 134 U. Pa. L. Rev. 1433, 1438 (1986) ("[N]ew trials can now be sought in nearly all jurisdictions on the ground of newly discovered evidence."); see also Armbrust, supra note 6, at 80 ("The primary vehicle for a defendant with newly discovered evidence of innocence is a motion for new trial. In some states, newly discovered evidence also can be brought to a court's attention through collateral attack proceedings. This article focuses primarily on motions for a new trial because they are the primary vehicle for litigating newly discovered evidence claims and are conceptually similar to collateral attack proceedings and, therefore, can be treated similarly.").

73 Thomas, supra note 39, § 2 (discussing various standards set forth by federal courts to determine whether a new trial is to be granted in a criminal case on the ground of a recantation by a witness of his or her trial testmony); see, e.g., Drake v. State, 287 S.E.2d 180, 182 (Ga. 1982) (employing the six part test first employed in Berry v. State); State v. Prudholm, 446 So.2d 729, 735 (La. 1984) (employing a slightly different four part test).

74 Fed. R. Crim. P. 33(a).

75 10 Ga. 511, 512-13 (1851) ("It is pretty generally agreed, that it is incumbent on a party who asks for a new trial, on the ground of newly discovered evidence, to satisfy the Court, 1st. That the evidence has come to his knowledge since the trial. 2d. That it was not owing to the want of due diligence that he did not acquire it sooner. 3d. That it is so material, that it would probably produce a different verdict. 4th. That it is not cumulative only, viz.: speaking to facts in relation to which there was evidence on the trial. 5th. The affidavit of the witness himself should be procured or its absence accounted for; and 6th. The new trial will not be granted if the only effect of the evidence will be to impeach the credit of a witness.").

76 24 F.2d 82, 87-88 (7th Cir. 1928) ("We shall approach this question on the assumption that a new trial should be granted when, (a) The court is reasonably well satisfied that the testimony given by a material witness is false. (b) That without

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it the jury might have reached a different conclusion. (c) That the party seeking the new trial was taken by surprise when the false testimony was given and was unable to meet it or did not know of its falsity until after the trial.").

Virtually all state and federal courts adopt one of these two standards or some derivative thereof. Repka, supra note 72, at 1439-40 (noting that most states have adopted one of the Berry or Larrison tests or some slight variation of one of them).

77 Wolf, supra note 46, at 1926 ("[T]he vast majority of courts have steadfastly adhered to the long-established rule that newly discovered evidence will not entitle the accused to a new trial unless that evidence would probably produce a different verdict."); see, e.g., United States v. Lee, 68 F.3d 1267, 1273 (11th Cir. 1995) ("A new trial is warranted based upon circumstances coming to light after trial only if the following five part test is satisfied: (1) the evidence was in fact discovered after trial; (2) the defendant exercised due care to discover the evidence; (3) the evidence is not merely cumulative or impeaching; (4) the evidence was material; and (5) the evidence was of such a nature that a new trial would probably produce a different result."); see also Evenstad v. Carlson, 470 F.3d 777, 783 n.6 (8th Cir. 2006) ("Most circuits, including this one, absent a finding the government knowingly sponsored false testimony, require a petitioner seeking a new trial to show the jury would have 'probably' or 'likely' reached a different verdict had the perjury not occurred. Other circuits, like the Minnesota courts, apply a 'possibility' standard granting relief whenever the discovery 'might' have produced an acquittal." (citations omitted)); United States v. Rodriguez-Marrero, 390 F.3d 1, 14 (1st Cir. 2004) ("A motion for new trial on the basis of newly discovered evidence will ordinarily not be granted unless the moving party can demonstrate that: (1) the evidence was unknown or unavailable to the defendant at the time of trial; (2) failure to learn of the evidence was not due to lack of diligence by the defendant; (3) the evidence is material, and not merely cumulative or impeaching; and (4) [the evidence] will probably result in an acquittal upon retrial of the defendant." (quoting United States v. Wright, 625 F.2d 1017, 1019 (1st Cir. 1980))).

78 See LaFave, Israel & King, supra note 71, § 28.1(a).

79 There is the additional remedy of the writ of Coram Nobis. Initially developed as vehicle for correcting errors of fact, it has largely been "displaced by the motion for a new trial based on newly discovered evidence, and an expanded writ of habeas corpus." Id. § 28.1(c). It has mostly "fallen into disuse." Id. Nonetheless, it remains a possibility for defendants. This Article does not delve into the writ of Coram Nobis because of its present limited utility and also because the other procedures outlined in this Article effectively cover any instance in which the writ could be raised. Additionally, this Article's proposals do not hinge upon the availability of the writ of Coram Nobis. See id. §28.9(a) ("The Court's opinion in Morgan suggested three prerequisites to coram nobis relief. First, the writ is only an option if § 2255 or other relief is not available or adequate, ruling out most claims by prisoners 'in custody' who are able to seek relief under § 2255. The writ of coram nobis remains useful, however, when the defendant is not 'in custody.' Second, the Court noted that coram nobis is available for 'errors of the most fundamental character,' and held that petitioner's sixth amendment claim was such a claim. The Court later explained in Carlisle v. United States that the writ was 'traditionally available only to bring before the court factual errors 'material to the validity and regularity of the legal proceeding itself,' such as the defendants being under age or having died before the verdict.' Third, drawing upon the Court's statement in Morgan that 'sound reasons exist[ed] for [the petitioner's] failure to seek appropriate earlier relief,' lower courts have insisted that petitioners seeking coram nobis must exercise 'reasonable diligence' in seeking prompt relief. An additional requirement that has been adopted by most circuits is that an applicant must demonstrate 'lingering civil disabilities' from a conviction. Given this daunting array of prerequisites, the Court understandably concluded in Carlisle that 'it is difficult to conceive of a situation in a federal criminal case today where [a writ of coram nobis] would be necessary or appropriate.'" (emphasis added) (citations omitted)); see also Repka, supra note 72, at 1437 ("The highly technical writ of coram nobis, which lies to correct errors of fact not apparent in the record that would have prevented judgment had they been known, proved to be ineffective because most courts rejected its application in the recantation context. The writ of habeas corpus also proved to be an impotent remedy in this area, as the courts held that it would not be issued unless state officials 'knowingly' used the perjured testimony.").

80 See 28 U.S.C. § 2241(c)(3) (2006); see also Stone v. Powell, 428 U.S. 465, 475-77 (1976) (noting the general history of habeas corpus and recognizing that its overarching purpose has been to correct constitutional errors in criminal convictions).

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81 28 U.S.C. § 2254(d)(1)-(2). Thus, a much broader range of constitutional claims were cognizable in a federal habeas court before passage of the AEDPA. The statute has now limited habeas claims to only those decisions that were "contrary to, or involved an unreasonable application of, clearly established Federal Law, as determined by the Supreme Court of the United States." Id. The Supreme Court has offered narrowing interpretations of the statute in subsequent decisions. See Williams v. Taylor, 529 U.S. 362, 412-13 (2000).

82 Williams, 529 U.S. at 413.

83 Id. at 413.

84 Herrera v. Collins, 506 U.S. 390, 400 (1993); see, e.g., Johnson v. Bett, 349 F.3d 1030, 1038 (7th Cir. 2003) ("We have said that the 'refusal to grant a new trial on the basis of newly discovered evidence is not actionable in habeas corpus.'" (quoting Guinan v. United States, 6 F.3d 468, 470 (7th Cir. 1993))); Coogan v. McCaughtry, 958 F.2d 793, 801 (7th Cir. 1992) ("Where the 'newly discovered evidence' consists of witness recantations of trial testimony or confessions by others of the crime, most courts decline to consider it in the absence of any showing that the prosecution knowingly proffered false testimony or failed to disclose exculpatory evidence, or that petitioner's counsel was ineffective."). Of course there might also be the writ of coram nobis, though this remedy is typically covered by habeas proceedings and has fallen into disuse. See discussion supra note 79.

85 The Supreme Court has suggested only one possible exception to this rule:

> We may assume, for the sake of argument in deciding this case, that in a capital case a truly persuasive demonstration of 'actual innocence' made after trial would render the execution of a defendant unconstitutional, and warrant federal habeas relief if there were no state avenue open to process such a claim.... [T]he threshold showing for such an assumed right would necessarily be extraordinarily high.

Herrera, 506 U.S. at 417. The Court, therefore, has suggested that if a defendant can meet this "extraordinarily high" standard, habeas relief would be warranted. Despite this language in Herrera v. Collins, the Court did not decide whether a freestanding claim of innocence constitutes grounds for federal habeas relief. Id. Even if it did, however, Herrera claims would rarely succeed given the "extraordinarily high" showing required. See LaFave, Israel & King, supra note 71, § 28.3(f) ("The chances that such a [Herrera-type] claim will succeed, however, are extremely small, and the questions such a claim raises are numerous and daunting.").

86 See Bermudez I, No. 00 Civ. 4795, 2004 U.S. Dist. LEXIS 5427, at *51, *55-56, *63 (S.D.N.Y. Mar. 29, 2004); Davis v. State, 660 S.E.2d 354 (Ga. 2008).

87 United States v. Agurs, 427 U.S. 97, 103 (1976) (relying on the rule articulated first in Brady v. Maryland, 373 U.S. 83 (1963), the Court stated, "In a series of subsequent cases, the Court has consistently held that a conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury" (footnotes omitted)); see also Coogan, 958 F.2d at 801.

88 Other defendants have argued that the courts' refusal to grant new trials may "be a violation of the fundamental fairness embodied in the Due Process Clause" when the new "evidence is [sufficiently] compelling." Moore v. Casperson, 345 F.3d 474, 491 (7th Cir. 2003) ("Mr. Moore [defendant] claims that the failure to grant him a new trial denied him due process of law in light of the new evidence of Kellner's recantation."). Other defendants have linked the delay in discovery of the recantations to the ineffective assistance of their counsel. See, e.g., Coogan, 958 F.2d at 801 (noting that an ineffective assistance of counsel claim should accompany a witness recantation). Though this list is not exhaustive, it represents those constitutional claims most typically associated with witness recantations. See also Brief for Innocence Project et al. as Amici Curiae Supporting Petitioner, In re Davis, 565 F.3d 810 (11th Cir. 2008) (No. 08-16009) (arguing that in the face of compelling evidence, execution of an "innocent" man would violate the Eighth Amendment).

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89 See supra note 85 and accompanying text.

90 See, e.g., Cone v. Bell, 129 S. Ct. 1769, 1780 (2009) ("Therefore, consistent with the longstanding requirement that habeas petitioners must exhaust available state remedies before seeking relief in federal court, we have held that when a petitioner fails to raise his federal claims in compliance with relevant state procedural rules, the state court's refusal to adjudicate the claim ordinarily qualifies as an independent and adequate state ground for denying federal review.").

91 The first exception is the "cause and prejudice" exception, and the second is the "fundamental miscarriage of justice" exception. The United States Supreme Court summarized the "cause and prejudice" standard:

> In all cases in which a state prisoner has defaulted his federal claims in state court pursuant to an independent and adequate state procedural rule, federal habeas review of the claim is barred unless the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law.

Coleman v. Thompson, 501 U.S. 722, 724 (1991) (emphasis added). Subsequent case law has further refined and formulated the meanings of both "cause" and "prejudice." See United States v. Frady, 456 U.S. 152, 167-70 (1982). This exception allows a defendant with a procedurally defaulted claim to nonetheless seek habeas relief if the default was caused by state interference. Murray v. Carrier, 477 U.S. 478, 488 (1986). The Court held that there must be a showing of interference by state officials that made compliance impracticable. Id. Such a showing would constitute "cause" for purposes of this exception. Id. After proving such interference, the defendant proceeds to show a "reasonable probability" that the verdict would have been different absent the constitutional violation. LaFave, Israel & King, supra note 71, § 28.4(f) ("In recent years, the standard most commonly applying in these cases requires a defense showing of a 'reasonable probability' that the outcome would have been different if not for the alleged constitutional violation. A 'reasonable probability' is described as 'a probability sufficient to undermine confidence in the outcome.'" (footnote omitted)). Thus, a defendant could conceivably obtain habeas review on the basis of newly discovered recantations only if he could show that the police or other state officers withheld exculpatory information or prevented witnesses from testifying sooner.

Recantations more commonly arise in the context of the second exception--the fundamental miscarriage of justice. This doctrine applies when the evidence suggests that an innocent defendant remains incarcerated or faces capital punishment. Carrier, 477 U.S. at 496 ("[I]n an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a federal habeas court may grant the writ even in the absence of a showing of cause for the procedural default."). The United States Supreme Court has clarified this fundamental miscarriage of justice/actual innocence doctrine through two important cases, Herrera v. Collins, 506 U.S. 390 (1993), and Schlup v. Delo, 513 U.S. 298 (1994). In Herrera, the court stated that an actual innocence claim was "a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits." 506 U.S. at 404. If a defendant, therefore, has compelling evidence that he is actually innocent but is procedurally barred from pursuing habeas relief, that defendant may invoke the "actual innocence" exception and obtain a federal habeas hearing. Importantly, the defendant must, even if he has shown "actual innocence," still allege a constitutional violation in order to obtain habeas relief. In Herrera, the defendant asserted only a claim of factual innocence without tying it to any alleged constitutional violation. Id. at 404-05. As a result, he failed to properly invoke habeas jurisdiction. Id.

In Schlup, the Court held that where a defendant's claim of actual innocence was based on an ineffective assistance of counsel claim rather than on mere innocence, habeas relief was available. 513 U.S. at 314. The defendant, like in Herrera, was procedurally barred from seeking habeas relief, but argued that in light of compelling evidence of "actual innocence" he should be able to argue his otherwise procedurally barred constitutional claims. Id. Whereas Herrera lacked a constitutional element to his claim, the defendant in Schlup applied the "fundamental miscarriage of justice" doctrine precisely by using his claim of actual innocence merely as a gateway to litigate otherwise barred constitutional claims (i.e., a claim of ineffective assistance of counsel). Id. at 314-15. The Court formulated the standard for considering new evidence: the defendant must demonstrate that "it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence." Id. at 327. Assuming the defendant can do this, habeas relief becomes available and the court will consider the constitutional claims.

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These doctrines have changed to some degree as a result of the 1996 AEDPA. Section 2264 of the AEDPA lays forth the standard to be applied by habeas courts in capital cases. 28 U.S.C. § 2264 (2006). In cases where a claim is procedurally defaulted, habeas courts are barred from considering the habeas petition unless

> the failure to raise the claim properly is--(1) the result of State action in violation of the Constitution or laws of the United States; (2) the result of the Supreme Court's recognition of a new Federal right that is made retroactively applicable; or (3) based on a factual predicate that could not have been discovered through the exercise of due diligence in time to present the claim for State or Federal post-conviction review.

Id. The first exception is essentially a rearticulation of the "cause and prejudice" standard. The third exception bears particular importance to petitioners presenting witness recantations. Many witnesses do not decide to recant until well after the statutory time period has expired. Criminal defendants facing this situation are not barred from presenting that evidence to the habeas court. Though again, a defendant may present evidence only to show a constitutional violation, not to show factual innocence.

Significantly, this specific section of the AEDPA, which applies only to convicts facing the death sentence, does not provide a statutory equivalent of the "fundamental miscarriage of justice" exception to the procedural default rule. Therefore, a convict facing the death penalty whose claims are procedurally defaulted has available to him only the three exceptions outlined above, and not the wider "fundamental miscarriage of justice" exceptions embodied in the Schlup rule. Very likely Congress intended this exact result, since Congress referred to the rule in other provisions of the statute. See 28 U.S.C. § 2244(b)(2)(B); see also LaFave, Israel & King, supra note 71, § 28.4(i) ("Perhaps the most significant feature of § 2264(a) is its failure to specifically take into account the impact of the alleged constitutional violation that was procedurally defaulted claim include an exception for a 'miscarriage of justice.' The absence of any 'actual innocence' component is especially striking since Congress included an actual innocence exception to two other provisions elsewhere in the Act, both of which would otherwise bar relief in cases in which only a petitioner's liberty, not his life may be at stake." (citation omitted)). As a result, in other noncapital criminal cases, the AEDPA does not change either the "cause and prejudice" or the "fundamental miscarriage of justice" exceptions to the rule prohibiting procedurally defaulted claims. See Id. ("Since the 1996 Act did not add a provision similar to §2264 to the statutory sections governing other types of cases, federal courts presumably will continue to apply the ... cause and prejudice standard and its 'fundamental miscarriage of justice' exception to procedurally defaulted claims in all cases other than those regulated by §2264.").

92 See, e.g., Ark. R. Crim. P. 37; D.C. Code § 23-110 (LexisNexis 2001); La. Code Crim. Proc. Ann. arts. 930.3, 930.8 (2001); Md. Code Ann., Crim. Proc. §§ 7-101 to 7-204 (2012); Neb. Rev. Stat. Ann. §§ 29-3001 to 29-3004 (LexisNexis 2009).

93 See, e.g., Alaska Stat. § 12.72.020 (2010); Kan. Stat. Ann. § 60-1507 (2005); Wyo. Stat. Ann. §§ 7-14-101 to 7-14-108 (2011).

94 See Medwed, supra note 2, at 676-78 ("[M]any time limits governing motions for a new trial on the grounds of newly discovered evidence are remarkably brief. As a result, these remedies are of limited utility to the bulk of criminal defendants who, in the immediate aftermath of their convictions, might not have the resources or the good fortune to find new evidence. According to Wilkes, litigants in seventeen states must file their motions within sixty days of judgment, and one state still follows the common law rule that motions for a new trial can only be filed during the court term in which the original judgment was entered. Seventeen other states and the District of Columbia have time restrictions on new trial motions spanning from one to three years. Of the remaining states, six allow new trial motions to be filed beyond three years after conviction, with four of those jurisdictions boasting waivable time limits of less than 120 days. A spare number of jurisdictions--nine--have no limitations period whatsoever. Also, many of the states that impose time limits on new trial motions view those conditions as jurisdictional in nature, barring trial courts from granting tardy motions even when such motions are based on newly discovered evidence. Some states have carved out exceptions to general statutory time limits when new trial motions involve newly discovered evidence. Similarly, if the alleged new evidence could not have been discovered prior to the end of the limitations period, several jurisdictions have held that the trial court has the latitude to consider the motion. Where the purported new evidence is coupled with a strong claim of innocence, some state courts gravitate toward entertaining the motion even if untimely filed pursuant to procedural norms. A number of states, however, have neglected to create exceptions to rigid time limits for new evidence claims, and a few states

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openly distinguish between scientific and nonscientific evidence in implementing statutes of limitations, treating the former with greater leniency. Only at a great cost, therefore, may state prisoners delay in pursuing potential non-DNA evidentiary leads and submitting their innocence claims to the trial court after conviction." (footnotes omitted)).

95 In one case, for example (which is discussed more fully infra), the recanter (the accused's son) testified as a young child that his father had killed his sister. Eight years later, he recanted his testimony. Dobbert v. Wainwright, 468 U.S. 1231 (1984) (denying certiorari). The recanter gave three reasons for not recanting earlier: (1) he was afraid of his father; (2) following the trial, he was living at a children's home where he was heavily medicated; and (3) the staff of the children's home pressured him to not recant his testimony against his abusive father. Id. at 1232 (Brennan, J., dissenting). Even if none of these reasons had ultimately been truthful, they are all certainly reasonable and debunk any sort of concept that only recantations arising within some arbitrary deadline may be presumed worthy.

96 Herrera, 506 U.S. at 400.

97 See supra note 7 and accompanying text. Neither courts nor policymakers can ignore this fact when DNA testing has and will likely continue to exonerate defendants that had previously offered recantations.

98 See Armbrust, supra note 6, at 89-98 (discussing a number of cases where courts erroneously discredited recanted statements, while also noting that "200-plus DNA exonerations have provided sound bases to reevaluate the current treatment of recanting witnesses").

99 Bermudez II, No. 8759/91, 2009 WL 3823270, at *14 (N.Y. Sup. Ct. Nov. 9, 2009); Davis II, 660 S.E.2d 354, 359-61 (Ga. 2008).

100 Bermudez II, 2009 WL 3823270, at *22-32.

101 Davis II, 660 S.E.2d at 359-60.

102 Bermudez II, 2009 WL 3823270, at *8; Davis II, 660 S.E.2d at 357.

103 Davis II, 660 S.E.2d at 358; see Bermudez II, 2009 WL 3823270, at *8.

104 Zielbauer, supra note 15, at A1, B2.

105 Bermudez II, 2009 WL 3823270, at *8. The Bermudez court is not alone. See also Bracy v. Gramley, 81 F.3d 684, 693-94 (7th Cir. 1996) ("[T]he more sweeping the recantation, the less credible it is likely to be."); Nicks v. Cain, No. Civ.A. 04-0519, 2005 WL 1578024, at *7 (E.D. La. June 30, 2005) (upholding the trial court's finding that the recantation lacks credibility); Hamilton v. Herbert, No. 01 CV 1703, 2004 WL 86413, at *18-19 (E.D.N.Y. Jan. 16, 2004) (rejecting the defendant's claims summarily while stating that the "state court's findings are presumed to be correct").

106 Of course, such a scheme also runs afoul of the Berry and the Larrison tests (assuming such is the rule in the relevant jurisdiction), both of which focus principally on whether the newly discovered evidence would have produced a different result if it had been presented at trial. See cases cited supra note 77. At least one other court has recognized that credibility can hardly be judged by the text of the words themselves. United States v. Earles, 983 F. Supp. 1236, 1254-58 (N.D. Iowa 1997). Instead, the court outlined various factors for a court to consider in determining a recanter's credibility:

(1) the interest of the witness in the result of the hearing; (2) the witness's relation to any party in interest; (3) the witness's demeanor upon the witness stand; (4) the witness's manner of testifying; (5) the witness's tendency to speak truthfully or falsely, including the probability or improbability of the testimony given his or her situation to see and

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observe; (6) the witness's apparent capacity and willingness to tell truthfully and accurately what he or she saw and observed; ... (7) whether the witness's testimony is supported or contradicted by other evidence in the case[;] ... [8] whether the recanted testimony implicated a family member; [9] whether the recanted testimony was consistent with other statements the witness had given; [10] whether the recanted testimony was substantially corroborated by other evidence; and [11] whether the witness was willing to assert the recantation in open court.

Id. at 1246, 1254.

107 Fortunately, however, not all courts have engaged in this sort of haphazard reasoning. This second group of courts either assumes the recantation is true and analyzes it accordingly, or at least marshals the facts in support of their holding. The Eighth Circuit, in a recantation case, analyzed the recanting witness's statement and held that even if it were true it "would only serve to potentially impeach the credibility of these eye witnesses, but it could not prove [defendant] did not shoot [the victim]." Cox v. Burger, 398 F.3d 1025, 1031 (8th Cir. 2005); see also Ex parte Franklin, 72 S.W.3d 671, 678 (Tex. Crim. App. 2002) (noting that even if the recantation were true, it would serve only to impeach the witness; it provided no affirmative evidence of the witness's innocence). Thus the court was justified in dismissing the recantation without further analysis. The Ninth Circuit engaged in a similar analysis in Smith v. Baldwin, 510 F.3d 1127, 1143 (9th Cir. 2007). Though the court noted the general unreliability of recantations, id. at 1141-42, the court took the appropriate measure of nevertheless assuming the recantation was true for purposes of explaining why it was nonetheless immaterial. Id. at 1142 ("[The] recantation changes little. A reasonable juror would still have sufficient evidence to believe that [defendant] was more likely than not the real killer, and [defendant] certainly cannot meet his burden by a preponderance of the evidence."). The court proceeds to explain exactly why the recantation was neither material nor credible. Id. at 1141 (noting, among other things, that the recantations, even if true, failed to explain various inconsistencies in some of the trial testimonies, or why the recantation lacked corroboration when the original did not). As the Earles court noted: "[T]he district court's determination of credibility is most persuasive when it is accompanied by a statement of reasons for the determination." 983 F. Supp. at 1254 (emphasis added).

108 Davis II, 660 S.E.2d at 358 ("The trial court relied on this principle [i.e., the mistrust of recantations] in disregarding the alleged recantations in Davis's case.").

109 Id.

110 Id. (citation omitted) (internal quotation marks omitted).

111 See id. (citation omitted) (internal quotation marks omitted).

112 Id. at 358-60.

113 Indeed, by its very definition, a recantation is impeachable. Recantation means "to make an open confession of error." Merriam Webster's Collegiate Dictionary 1038 (11th ed. 2003).

114 This consideration led Chief Justice Sears to state in his dissenting opinion:

We have noted that recantations by trial witnesses are inherently suspect, because there is almost always more reason to credit trial testimony over later recantations. However, it is unwise and unnecessary to make a categorical rule that recantations may never be considered in support of an extraordinary motion for new trial. The majority cites case law stating that recantations may be considered only if the recanting witness's trial testimony is shown to be the 'purest fabrication.' To the extent that this phrase cautions that trial testimony should not be lightly disregarded, it has obvious merit. However, it should not be corrupted into a categorical rule that new evidence in the form of recanted testimony can never be considered, no matter how trustworthy it might appear. If recantation testimony, either alone or supported by other evidence, shows convincingly that prior trial testimony was false, it simply defies all logic and morality to hold that it must be disregarded categorically.

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Davis II, 660 S.E.2d at 363-64 (Sears, C.J., dissenting).

115 468 U.S. 1231 (1984).

116 Id. at 1231-32 (Brennan, J., dissenting).

117 Id. at 1232.

118 Id. at 1233.

119 Id. at 1232-33 ("Although [the son's] initial statements to the police contradicted his subsequent trial testimony, [the trial court] found that the inconsistencies were easily explained away in light of the boy's terror of the father.").

120 Id. at 1233.

121 Id. at 1231.

122 Id. at 1238.

123 Id. at 1236.

124 Id. at 1236-37 n.*.

125 Id.

126 See, e.g., Herrera v. Collins, 506 U.S. 390, 400 (1993) (noting federal habeas courts' general reluctance and inability to resolve factual disputes).

127 See Dobbert, 468 U.S. at 1235 (Brennan, J., dissenting).

128 Id. at 1236.

129 Id. at 1235-36.

130 Mendiola v. Schomig, 224 F.3d 589, 600 (7th Cir. 2000) (Rovner, J., dissenting).

131 Id. at 601 ("But when a court rejects a plausible recantation out of hand, without any of the process that attends a valid credibility assessment, we owe the court's finding no respect. To sustain such a summary determination, as we do today, is to unnecessarily exalt the sovereignty of state courts over due process and the pursuit of truth.").

132 Id. at 600.

133 Wolf, supra note 46, at 1947.

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134 Id. at 1947-48.

135 Id.

136 See Cobb, supra note 41, at 993-94.

137 Id. at 1001-02.

138 Repka, supra note 72, at 1454.

139 See id. at 1445-46.

140 Id. at 1454.

141 See cases cited supra note 17.

142 See supra notes 110-114 and accompanying text.

143 Repka, supra note 72, at 1454.

144 Medwed has written at length about the cognitive biases of a judge reviewing a recantation years after the trial ended. Medwed, supra note 2, at 699-709. He identified two contributing factors to this bias: (1) most judges reject the prospect of a wrongful conviction, because they see themselves as fair and competent individuals; and (2) judges often have "difficulty deviating from a prior decision because that decision has become the reference point to which they compare and contrast newfound information." Id. at 701-02; see also infra note 175 (discussing how judges should not supplant the role of the jury).

145 Wolf, supra note 46, at 1947.

146 Cobb, supra note 41, at 1001-02.

147 See Armbrust, supra note 6, at 98-103.

148 Id. at 99-100.

149 Id. at 99-101.

150 Id. at 99.

151 Id. at 99-100.

152 Id. at 100.

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153 Id. at 100-01.

154 Id. at 100.

155 Id. at 101.

156 Id. (citation omitted).

157 Id. at 101-02.

158 As a side note, we find irrelevant Armbrust's second proposal, which is that "[appellate] courts should adopt a less deferential standard of review for summary denials of new trial motions based on recantation testimony." Id. at 102. Without engaging this point in great detail, appellate courts are not in the business of engaging in intense factual finding, which any review of a recantation must necessarily include. Thus, in our view, the correct approach focuses more on the process that the trial courts undertake and less on the process adopted by the appellate courts. We have focused our efforts in this paper accordingly.

159 Id. at 100.

160 Id. at 101.

161 See, e.g., Smith v. Baldwin, 510 F.3d 1127, 1148 (9th Cir. 2007).

162 The Eighth Circuit, in a recantation case, analyzed the recanting witness's statement and held that even if it were true it "would only serve to potentially impeach the credibility of these eye witnesses, but it could not prove [defendant] did not shoot [the victim]." Cox v. Burger, 398 F.3d 1025, 1031 (8th Cir. 2005).

163 See supra note 107 and accompanying text.

164 See supra note 77.

165 438 U.S. 154 (1978).

166 Id. at 171-72.

167 Id. (emphasis added).

168 See supra Part I.A.

169 Franks, 438 U.S. at 171.

170 Of course nearly all jurisdictions have already adopted some variation of this "materiality" requirement in their motions for a new trial on the basis of newly discovered evidence. See supra note 77 and accompanying text. This aspect of the

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Article's suggested approach would not diverge with the judicial and statutory approaches of most jurisdictions and thus would presumably not be difficult to execute.

171 See supra notes 103-131 and accompanying text.

172 See supra notes 55-61 and accompanying text.

173 Cobb, supra note 41, at 980, 994 ("One study indicates that the most reliable guide to truth-telling is the verbal content of testimony and not facial or non-verbal cues. Findings such as these suggest that the deference accorded to the trial judge, if not ill-founded, must be justified by policy grounds rather than those grounds generally articulated.... In determining which of the witness's versions of events is true, the trial judge is preempting the function of the jury." (footnote omitted)); Repka, supra note 72, at 1452-54 (detailing numerous cases and commentators discussing the desirability of juries over judges in making these sorts of credibility determinations); Wolf, supra note 46, at 1936-37 ("The right to trial by jury means that a jury, not a judge, must make the final determination of the innocence or guilt of the accused. The function of the trial judge is to decide only whether the newly discovered evidence should be submitted to the jury, not what its ultimate weight should be. Because there is no way for a court to determine that the perjured testimony did not have controlling weight with the jury, when the judge attempts to second-guess the jury be determining whether it probably would have acquitted, he usurps the jury's function." (footnote omitted) (internal quotation marks omitted)).

174 See, e.g., Sam Stonefield, Rule 801(d)'s Oxymoronic "Not Hearsay" Classification: The Untold Backstory and a Suggested Amendment, 5 Fed. Cts. L. Rev. 1 (2011).

175 Fed. R. Evid. 801(d)(1).

176 Cobb, supra note 41, at 994.

177 Id. at 994-95.

178 See, e.g., Fed. R. Evid. 802 ("Hearsay Rule") ("Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court pursuant to statutory authority or by Act of Congress."). The common law distrusted "evidence of confessions by third persons offered to exculpate the accused." Id. at 804 advisory committee's note to subdivision (b). Courts suspected defendants could fabricate both the confession and its contents and then rely on the unavailability of the witness to more easily admit the fabricated evidence. Id.

179 Id. at 804 advisory committee's note to subdivision (b).

180 Id.

181 See supra Part I.A.

182 Cobb, supra note 41, at 994-95 ("[T]he courts' response to recanting testimony is not in accord with the practice of admitting prior inconsistent statements of witnesses at trial, although the situations are remarkably analogous. The only difference is in the timing of the alteration of the witness's testimony; in one case it occurs before trial, and in the other, afterwards. But while jurors rarely get to hear recanting testimony, under the Federal Rules of Evidence prior inconsistent statements are routinely admissible for impeachment purposes, and sometimes for substantive purposes as well. One authority notes that the use of prior inconsistent statements or self-contradiction is the most effective and most frequently employed means of impeaching witnesses, on the theory that 'talking one way on the stand and another way previously is blowing hot and cold, and raises a doubt as to the truthfulness of both statements.' If our legal system deems it important that juries have knowledge of prior inconsistent statements by witnesses, it is difficult to understand

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why so many obstacles are placed in the path of a defendant who wishes to acquaint a jury with subsequent inconsistent statements." (footnotes omitted)).

183 Fed. R. Evid. 804 advisory committee's note to subdivision (b).

184 Id. at 804(b)(3).

185 See id. 801(d).

186 Judge Flaum, speaking for the Seventh Circuit, emphasized this fact: "[T]he precise meaning of the corroboration requirement in Rule 804(b)(3) is uncertain, and is not much clarified by either legislative history or the cases." United States v. Garcia, 897 F.2d 1413, 1420 (7th Cir. 1990) (quoting United States v. Silverstein, 732 F.2d 1338, 1346-47 (7th Cir. 1984)). Thus the question remains on how courts ought to judge the reliability and credibility of recantations. Nevertheless, case law has identified at least some factors relevant to the determination of whether certain evidence in fact corroborates the statement. 4 Stephen A. Saltzburg et al., Federal Rules of Evidence Manual §804.02[9] (9th ed. 2006).

Those factors include: (1) the timing and circumstances under which the statement was made; (2) the declarant's motive in making the statement and whether there was a reason for the declarant to lie; (3) whether the declarant repeated the statement and did so consistently, even under different circumstances; (4) the party or parties to whom the statement was made; (5) the relationship between the declarant and the opponent of the evidence; and (6) the nature and strength of independent evidence relevant to the conduct in question.

Id.

187 In the end, it is not necessary for us to outline the details of the corroboration requirement because courts can simply tap into their respective body of case law surrounding the specifics of their respective corroboration requirement.

188 Armbrust, supra note 6, at 100.

189 See supra notes 68-77 and accompanying text.

190 See supra Part II.C.

191 See supra Part II.C.

192 Additionally, states could create something akin to an "Extraordinary Motion for a New Trial on the Basis of Newly Discovered Evidence." This would be similar to the motion available to Troy Davis in the Georgia state courts. See Davis II, 660 S.E.2d 354, 358 (Ga. 2008). When the motion for a new trial was no longer available, Mr. Davis filed an extraordinary motion for a new trial. Id. ("Extraordinary motions for new trial are 'not favored,' and 'a stricter rule is applied to an extraordinary motion for a new trial based on the ground of newly available evidence than to an ordinary motion on that ground.' A trial court's ruling on such a motion 'will not be reversed unless it affirmatively appears that the court abused its discretion. [Cit.]' For the reasons set forth below, we conclude that the trial court did not abuse its discretion in denying Davis's extraordinary motion for new trial without first conducting a hearing, particularly in light of the requirement under Timberlake [v. Georgia, 271 S.E.2d 792 (Ga. 1980),] that newly-discovered evidence be so material that it probably would result in a different verdict, and in light of the duty of a defendant to present in the affidavits supporting his or her extraordinary motion for new trial 'facts sufficient to authorize that the motion be granted.'" (citations omitted)).

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193 Such a result makes sense because the existence of nonphysical evidence is in no way contingent upon the defendant's efforts or lack thereof.

194 At least one other scholar has also recommended this approach. Daniel Medwed writes at length on this point. Medwed, surpa note 2, at 694-95 ("Ridding state post-conviction regimes of unforgiving time limits on newly discovered evidence claims not only accrues to the benefit of potentially innocent defendants, but also reflects well upon the criminal justice system itself, sending a message that courts are willing and able to look anew at legitimate claims of innocence and not hide behind a veil of procedural default. Furthermore, to offset the uncertainty created by the departure of statutory time limits, state courts would likely establish approximate, de facto guidelines as to how long litigants have after discovery of new evidence to file their claims. The implementation of somewhat flexible timing standards of this nature, which would start to run at the date of discovery and be determined judicially on a case-by-case basis, would advance the airing of bona fide innocence claims yet still largely sustain the systemic goal of finality. Short of this reform, simply pegging the statute of limitations period for new evidence claims to the time of discovery or the time when the evidence should have been discovered as opposed to the date of conviction--essentially tolling the time period during the search for new evidence--would be a step in the right direction." (footnotes omitted)).

195 See Bermudez II, No. 8759/91, 2009 WL 3823270, at *1-2 (N.Y. Sup. Ct. Nov. 9, 2009).

196 Id. at *6-10.

197 Bermudez I, No. 00 Civ. 4795, 2004 U.S. Dist. LEXIS 5427, at *22-24 (S.D.N.Y Mar. 29, 2004).

198 Bermudez II, 2009 WL 3823270, at *12-13.

199 Id.

200 Id.

201 Id. at *9.

202 Id. at *6.

203 Bermudez I, 2004 U.S. Dist. LEXIS 5427, at *19-20.

204 Id. at *31-32.

205 Bermudez II, 2009 WL 3823270, at *8.

206 See Davis II, 660 S.E.2d 354, 357-60 (Ga. 2008).

207 See Davis I, 426 S.E.2d 844, 845 (Ga. 1993).

208 See Davis II, 660 S.E.2d at 357.

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209 Id. at 358.

210 Id.

211 Davis IV, 130 S. Ct. 1, 1 (2009).

212 Warren Richey, Death Row Inmate Troy Davis: Judge Upholds Conviction, Christian Sci. Monitor, Aug. 24, 2010, available at http:// www.csmonitor.com/USA/Justice/2010/0824/Death-row-inmate-Troy-Davis-Judge-upholds-conviction (last visited Feb. 4., 2011); On September 21, 2011, Troy Davis was executed after the United States Supreme Court denied a last-minute stay of execution. Curry & James, supra note 35.

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AFFIDAVIT OF DARLENE WALTON

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

The undersigned, Darlene Walton, being first duly sworn, hereby deposes and states as follows:

1. I am over the age of 18, and I am a resident of the State of Illinois. I have personal knowledge of the facts stated herein.

2. In December 2002, I was 20 years old and living with my grandmother, Jaqueline Ezell, and my grandfather, Eugene O'Connor, in the lower unit of a duplex located at 956 Minnehaha Ave. East in St. Paul, Minnesota. My name at that time was Darlene Jones.

3. My aunt lived in the second-story unit with my cousin Kentrell Anthony.

4. On Sunday, December 22, 2002, a number of family members and friends spent the afternoon and evening watching TV and having conversation in the sunroom of my grandmother's unit. The sunroom was also my bedroom.

5. Philip Vance and Dominick Johnson were with us that day. I was Philip's girlfriend at the time. My cousin Kentrell was Dominick's girlfriend.

6. At one point during the late afternoon of December 22, Philip and Dominick left the house for a couple hours.

7. My grandmother and my aunt left the house at around 5 PM to go play bingo.

8. Philip and Dominick returned to the house in the early evening. Upon their return, I used Phillip's cellphone to call Chicago to check on how my young daughter was doing. I also began braiding Philip's hair. Shortly thereafter, Dominick and Kentrell went to the upstairs unit to be alone together while my grandmother and her mother were out playing bingo.

9. At some point later on that evening, Philip and I got into an argument. In order to keep me from leaving the house, Philip threw my only pair of shoes up onto the roof of my grandmother's house. I had just moved into the house, and Philip knew that I had only the one pair.

10. After he threw the shoes onto the roof, Philip was walking and yelling in the alley behind the house. At about that same (around 10 pm that evening), Kentrell arranged for my uncle Demetrius O'Connor to drive Philip and Dominick from the duplex on Minnehaha Ave. East to the Buttery Bar in downtown Saint Paul. Demetrious yelled at Philip to come and get in his car, which Philip did.

11. Kentrell rode in the car with them. After they dropped Philip and Dominick off at the bar, Demetrius and Kentrell returned to the duplex.

12. A couple of days later, Philip dropped by the house and gave me a new pair of shoes. Until then, I had been wearing a pair of my grandmother's shoes.

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13. Several weeks after that, the police kicked in the doors at our duplex and questioned us about Philip and Dominick and a murder that had taken place on December 22. I was questioned once at my grandmother's place on Minnehaha Avenue and later, when I moved in with my aunt, Regina Hagerman, at her place. But I was never taken to a police station for questioning.

14. On the two occasions when I was questioned by the police, no one ever told me that the robbery and murder took place at about 9:45 pm on Dec. 22, 2002. If someone had done so, I would have told the police that neither Philip nor Dominick could have been involved in that crime because they were both with me at the duplex where I was living at 956 Minnehaha Ave. East in St. Paul until about 10 pm that evening.

15. The police offered my grandfather, Eugene O'Connor, lots of money if we would just say what they wanted us to say. So my grandfather, who as usual had spent most of that day in his bedroom and had no knowledge of who was there or what had happened that day, encouraged us to say whatever the police wanted us to say.

I declare that, to the best of my knowledge and belief, the information set forth above is true, correct, and complete.

Darlene Walton

Darlene Walton

Sworn to and subscribed before me on this 1st day of May, 2023.

Notary Public

My commission expires:

MONSERRATE HERNANDEZ
OFFICIAL SEAL
Notary Public, State of Illinois
My Commission Expires
December 01, 2025

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State of Minnesota
1/5/2026 4:14 PM

STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF DAKOTA FIRST JUDICIAL DISTRICT

State of Minnesota,

Petitioner,

vs.

Philip Vance,

Respondent.

Affidavit of Dominick Johnson

D. C. File No. K6-04-000736

COUNTY OF WASHINGTON

STATE OF MINNESOTA

The undersigned being duly sworn, upon oath, deposes and states that:

1. In November 2004, I pled guilty to Second Degree Felony Murder for the December 22, 2002 robbery at Sabreen's in South St. Paul and the shooting of Khaled Al Bakkri.
2. I pled guilty to a crime that I did not commit. I had nothing to do with the Sabreen's robbery or with the shooting of Mr. Bakkri. I did not participate in the crime, and I did not witness the crime. I was not there.
3. At the time I entered my guilty plea, I testified that Philip Vance committed the robbery and killing at Sabreen's. This testimony was also false. I did not witness any part of this crime, and I do not know who committed it.
4. In fact, I know that Philip Vance did not commit this crime.
5. I understand that providing a false guilty plea is a serious matter. At the time, my attorney told me that it was in my best interest to take a plea deal because I was young, and because I would face a much longer sentence if I went to trial and was convicted. I had already been in custody for almost two years while I waited for trial. Also, Philip Vance had already been convicted based on very limited evidence, and I was afraid that the same thing would happen to me.

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6. Back in 2004, and especially after Philip Vance was convicted, I felt I had no way of proving that people were testifying falsely against us, and I had no faith in the justice system. I am coming forward now because I want the truth to come out, even if that means admitting I lied.
7. No one has threatened me, or given me, or promised me anything for signing this Affidavit.
8. I read this Affidavit before signing it and I had the chance to correct anything that was wrong in it.

FURTHER YOUR AFFIANT SAITH NOT.

Dated: 9-19-, 2021.

Dominick Johnson

MINNESOTA JUDICIAL BRANCH

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STATE OF MINNESOTA]
]SS. AFFIDAVIT
COUNTY OF DAKOTA]

I, Dontay Reese, The above name affiant, hereby certify and declare under the penalty of perjury, That this affidavit is true and correct to the best of my ability and knowledge.

I Dontay Reese of sound mind and body, swear to the following After the date February 13, 2004. I was acquainted with a **Philip Vance** of whom I had known from the streets. "While we were in Dakota County Jail, I had learned that he was charged with numerous counts of murder. We discussed witnesses we both knew that were involved in this investigation and while doing legal research in the facilities Law library, I read his court transcript involving his charges. Because of a statement I made to another inmate, investigators came to question me. They promised me if I knew or had any information that could help their case it would be greatly appreciated, and in return they would speak with the D.A. on my behalf for a lower sentence for a case I was facing. After speaking with my mother and Attorney I agreed to testify. In september of 2004, I testified before a jury that **Mr. Philip Vance** confessed to commiting this murder which occured on Dec. 22, 2004 When the truth is, **Mr. Philip Vance** never told me that he commited any murder. I knew the states case evidence was weak so I fabricated a story to get lesser time regardless of what would happen to **Mr. philip Vance.** I feel guilty about what harm I have caused him and feel I should right the injustice I did to **Mr. philip Vance.** My testimony at trial against **Mr. P. Vance** was false.

I submit this affidavit under perjury and swear it to be the truth, the whole truth, and nothing but the truth.

Notary Signature Carol A Mielke

Dated 1-30-07

CAROL A. MIELKE
Notary Public-Minnesota
My Commission Expires Jan 31, 2011

Affidavit Name Dontay Reese

Dated 1-27-07

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State of Minnesota
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3/1/07

I John Edward Martin Swear to The following

Sometime after new years of 2003 I spoke with philip vance ar discussion center around trying to figure out his where abouts on The evening of dec 22. 2002 Sometime around This time myself mr vance and mr Johnson had visited a bar in The Skyway dawntown (Radisson bar) during The discussion between mr vance and myself we come to The conclusion That we had been together on The date of 12/22/02 mr vance and mr Johnson later left with two females yvonne and nicole.

once we reached This conclusion vance felt This gave him an alibi and he couldnt have committed any robbery or homicide now I testified at trial and before a grand jury to This when The truth is I really wasnt 100 percent positive That The day I testified to was actually 12/22/02.

I do remember This day occuring. but actually happening on The 22nd of december. Im ~~not~~ postive now Johnson and vance discussed going to The liquor store and if The 22nd of december was a Sunday Then The day I testified to wasnt on 12/22/02.

now I never attempted to lie about anything. The date of my recollection was incorrect and with That I Submit This affidavit under The penalty of perjury

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John Edward Martin
3/1/07

John Edward Martin
3/1/07

EDWIN M. EMERSON
NOTARY PUBLIC-MINNESOTA
My Comm. Exp. Jan. 31, 2009

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1/5/2026 4:14 PM

AFFIDAVIT OF KENTRELL ANTHONY

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The undersigned, Kentrell Anthony, being first duly sworn, hereby deposes and states as follows:

1. I am over the age of 18, and I am a resident of the State of Minnesota. I have personal knowledge of the facts stated herein.

2. In December 2002, I was 19 years old and living with my mother in the upper unit of a duplex located at 956 Minnehaha Ave. East in St. Paul, Minnesota.

3. My grandmother, Jacqueline Ezell, lived in the unit below with my cousin Darlene Jones.

4. On Sunday, December 22, 2002, a number of family members and friends spent the afternoon and evening watching TV and having conversation in the sunroom of my grandmother's unit. The sunroom was also my cousin Darlene's bedroom.

5. Philip Vance and Dominick Johnson were with us that day. I was one of Dominick's girlfriends at the time. My cousin Darlene was Phillip's girlfriend.

6. My friend Nicolle Rauschnot was also visiting that day. She left the duplex at some point in the evening. A couple of days after Christmas, Nicolle and I drove in her small silver car to visit Chicago for about ten days.

7. At one point during the late afternoon of December 22, Philip and Dominick left the house for a couple hours. But they came back in the early evening.

8. My mother left the house at around 5 PM to go play bingo.

9. When Philip and Dominick returned to the house in the early evening, Darlene used Phillip's cellphone to call Chicago to check on how her daughter was doing. Darlene also began braiding Philip's hair. Shortly thereafter, Dominick and I went to the upstairs unit and were physically intimate while my mother was out playing bingo.

10. At around 10 or 11 PM (sometime before 11 pm) that evening, my uncle Lawrence "Demetrius" O'Connor drove Philip and Dominick from the duplex on Minnehaha Ave. East to the Buttery Bar in downtown Saint Paul. I wanted them out of the duplex before my mother came back from playing bingo, which was usually 11 pm. I rode in the car with them. After we dropped Philip and Dominick off at the bar, "Demetrius" and I returned to the duplex.

11. Several weeks later, the police kicked in our doors at the duplex and questioned us about Philip and Dominick and a murder that had taken place on December 22. Over the next weeks, the police returned to the duplex a number of times and took us down the station several times to question us. They were always rude and intimidating. And that is why, all these years later, I still have a clear memory of the day and evening of December 22, 2002.

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12. In the course of the police interviews/interrogations, no one ever told me that the robbery and murder took place at about 9:45 pm on Dec. 22, 2002. If someone had done so, I would have told the police that neither Philip nor Dominick could have been involved in that crime because they were both with me at the duplex where I was living at 956 Minnehaha Ave. East in St. Paul until about 10 or 11 pm that evening.

13. The police offered my grandfather, Eugene O'Connor, lots of money if we would just say what they wanted us to say. So my grandfather, who as usual had spent most of that day in his bedroom and had no knowledge of who was there or what had happened that day, encouraged us to say whatever the police wanted us to say.

I declare that, to the best of my knowledge and belief, the information set forth above is true, correct, and complete.

Kentrell Anthony

Sworn to and subscribed before me on this 5 day of August, 2022.

VERONICA GONZALEZ DE BECERRIL
NOTARY PUBLIC
STATE OF MINNESOTA
MY COMMISSION EXPIRES
JAN. 31, 2026

Notary Public

My commission expires:

Jan. 31, 2026

MINNESOTA JUDICIAL BRANCH

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State of Minnesota
1/5/2026 4:14 PM

To whom it may concern.

I'm writing in regard to the Phillip Vance case. My name is Maynard Cross and I gave you all a statement concerning Mr. Vance case I'm sure you still have records of that statement. In brif of my statement to you, it was about how the police (homicide detecives) fed me the case. I didn't know of a Phillip Vance or a Florida Boy until the homicide detectives, came and qustioned me about his case. So as before, I'll testify to that. I know the last time I talked to you all, you didn't know what I was gone do, I'm telling you I'm sincer about helping Mr. Vance

Sincerely,

Maynard Cross

O.I.D. # 194776

Signed before me this
15th day of August 2004
Funkhouser

CAMI FUNKHOUSER
Notary Public
Minnesota
My Commission Expires January 31, 2010

Filed in District Court
State of Minnesota
1/5/2026 4:14 PM

STATE OF MINNESOTA
COUNTY OF DAKOTA COUNTY

STATE of Minnesota,

AFFIDAVIT OF MELISSA STITES

v.

Phillip VANCE,

I, Melissa Stites, first being duly sworn, do depose and state that:

1. I am 44 years old, and I currently reside in the State of Pennsylvania.

2. I made certain statements and gave testimony in connection with the above-referenced case. I write this affidavit to retract these statements and testimony and provide a truthful account of the events of December 22, 2002 and the investigation that followed.

3. I am writing this affidavit of my own free will. No one has given or promised me anything in exchange for the statements that I am making in this affidavit.

4. In 2002, I was the head bartender at the Radisson Hotel located in downtown St. Paul. On or about October 5, 2004, I testified at trial that: (1) I contacted Police Officer John McManus on December 23, 2002 to report on a conversation that I had with Phillip Vance the day before; (2) I interpreted Phillip's comment about "getting his plan on" to be mean "planning to commit a robbery"; (3) Phillip was "more secretive than usual;" and (4) when I later wore a wire, I asked Phillip if he ever shot anyone, and he said "I shot a guy two weeks ago over south side five times in the back." This testimony was false.

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State of Minnesota
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5. The following is a true and accurate account my interaction with Phillip Vance on December 22, 2002 and my subsequent interactions with law enforcement:

a. On some date on or around December 23, 2002, Police Officer John McManus and other officers came into the Radisson Hotel and asked me questions about Phillip Vance, who was also known as "Florida." During the course of my conversation with Officer McManus, I was asked to make false statements about Phillip Vance. I was also pressured by the officers to wear a wire and engage in future conversations with Phillip. I did not reach out to these officers; they came to me.

b. I was familiar with Phillip and his friends because they came into the bar fairly regularly. Phillip did come into the bar on December 22, 2002, and I recall having a conversation with him. However, I did not think he was "more secretive than usual," or that he was planning to commit a robbery. Officers instructed me to say this.

c. Officers placed me in a potentially dangerous situation more than once by having me wear a wire to buy a gun from Phillip and question him at the jail. At no time during the conversation did Phillip tell me that he committed a robbery or that he shot anyone, and I have no reason to believe he did.

d. I agreed to say and do these things, because during that time, I had gotten into some legal trouble. The officers told me that they would not charge me with any crimes and I would not face any jail time if I said what they told me to say and did what they told me to do. I did not feel like I had a choice. At the time, I was a 26-year-old woman, and I was spending time with the wrong people. I was

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vulnerable and scared of getting in trouble. I was also struggling with chemical dependency. I agreed to give false statements about Phillip Vance in an effort to protect myself.

e. Today, I am five years sober, and I help other women stay on the right path. I am coming forward now to correct the statements I made about Phillip, because it is the right thing to do. Back then I did not feel like I had a voice or a say in the matter, but now I do. I never wanted to lie, wear a wire, or be involved in this case.

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Melissa Stites

Melissa Stites, Affiant

Dated: 1/22/2021

SUBSCRIBED AND SWORN to before me this 22 day of January, 2021 at Hornbeck Chevrolet Susq. County. I HEREBY CERTIFY that I have personally examined the herein affiants and I am satisfied that they voluntarily executed and understood their given affidavit.

Margaret Wilkins

Notary Public

Commonwealth of Pennsylvania – Notary Seal
Margaret Wilkins, Notary Public
Susquehanna County
My Commission Expires July 14, 2021
Commission Number 1178931

MINNESOTA JUDICIAL BRANCH

Filed in District Court
State of Minnesota
1/5/2026 4:14 PM

STATE OF MINNESOTA — IN DISTRICT COURT

COUNTY OF DAKOTA — FIRST JUDICIAL DISTRICT

State of Minnesota,

Petitioner,

vs.

Philip Vance,

Respondent.

Declaration of Regina Hagerman

D. C. File No. K6-04-000736

For her Declaration pursuant to Minn. Stat. § 358.116, Regina Hagerman states as follows:

1. I testified against Philip Vance before the Grand Jury and at his trial in 2004. My testimony was false. I gave the false testimony because of pressure and threats from the police.
2. I had many encounters with the police during the investigation of the robbery and killing at Sabreen's. They were talking to me because around that time, Philip Vance was going with my niece, Darlene Jones. I knew Philip Vance as "Florida."
3. The police wanted me to say that Florida was involved in the robbery and killing at Sabreen's. I didn't know anything about that, and I told them so. But they would not leave me alone. They kept telling me I had to say something against Florida. I kept telling them that I didn't know anything about it, so I had nothing to say. They said I had to say something.
4. Police would often be at my house when I came home from my job at Goodwill, and they would keep pressuring me to say something against Florida. Also, when I went to work in the morning, the police would show up and confront me at my bus stop, still trying to get me to say that I knew something about Florida being involved with what happened at Sabreen's. But I didn't know anything so I had nothing to tell them. Sometimes they would be at the bus stop when I was coming back from work, and they would confront me again. It scared me when I would see them at the bus stop. I thought I was in trouble

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5. The police threatened me. They told me that I would go to jail if I did not tell them what they wanted to hear about Florida. Also, at the time my fiancé and my child's father, George McCleod, was in jail, and the police told me that something bad was going to happen to George in jail if I would not tell the police what they wanted to hear about Florida.

6. I was scared for myself and for George. I didn't want to go to jail, I didn't want anything to happen to George, and I wanted to be left alone. That is why I agreed to say that Florida was at my house the Saturday before the Superbowl in 2003. He never said that he was involved in a crime. I testified about this before the Grand Jury and at the trial.

7. My testimony about what Florida said was false. The truth is, Florida never said that he had anything to do with the robbery and killing at Sabreen's. Like I told the police at the beginning, I don't know anything about it.

8. The false testimony I gave has bothered me more and more over the years. I am worried that because I gave in to pressure and threats from the police, an innocent man may be in prison for life.

9. No one has threatened me, or given me, or promised me anything for signing this Declaration. I am doing this because I want the truth to come out.

10. I read this Declaration before signing it and I had the chance to correct anything that was wrong in it.

11. I declare under penalty of perjury that everything I have stated in this document is true and correct.

Dated: 2-2-21, 2021.

Regina Hagerman
Regina Hagerman

Cook County, Illinois
County and State where Signed

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State of Minnesota
1/5/2026 4:14 PM

To whom this may Concern

My name is Trevor A. Crawford and I am Currently incaccerated at M.C.F. Faribault. This statement is addressing the credibility of the initial Statement given by myself, and Maynard R. Cross to the South St. paul Police Department in referrance to a robbery and Homicide that took place in 2002. The letter that I wrote to Phillip R. Vance Stating the facts and grounds on which the Statements against him were "derrived" by Maynard R. Cross are fake, but was used by Mr. Cross as a rouse to get a time reduction off the Current life sentence he is Serving. I went along with it as a favor to help Mr. Cross out, but used my better Judgement because it was the wrong thing to do to a innocent man. I was forced to make a State-ment by the police, because they threatend to envolve my older brother. I was not forced to write this statement, I am simply doing it because it is the right thing to do.

Sincerely yours, Trevor A. Crawford

Trevor A. Crawford

Notarized

JANIS M. DUGAN
Notary Public-Minnesota
My Commission Expires Jan 31, 2010

witness: Janis M. Dugan

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State of Minnesota
1/5/2026 4:14 PM

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF DAKOTA FIRST JUDICIAL DISTRICT
Court File No. K5-04-3658

State of Minnesota,

Plaintiff,

vs. **AFFIDAVIT OF KATHRYN M. KEENA**

Nicolle Lynn Rauschnot,

Defendant.

STATE OF MINNESOTA)
)ss.
COUNTY OF DAKOTA)

I, Kathryn M. Keena, being first duly sworn on oath, depose and state as follows:

1. I am an Assistant Dakota County Attorney and in that position, I am the responsible prosecutor in the above-entitled matter.

2. The defendant requested a speedy jury trial on February 18, 2005. The trial is currently scheduled to commence on April 11, 2005.

3. On or about March 20, 2005, I received a Notice of Alibi indicating that the defendant intended to rely upon the defense of alibi at trial and that in support of her defense, intends to call Mary Rauschnot as a witness. This is the first time the state has been made aware of the defense and that Mary Rauschnot would be called as a witness.

4. In response to the Notice of Alibi, on March 23, 2005, I sent a letter to Mr. Gray requesting that he advise me of the specific place or places where Ms. Rauschnot

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VAN A. BROSTROM, Court Admr
APR 01 2005
BY DEPUTY

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State of Minnesota
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contends to have been when the offense occurred in accordance with Minn.R.Crim P. 9.02, Subd. 1(3)(c). It is my understanding that Mr. Gray went on vacation on or about March 24, 2005, and is scheduled to be out of the office the entire week of March 28, 2005. As of the date of this affidavit, Mr. Gray has most likely not yet seen the state's request regarding the alibi defense.

5. The state is requesting a continuance of the trial date so that it has additional time to investigate the defendant's alibi defense after being advised of where the defendant contends to have been at the time the offense occurred.

Further your affiant saith naught.

Kathryn M. Keena

Kathryn M. Keena

Subscribed and sworn to before me
this 1st day of April, 2005.

Barbara J. Teigen

NOTARY PUBLIC

BARBARA J. TEIGEN
NOTARY PUBLIC
STATE OF MINNESOTA
MY COMM. EXP. 1-31-2010

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State of Minnesota
1/5/2026 4:14 PM

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF DAKOTA FIRST JUDICIAL DISTRICT
Court File No. K5-04-3658

State of Minnesota,

Plaintiff,

vs. **AFFIDAVIT OF KATHRYN M. KEENA**

Nicolle Lynn Rauschnot,

Defendant.

STATE OF MINNESOTA)
)ss.
COUNTY OF DAKOTA)

I, Kathryn M. Keena, being first duly sworn on oath, depose and state as follows:

1. I am an Assistant Dakota County Attorney and in that position, I am the responsible prosecutor in the above-entitled matter.

2. The defendant demanded a speedy jury trial on February 18, 2005. The trial is currently scheduled to commence on April 11, 2005. The state is requesting a continuance of the trial date for the reasons discussed below.

3. In preparation for trial, I requested the South St. Paul Police Department to serve subpoenas on a number of different witnesses. One of the state's witnesses is John Martin. As of the date of this affidavit, the state has been unable to serve John Martin with said subpoena. The efforts made to serve John Martin are outlined in the Affidavit of Daniel Vujovich submitted in support of this motion.

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VENA BROSTROM, Court Administrator
APR 08 2005
BY B Stevens DEPUTY

State's Exhibit 2 - CRU Supporting Materials and Documents

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4. John Martin is a key witness for the state. John Martin witnessed Phillip Vance and Dominick Johnson in the defendant's car shortly before the robbery/homicide at Sabreens on December 22, 2002. His testimony is critical to the state's case and the state cannot proceed without his testimony.

5. In addition to the unavailability of John Martin, the state is requesting a continuance in order to discuss with Yvonne White's attorney the necessity of compelling Ms. White to testify in the trial of Nicolle Rauschnot. The state had not intended on calling Ms. White as a witness, but it has now become necessary in light of discussions I had with Dominick Johnson on April 7, 2005.

During his plea hearing at which Mr. Johnson pled guilty to murder in the second degree for his role in the robbery/homicide, Mr. Johnson testified that Nicolle Rauschnot drove him and Mr. Vance to Sabreens in Ms. Rauschnot's car. Mr. Johnson also testified that Yvonne White was present in the car. During my meeting with Mr. Johnson on April 7, 2005, he advised me that he would not testify at Nicolle Rauschnot's trial. Mr. Johnson was unequivocal about his refusal to testify. Mr. Johnson maintained this stance even after it was explained to him that he could be found in contempt of court and receive additional time for his refusal to testify.

Ms. White's attorney is currently traveling abroad and is not available to counsel Ms. White in this regard. A continuance is necessary so as to allow the state to discuss this issue with Ms. White through her attorney.

6. Finally, the state is requesting a continuance given defense counsel's lack of timely disclosure to the state of the witnesses he intends on calling at trial. In a letter dated March 17, 2005, defense counsel advised the state that the defendant intended to

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rely upon the defense of alibi and that Mary Rauschnot would be called as a witness in support of said defense. That is the only written disclosure the state has received of the witnesses the defendant intends on calling at trial. The defendant subsequently withdrew that defense and that witness during a pretrial hearing on April 6, 2005.

7. At the pretrial hearing on April 6, 2005, defense counsel indicated on the record that he intended on calling Yvonne White, Amy Drager, and Richard Renville as witnesses. Phil Prokopowicz of my office attended the pretrial hearing in my place. I spoke to Mr. Prokopowicz after the hearing at which time he advised me that he had not written down any of the names mentioned by defense counsel because defense counsel indicated on the record that he had previously provided disclosure to the state. Mr. Prokopowicz recalled that defense counsel had mentioned Yvonne White, Amy Drager, and someone with the last name of Renville as being witnesses the defense intended on calling.

After speaking to Mr. Prokopowicz, I contacted the court reporter who was present at said hearing and asked her to review the record to confirm the names of the witnesses mentioned by defense counsel during the hearing. The court reporter contacted me the following morning and stated that defense counsel had indicated he was going to call Amy Drager and Yvonne White as witnesses. On the afternoon of April 7, 2005, I learned from the Minnesota Gang Strike Force that defense counsel had subpoenaed Andy Shoemaker of that agency. None of the witnesses disclosed thus far by defense counsel are on the state's disclosure list.

8. Upon learning that Andy Shoemaker had also been subpoenaed, I faxed a letter to defense counsel requesting that he provide written disclosure of the witnesses he

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State of Minnesota
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intended on calling. On the morning of April 8, 2005, during a conference call between defense counsel, Judge Rex Stacey, and myself, defense counsel stated that he had provided oral notice of the witnesses he intended on calling at the pretrial hearing. When I indicated that he had failed to mention Andy Shoemaker, defense counsel acknowledged this. Following the conference call, I received a faxed letter from defense counsel indicating that he had advised the state of the witnesses he intended on calling during the pretrial held on April 6, 2005. In his letter, defense counsel asserts that he advised the state at the pretrial hearing that he intended on calling Andy Shoemaker. This is in direct contradiction to what defense counsel stated during the telephone conference on April 8, 2005.

9. While the state knows who these witnesses are, it is unfair and prejudicial to the state to expect it to go forward on last minute, inadequate, and incomplete disclosures made by defense counsel. It is clear from the defendant's recent disclosure that she is going to use Yvonne White and Ms. White's alibi, Amy Drager to argue that Yvonne White was not present at Sabreens, therefore, by inference, Nicolle Rauschnot was also not present.

The South St. Paul Police Department has been conducting further investigation as to the information provided by Amy Drager. Ms. Drager's statement of what she was doing the night of December 22, 2002, is based on her recollection that she and Yvonne White were at her mother's residence and had picked up Christmas presents for Ms. Drager's children from a social service agency located in St. Paul Park, Minnesota. Ms. Drager could not recall the name of the agency. The South St. Paul Police Department believes it has found the agency from which Ms. Drager received these presents and

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according to that agency, the presents were distributed on December 21, 2002, not December 22, 2002, as claimed by Ms. Drager. An employee of the agency is currently searching for the distribution records concerning the recipients of Christmas gifts in December 2002, but has not yet found them.

10. In summary, the state is requesting a continuance of the trial in this matter for the following reasons: (1) the unavailability of John Martin, a key witness for the state; (2) the unavailability of Dominick Johnson as a witness and the need for the state to discuss further with Yvonne White's attorney the testimony of her client. Ms. White's attorney is currently traveling abroad and is not available for consultation by either the state or her client; and (3) the untimely disclosure made by defense counsel and the necessity of the state to conduct further investigation regarding Yvonne White's alibi.

These reasons constitute good cause to continue the trial date beyond the defendant's demand for a speedy trial and there is nothing to indicate that the defendant will be prejudiced by a continuance.

11. The state respectfully requests that the trial in this matter be continued to a date within 120 days of the defendant's initial demand for speedy trial that was entered on February 18, 2005.

Further your affiant saith naught.

Kathryn M. Keena

Kathryn M. Keena

Subscribed and sworn to before me
this 8th day of April, 2005.

Barbara J. Teigen

NOTARY PUBLIC

BARBARA J. TEIGEN
NOTARY PUBLIC
STATE OF MINNESOTA
MY COMM. EXP. 1-31-2010

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STATE OF MINNESOTA
COUNTY OF DAKOTA

DISTRICT COURT
FIRST JUDICIAL DISTRICT

State of Minnesota,

Plaintiff / Respondent,

vs.

Philip Vance

Defendant / Petitioner.

AMENDED PETITION FOR POSTCONVICTION RELIEF UNDER MINN. STAT. § 590.01

Court File No.: 19-K6-04-000736

TO: THE ABOVE-NAMED DISTRICT COURT; DAKOTA COUNTY ATTORNEY'S OFFICE.

The undersigned counsels represent and state:

I.

They are the attorneys for the petitioner, Mr. Philip Vance, who is imprisoned and restrained of his liberty in the Minnesota Correctional Facility – Rush City. Mr. Vance's MNDOC Offender ID ("OID") is 215517.

II.

Mr. Vance is confined and restrained of his liberty by virtue of the following judgment of conviction:

Mr. Vance was found guilty on October 5, 2004 of first-degree premeditated murder, first-degree felony murder during an aggravated robbery, and second-degree intentional murder after a jury trial before the Honorable Rex D. Stacey. On October 8, 2004, Mr. Vance was sentenced to life imprisonment for the first-degree premeditated murder charge.

III.

Mr. Vance previously sought relief from his conviction through a direct appeal thereof,

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which asserted the following grounds for relief:

(1) The trial court erred in denying his motion to admit certain alternative-perpetrator evidence and reverse-*Spreigl* evidence

(2) He was denied a fair trial due to the cumulative prejudicial effect of errors by the trial court, including the admission of evidence that witnesses were threatened, felt threatened, or were fearful;

(3) The trial court failed to *sua sponte* give a cautionary instruction respecting the evidence in the preceding paragraph;

(4) The trial court failed to *sua sponte* give a limiting instruction with respect to unredacted statements by police officers asserting that Petitioner was lying;

(5) Newly discovery evidence entitles him to a new trial;

(6) The trial court erroneously excluded introduction of a relevant letter; and

(7) Prosecutorial misconduct occurred when the prosecutor cried during her opening statement.

See State v. Vance, 714 N.W.2d 428, 433 (Minn. 2006) ("*Vance I*").

On May 25, 2006, the Supreme Court of Minnesota affirmed Mr. Vance's conviction and rejected all of these arguments for reversal. *See id.* at 433, 436-44.

In May 2007, Petitioner filed a petition for postconviction relief with the district court. *See Vance v. State*, 752 N.W.2d 509, 512 (Minn. 2008) ("*Vance II*"). The district court denied the petition, finding the claims were *Knaffla*-barred and/or baseless, lacking in specificity, and/or lacking in merit. *See id.* Petitioner appealed the postconviction denial to the Minnesota Supreme Court, arguing that he was entitled to postconviction relief based on:

(1) Ineffective assistance of trial and appellate counsel;

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(2) Newly discovered evidence of witness recantation;

(3) The insufficiency of the indictment in light of recanted witness testimony;

(4) Prosecutorial misconduct;

(5) Failure to submit his charge pursuant to Minn. Stat. § 609.11 (2006) to the grand jury or the jury;

(6) Cumulative errors preventing him from receiving a fair trial; and,

(7) The district court abused its discretion by denying him an evidentiary hearing.

Vance II, 752 N.W.2d at 512. The Minnesota Supreme Court affirmed the district court's summary denial of the postconviction petition. *Id.* at 517.

On July 21, 2008, Petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. *See, e.g.*, *Vance v. King*, No. 08-CV-4756-ADM/SRN, 2009 WL 294361, at *10 (D. Minn. Feb. 5, 2009) ("*Vance III*"). Petitioner argued he was entitled to habeas corpus relief because:

(1) The trial court's refusal to admit testimony of Petitioner's witnesses;

(2) The admission at trial of allegedly perjured testimony of witnesses;

(3) The failure of the prosecution to disclose to Petitioner evidence favorable to him;

(4) Prosecutorial misconduct during closing argument;

(5) Prejudicial error by the prosecution misstating and misusing evidence;

(6) The denial of a right of appeal; and

(7) Ineffective assistance of counsel

Id. The district court denied the habeas petition. *Id.* at *20.

The Office of the Minnesota Attorney General, through its Conviction Review Unit ("CRU"), has been reviewing Mr. Vance's convictions for years. Pursuant to the CRU charter, at

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the conclusion of its investigation, the CRU may join this Petition.

IV.

The facts supporting this petition are more fully set forth in the accompanying memorandum and are incorporated herein. A brief summary of those facts is provided *infra*.

The Minnesota Supreme Court summarized the relevant facts on direct appeal as follows:

> On October 5, 2004, a Dakota County jury found appellant Philip Vance guilty of first-degree premeditated murder, first-degree felony murder during an aggravated robbery, and second-degree intentional murder for the shooting death of Khaled Al–Bakri (Al–Bakri). The trial court judge sentenced Vance to life imprisonment. In this direct appeal, Vance raises a number of issues. He contends that the trial court erred when it denied his motion to admit certain alternative-perpetrator evidence and reverse-*Spreigl* evidence. He also contends that he was denied a fair trial due to the cumulative prejudicial effect of errors by the trial court, including the admission of evidence that witnesses were threatened, felt threatened, or were fearful; the trial court's failure to *sua sponte* give a cautionary instruction with respect to that evidence; and the trial court's failure to *sua sponte* give a limiting instruction with respect to unredacted statements by police officers asserting that Vance was lying. Pro se, Vance argues that: (1) newly discovered evidence entitles him to a new trial; (2) the trial court erroneously excluded introduction of a relevant letter; and (3) the prosecutor committed misconduct when she cried during her opening statement and while presenting the state's case. We affirm.
>
> Tariq Bakkri (Bakkri), Al–Bakri's brother and the owner of Sabreen's Supermarket (Sabreen's) in South Saint Paul, was working at Sabreen's on the afternoon of December 22, 2002. At about 2:00 p.m., Al–Bakri arrived and offered to work the rest of the afternoon and evening. Bakkri left the store between 9:27 p.m. and 9:30 p.m. At about 9:41 p.m., Kathleen Johnson arrived at Sabreen's. When she entered the store, she observed a man in a black mask taking money out of the cash register. She thought she heard the man shout something and she saw him make a "motion like he was going to pull a gun out from his pants." She immediately ran from the store to her car. As she drove away, she observed two people running out of the store. One person was slightly taller than the other. Both were slender and wore baggy pants, hooded sweatshirts, and masks.
>
> Also around 9:30 p.m., four teenagers, including D.M., walked to Sabreen's. As they were walking, one of the teenagers noticed a car parked in an alley just outside of Sabreen's. He described the car as a four-door, "regular sized car," "darkish," shiny, and "tinted gray." Another of the teenagers testified that it was a big, dark, "grayish-black," four-door car. The group observed two men run from the store, jump into the car, and drive away quickly. One of the teens described the two men as wearing baggy clothing, while another observed that the two men wore

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sweatshirts and dark jeans.

When the teenagers entered the store, they could not locate the clerk. As they waited at the counter, D.M. noticed that the cash register was open. He leaned over the counter and saw Al–Bakri lying on the floor, motionless. He also noticed some blood. The teenagers immediately ran back to D.M.'s home and called the police.

Al–Bakri was pronounced dead at the scene. The cash register indicated that the cash drawer was last opened at 9:35 p.m. for a no-sale transaction. The police found four cartridge casings from a .22 caliber gun on the floor of the store. Two of the cartridges were determined to be Winchester Western brand ammunition and two were CCI brand ammunition. Two bullets were found in Al–Bakri's body, a third was found in a flashlight near his body, and the fourth was not located. The police were unable to find any physical evidence at the scene connecting Vance or any other suspect to the murder and the murder weapon was never recovered.

A number of witnesses testified about Vance's activities before and after the murder on December 22. John Martin, a convicted burglar, testified that on December 22, 2002, he, Vance, and Dominic Johnson were at the Radisson bar in downtown St. Paul between 7 p.m. and 8 p.m. While at the bar, the three discussed the upcoming holidays, and Vance and Johnson discussed making arrangements to buy presents for their children. Martin testified that the three did not discuss a robbery while at the Radisson bar. According to Martin, around 8:30 p.m., Johnson made a phone call from Vance's cell phone to Yvonne and Nicole, two women from South St. Paul. Vance and Johnson told Martin they were going to South St. Paul and invited him along. Martin declined, and the three left the bar. As Martin was heading to his bus, he saw Yvonne and Nicole arrive in a four-door, dark blue Chevy Corsica. The car pulled up to the area where Vance and Johnson were standing.

Melissa Stites, the head bartender at the Radisson bar, testified that on December 22, 2002, Vance, Johnson, and a third man came into the bar around 7:30 p.m. Stites knew both Vance and Johnson, and she testified that they were "more secretive" than usual that evening. When Stites asked them what was going on, Vance replied "that they were getting their plan on." Stites interpreted "getting their plan on" to mean "planning to commit a robbery." Vance and Johnson were in the Radisson bar for about half an hour. As they were leaving, Stites commented that tips were low that night, because Vance and Johnson normally did not tip her. Vance responded, "Don't worry, Baby, when I get back there's going to be plenty of money."

Eric Griffin, an acquaintance of Vance and Johnson, testified that he saw Vance and Johnson arrive at The Buttery, a bar in St. Paul, sometime after 10:00 p.m. on December 22, 2002. Griffin testified that Vance's demeanor was "kind of wild * * * from drinking." Vance was wearing a black hooded sweater and loose-fitting dark blue jeans. Vance told Griffin "that he had did a robbery and it had gone bad, and the guy he was robbing, he had f___ed him up." Vance told Griffin that the robbery

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had occurred in South St. Paul.

Colleen McManus, the night manager at The Buttery, saw Vance and Johnson outside the bar as she arrived at work sometime between 10:15 p.m. and 10:30 p.m. on December 22. She saw the two get out of a car, which she believed was a four-door, "silver, light green" midsized car. Johnson wore a white hooded sweatshirt, a light blue Starter jacket, dark jeans, and white tennis shoes. Vance wore a dark blue jacket with leather sleeves, dark pants, and a dark hooded sweatshirt. As she entered the bar, she saw Vance and Johnson talking to a group of people, which included Maynard Cross. Vance approached McManus and asked her not to "throw him out" of the bar.[1] Vance and Johnson both seemed nervous. When McManus asked Vance what was wrong he said, "I really f___ed up this time." She responded, "It couldn't have been that bad," and he said, "Oh, yeah, it was. I really did it this time. I did it this time." At one point, Vance started crying, which McManus noted was unusual for him. When she again inquired about his agitation, he said, "Well, I didn't mean for it to happen, it wasn't supposed to happen that way." He then made a motion that McManus interpreted to mean that he had shot someone. When she asked him if he had shot someone, he replied, "It wasn't supposed to happen like that."

McManus immediately called to report her conversation with Vance to her brother, John McManus, a police officer assigned to the Minnesota Gang Strike Force (MGSF). On December 23, 2002, Stites also reported the conversation she had had with Vance at the Radisson bar to Officer McManus, whom she knew because she had previously provided information to him.

Stites agreed to participate in an undercover investigation of Vance and on January 3, 2003, Stites met with Vance and Johnson at The Buttery. Stites was meeting with Vance under the guise of purchasing a gun from him, with the hope that she would be able to elicit information about the murder. The police had arranged to intercept Stites' conversation with Vance. At some point during the meeting, Vance asked Stites to accompany him to the Lab, another St. Paul bar. Johnson did not accompany Stites and Vance to the Lab.

At the Lab, Stites asked Vance if he had any guns that she could buy and if he would teach her how to shoot. Vance told her that he had four guns. When asked by Stites if he had ever shot anyone, Vance replied that he had "shot a guy two weeks ago over south side five times in the back." Police officers who listened to the conversation corroborated Stites' recollection, with slight variations in the exact words that were used to describe the prior shooting: "Two weeks ago Winchester on the south side * * * I shot a guy five times in the back"; "Yes, about two weeks ago over south, Boo * * * I shot a guy in the back five times"; "he shot somebody in the south side five times and it was a Winchester"; "he had shot a guy five times in the back on the south side * * * I shot a guy two weeks ago on the south side." Vance subsequently sold a .22 caliber handgun to Stites. That gun did not match the weapon used to kill Al–Bakri.

The state also presented testimony from witnesses who were incarcerated with

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Vance before trial. According to Isaac Hodge, he and Vance were incarcerated at the Sherburne County jail together in 2003. At one point, Vance and Hodge were looking at a newspaper and Vance saw a picture of a man who was later identified as Maynard Cross, one of the people seen talking to Vance at The Buttery the night of the murder. Vance stated, "Man, this dude put my name in some bulls___t." Hodge also testified that Vance, without going into great detail, told him that he was involved in a murder-robbery. In addition, Vance said "it wasn't worth it," which Hodge interpreted to mean that the amount of money that Vance got in the robbery did not justify the murder. Tyrone Crawford, who was housed at the Sherburne County jail around the same time, had a similar conversation with Vance, in which Vance told him that Vance "shot a guy at the grocery store, and he was concerned that that was going to come back on him." Vance also indicated that Cross "was going to testify against him about shooting somebody * * * at a grocery store."

John Nunn was housed at both the Sherburne County jail and Sandstone Prison with Vance. Nunn testified that Vance told him that he had committed a robbery in which someone "got murked," which Nunn interpreted to mean the person was either hurt or shot and killed. Vance told Nunn that he was concerned about the police finding a .22 caliber handgun that had been used in the robbery.

Dontay Reese testified that, while in the Dakota County jail with Vance, he had multiple conversations with Vance about a murder in which Vance was involved. Vance told Reese, in reference to shooting the clerk, that "it wasn't supposed to go down like that" and "[Johnson] said my name and it wasn't supposed to go down like that. I was zooted, I was drunk and I gave the dude five. And then we got the money and got lit." Vance also told Reese that Johnson, Vance, and Martin were at a bar and left after Johnson called two women, named Yvonne and Tiffany or Nikki, to get a ride to Johnson's cousin's house. Vance told Reese that the women drove a blue Corsica or Accord. Vance and Johnson then met another man and went to a "mom-and-pop store" where Vance and Johnson went inside to commit a robbery. During the robbery, Johnson said Vance's name, so Vance shot the clerk. Vance told Reese he used a "deuce-deuce" to kill the clerk, which Reese interpreted to mean a .22 caliber handgun.

Geronimo Estrada testified that he was incarcerated with Vance at the Ramsey County Workhouse and that they discussed the murder on multiple occasions. According to Estrada, Vance told Estrada that when he entered the store he immediately ran behind the counter and grabbed the clerk, who was startled and did not know what was going on. Vance said the clerk was hysterical and crying saying, "please don't hurt me," and that Vance shot the clerk once or twice in the back of the head. Vance also told Estrada what they took from the store, which included money, cigarettes, plastic bags, lottery tickets, and a telephone. Officer Daniel Vujovich testified that those were the items taken from Sabreen's and that at no time during the investigation was the list of items stolen from Sabreen's disclosed.

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> At trial, the state introduced recordings of interviews Officer Thomas Kreager and other police officers conducted with Vance during the investigation. During the course of the interviews, the officers accused Vance of lying.
>
> Vance did not testify and presented no witnesses in his defense.

Vance I, 714 N.W.2d at 432-36.

When Mr. Vance submitted his postconviction petition in May of 2007, he submitted affidavits from John Martin and Dontay Reese which "recanted part of their trial testimony." *Vance II*, 752 N.W.2d at 514. However, the Minnesota Supreme Court did not believe the affidavits had sufficient indicia of trustworthiness to merit a hearing. *See id.* at 514-15. Mr. Vance also submitted affidavits from Edward Townsend and Trevor Crawford, but the courts did not find these affidavits compelled an evidentiary hearing. *See id.* at 516-17. In rejecting Cross's affidavit, the Minnesota Supreme Court stated it did so because his 2006 affidavit did not meet the test for recanted testimony. *See id.* at 517, n.4. For the same reason, the Court held that the 2006 Cross affidavit did not render Petitioner's indictment insufficient. *Id.*

In the years since Mr. Vance's postconviction petitions were adjudicated, Mr. Vance has obtained a plethora of affidavits from trial witnesses recanting their testimony and from witnesses who should have been called at trial by defense counsel. Specifically, Mr. Vance now relies on the following affidavits, in addition to other evidence and previously presented affidavits:

- Multiple affidavits from Maynard Cross, signed in 2006, 2021, and 2024.
- Affidavit of Regina Hagerman, signed in 2021.
- Affidavit of co-defendant Dominick Johnson, signed in 2021.
- Affidavit of Melissa Stites, signed in 2021.
- Affidavit of Darlene Walton, signed in 2023.
- Affidavit of Kentrell Anthony, signed in 2022.

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- Affidavit of Dontay Reese, signed in 2007.
- Affidavit of Edward Townsend, signed in 2007.
- Affidavit of John Martin, signed in 2007.
- Affidavit of Michael E. White, signed in 2005.
- Affidavit of Wayne Jones, signed in 2007.
- Affidavit of Trevor Crawford, submitted in support of 2007 postconviction petition.

Of the above affidavits, the affidavits of Melissa Stites, Dominick Johnson, Regina Hagerman, Darlene Walton, Kentrell Anthony, and Maynard Cross's 2024 affidavit are the most important. Each of these affidavits allows the Court to be reasonably well-satisfied that the recanted testimony was false, and that the recantations are genuine to a degree of reasonably certainty. *See Pippitt v. State*, 737 N.W.2d 221, 226-27 (Minn. 2007); *Opsahl v. State*, 710 N.W.2d 776, 782 (Minn. 2006). The affidavits allow the Court to conclude that the jury might have reached a different conclusion without the recanted testimony. *See Pippitt*, 737 N.W.2d at 227. The affidavits demonstrate, at least in part, that Petitioner was taken by surprise at trial or did not know of the falsity until after trial. *See id.* Importantly, Cross's 2021 and 2024 affidavits meet the test for recanted testimony, and therefore render Vance's indictment insufficient. *See Vance II*, 752 N.W.2d at 517, n.4; *see also Opsahl v. State*, 710 N.W.2d at 782.

Additionally, in 2009, the Metro Gang Strike Force ("MGSF") was disbanded after it was discovered "deeply disturbing" behavior by the MGSF and its members. A report entitled REPORT OF THE METRO GANG STRIKE FORCE REVIEW PANEL (Aug. 20, 2009) ("MGSF REPORT") found that the MGSF lost "substantial quantities of evidence that should still be in the evidence room" and routinely mislabeled or misappropriated evidence tied to criminal prosecutions. *See* MGSF REPORT. The report found that MGSF officers routinely violated the constitutional rights of

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detainees and criminal suspects by performing and lying about performing warrantless searches and seizures in the absence of facts supporting a good faith belief that an exception to the warrant requirement existed. *See id.* MGSF officers even contaminated valid searches and seizures conducted pursuant to lawfully issued warrants by seizing money and personal items that bore no relation to the matter under investigation and which was incapable of being tied to the suspected criminal activity. *See id.* The report found that "at least one employee of the Strike Force repeatedly accessed the [NCIC] database at the Strike Force's offices for non-governmental purposes." *Id.* The report states that "[i]n late 2008, Strike Force officers were asked to sign blank forms permitting the evidence in their cases to be destroyed. Once these documents were signed, Strike Force personnel placed forms noting that evidence was destroyed into files in which the evidence was not, in fact, destroyed." *Id.*

The MGSF REPORT details that "[a] relative of a Strike Force employee had regular access to the Strike Force offices and was observed handling seized property." *Id.* It is alleged upon information and belief that this relative was Ms. Colleen McManus, the sister of Strike Force officer John McManus. Ms. Colleen McManus and MGSF officer John McManus were both centrally involved in the investigation into Petitioner, and both testified at Petitioner's trial.

The MGSF REPORT details that "a number of Strike Force officers shredded documents and most likely placed a large amount of additional material in bins inside the Strike Force offices for shredding by a professional firm," noting the bins "were full when reviewed" and "included material relevant to numerous cases, including one entire case file." *Id.* The report noted that "sensitive material, including official case material, old items of evidence, at least two live rounds of ammunition and sensitive information about a Strike Force officer were placed in a publicly accessible dumpster outside of the Strike Force's officers" on the very day that the Legislative

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Auditor released a report suggesting malfeasance by the MGSF. *Id.* In the same vein, the report found that "[i]n the days following the Legislative Auditor's report, a Strike Force employee tried to delete a file relating to confidential informants working within the Strike Force." *Id.*

Also important, the report noted that of the case files the investigators reviewed, "[m]any… were severely lacking: (1) information about searches and seizures; (2) information about the involvement of informants; (3) evidence tracking; (4) case status and (5) communications with prosecutors." *Id.* This is relevant to Petitioner's case, as there are numerous substantial reasons to believe that MGSF officers withheld *Brady*, *Giglio*, and/or *Youngblood* evidence from both the defense and Dakota County prosecutors. This is especially true regarding taped interviews with informants and witnesses, as Maynard Cross's 2024 affidavit states that the first time Cross was interviewed, the interview was recorded and in that interview, Cross told the MGSF investigators he did not know anything about the Sabreens robbery, that he did not know Mr. Vance, and that he wanted the officers to leave him alone. *See* Maynard Cross Affidavit (2024). In the same affidavit, Cross swears under penalty of perjury that this conversation was tape recorded, and that if the tape recording is no longer available, then "the investigators must have either lost or destroyed the tapes." *Id.* No such recording was ever provided to trial, appellate, or postconviction counsel, and such a tape has not been located despite hours of diligent searching through the South St. Paul Police Department's archived case files. The recording no longer exists because MGSF officers destroyed and otherwise failed to disclose the tape in bad faith. Similarly, it is notable that the wire witness Melissa Stites wore that supposedly captured incriminating statements, and which MGSF officers supposedly heard in real time, was apparently unusable or was otherwise alleged by MGSF officers to be incapable of submitting as an exhibit during trial.

Lastly, documents constituting *Brady*, *Giglio*, and/or *Youngblood* evidence have been

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recently discovered in the South St. Paul Police Department case files. *See Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972); *Youngblood v. Arizona*, 488 U.S. 51 (1988). These documents are exculpatory; at minimum, the documents are potentially exculpatory. Their import is addressed more fully in Petitioner's accompanying memorandum.

The MGSF REPORT, witness affidavits, and witness recantations all combine to demonstrate that Petitioner did not receive a fair trial. He was deprived of due process by the actions of MGSF investigators and copious false testimony, given at the behest of MGSF investigators and because of coercive and bad faith police tactics. Mr. Vance has spent more than 21 years in prison because of this unlawful and bad faith conduct. The evidence of Mr. Vance's innocence and wrongful conviction is substantial and justifies granting him an evidentiary hearing.

V.

Mr. Vance, through this petition, is seeking relief based upon the following legal grounds:

1. Mr. Vance's conviction is defective because it relied upon false evidence provided by Melissa Stites, who provided inculpatory evidence against Mr. Vance. Through her affidavit, Ms. Stites explains that she was pressured by members of the Metro Gang Task Force to falsely accuse Mr. Vance of murder, and to assist in the prosecution of Mr. Vance through the provision of false testimony and statements. Ms. Stites' affidavit also explains that she was explicitly instructed by police officers to give false testimony in Mr. Vance's case and at his trial. Stites has recanted her trial testimony and stated that she never heard Mr. Vance make any statement indicating that he played any role in the killing of Khalid Al-Bakri.
2. Mr. Vance's conviction is defective because it relied upon false evidence provided by Regina Hagerman, who testified before the grand jury in Mr. Vance's case about threats

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that Mr. Vance was claimed to have made against Hagerman's then-fiancé to obtain a lawful basis to search the cell of Mr. Vance's co-defendant, Dominic Johnson, which resulted in the obtainment of a letter used at Mr. Vance's trial which made it falsely appear as if Mr. Vance was trying to witness tamper. Hagerman has recanted her trial testimony and stated that she has no knowledge of any fact that indicates Mr. Vance played any role in the killing of Khalid Al-Bakri.

3. Mr. Vance's conviction is defective because it relied upon false evidence provided by Maynard Cross, who provided inculpatory evidence against Mr. Vance. Through his affidavit, Cross has made clear that, contrary to his testimony, he was not at the Buttery on December 22, 2002, but was instead in Milwaukee, WI. Cross's affidavit also clarifies that the details he provided about the circumstances of the murder, which he claimed to have learned from Mr. Vance, originated from conversations with members of the Metro Gang Task Force officers who wanted Cross to incriminate Mr. Vance. Cross has recanted his testimony and stated that has no knowledge of any fact that indicates Mr. Vance played any role in the killing of Khalid Al-Bakri.
4. Mr. Vance's conviction is defective because the indictment is defective, since the indictment relied on false and inculpatory grand jury testimony provided by Maynard Cross, Regina Hagerman, and Jacqueline Ezell.
5. Mr. Vance's conviction is defective because it relied upon false evidence provided by Dontay Reese, who provided inculpatory evidence against Mr. Vance. Through his affidavit, Reese explains that he was promised leniency in his own criminal matter by investigators in Mr. Vance's case if Reese could provide any information about Mr. Vance's case. Reese has recanted his trial testimony and stated that he never heard Mr.

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Vance make any statement indicating that he played any role in the killing of Khalid Al-Bakri.

6. Mr. Vance's conviction is defective because it relied upon false evidence provided by Trevor A. Crawford, who provided inculpatory evidence against Mr. Vance. Through his affidavit, Mr. Crawford explains that Mr. Vance never made such a confession, and that Mr. Crawford only testified to this effect because investigators threatened to involve Crawford's older brother in the case. Crawford has recanted his trial testimony and stated that he never heard Mr. Vance make any statement indicating that he played any role in the killing of Khalid Al-Bakri.
7. Mr. Vance's conviction is defective because the State failed to disclose *Brady*, *Giglio*, and *Youngblood* evidence in criminal discovery. *See Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972); *Youngblood v. Arizona*, 488 U.S. 51 (1988). For purposes of the *Youngblood* analysis, it is alleged that the State acted in bad faith when it failed to make these disclosures.
8. Mr. Vance's conviction is defective because he was prevented from presenting an alibi defense despite having alibi witnesses available to testify. Specifically, Darlene Walton has provided an affidavit testifying under penalty of perjury that she was with Mr. Vance at that time of the murder, and that neither of them was at the scene of the murder on December 22, 2002. Mr. Vance was unable to present his alibi witnesses through a combination of witness tampering by police and ineffective assistance of trial counsel.
9. Mr. Vance was denied his Sixth and Fourteenth Amendment right to effective assistance of trial counsel and appellate counsel. Mr. Vance's trial and appellate counsels' representation fell below the standard of reasonableness and prejudicially

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affected the outcome of the proceedings.

10. Mr. Vance was denied his Sixth and Fourteenth Amendment right to effective assistance of trial counsel when trial counsel unreasonably failed to present alternative-perpetrator evidence at trial relating to Michael Smith and/or Lorenzo Eide, and when trial counsel unreasonably failed to investigate, develop, or call alibi witnesses. *See Vance I*, 714 N.W.2d at 437-39.[1]

11. Mr. Vance was denied his Sixth and Fourteenth Amendment right to effective assistance of appellate counsel when appellate counsel unreasonably failed to argue that trial counsel's failure to investigate or present alibi witnesses, or to present alternative-perpetrator evidence at trial relating to Michael Smith and/or Lorenzo Eide, constituted ineffective assistance of trial counsel. *See Vance I*, 714 N.W.2d at 437-40 (making no reference whatsoever to ineffective assistance of counsel, but noting repeatedly the unusual decisions of trial counsel, such as not introducing any alternative perpetrator evidence).

VI.

Mr. Vance respectfully requests the following relief:

1. That the Court accept and consider the brief accompanying this petition;
2. That an Order be issued for an evidentiary hearing wherein proof of the allegations herein can be offered;
3. That an Order be issued directing Respondent, through its counsel at the Dakota County

[1] The Supreme Court of Minnesota determined the trial court erred in excluding alternative perpetrator evidence regarding Eide. *Vance I*, 714 N.W.2d at 439. The Court determined this error was harmless, finding it "[p]articularly significant" that Vance allegedly made "admissions to a number of witnesses that he committed the murder." *Id.* The witnesses referenced in the preceding sentence consist almost exclusively of witnesses who have recanted their testimony. *Cf. id.*

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Attorney's Office, to produce Petitioner at all hearings held by this Court;

4. That after a hearing on the merits, an Order be issued directing that Petitioner's conviction for first-degree premediated murder be vacated and set aside;
5. That after Petitioner's conviction for first-degree premeditated murder is vacated and set aside, an Order be issued directing that the jury verdicts for first-degree felony murder and second-degree felony murder be vacated and set aside;
6. For such other and further relief as law and justice may require as determined by this Court.

This petition is based upon the Minnesota and United States Constitutions, the Minnesota Rules of Criminal Procedure, case law, the interests of justice, the accompanying memorandum of law and attached exhibits, and such other and further points and authorities as may be subsequently presented to the Court.

Dated: February 26, 2025

Respectfully submitted,

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REPORT OF THE METRO GANG STRIKE FORCE REVIEW PANEL

AUGUST 20, 2009

MINNESOTA JUDICIAL BRANCH

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REPORT OF THE METRO GANG STRIKE FORCE REVIEW PANEL

Panel Members

Andrew Luger John Egelhof

INTRODUCTION

This Report constitutes the findings and recommendations of the Metro Gang Strike Force Review Panel. The Panel was formed on May 26, 2009 at the request of the Commissioner of Public Safety, Michael Campion. The two members of the Review Panel are:

Andrew M. Luger. Mr. Luger is a former federal prosecutor and partner with the Minneapolis litigation firm of Greene Espel P.L.L.P. Mr. Luger received his B.A. from Amherst College and his law degree from the Georgetown University Law Center. In 1989, after three years in private practice in New York City, Mr. Luger was appointed an Assistant United States Attorney in the Eastern District of New York. As a federal prosecutor in New York, Mr. Luger investigated and prosecuted drug and violent crimes, white collar crimes and international financial crimes. In 1992, Mr. Luger was appointed an Assistant United States Attorney in Minnesota, focusing on white collar investigations and prosecutions. In 1995, Mr. Luger joined Greene Espel where his practice is comprised of internal investigations, business litigation and white collar criminal defense.

John Patrick Egelhof. Mr. Egelhof retired from the Federal Bureau of Investigation in 2008 following 28 years service. Mr. Egelhof joined the FBI in 1980, serving in Washington, D.C. and New York City before being appointed as a Special Agent in 1984. He served as a Special Agent in Richmond, Virginia, where he ran a fugitive task force; Boston, Massachusetts, as a member of an Armored Car/Bank Robbery Task Force; Concord, New Hampshire and finally Bemidji, Minnesota. Mr. Egelhof served as a member of an Evidence Response Team and as a SWAT operator for two FBI field divisions. In 2005, he started the Headwaters Safe Trails Task Force, composed of federal/state/local and tribal officers who targeted violent, drug and gun crimes on the three reservations near Bemidji. Following his retirement, Mr. Egelhof taught for the Department of Justice's International Criminal Investigative Training and Assistance Program as a law enforcement instructor in Pakistan, and as an instructor for the FBI. Since 2009 he has worked as a Private Detective under JP Egelhof Investigations, LLC.

The Panel was formed following the May 20, 2009 Financial Audit Division Report by the Office of the Legislative Auditor (the "Legislative Auditor's Report"). The Legislative Auditor's Report concluded that:

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> The Metro Gang Strike Force's internal controls were not adequate to safeguard seized and forfeited property, properly authorize its financial transactions, accurately record its financial activity in the accounting records, and conduct its financial activities in a reasonable and prudent manner.

The Legislative Auditor then listed eleven specific findings and recommendations concerning various aspects of the Strike Force's operations and oversight. A copy of the Legislative Auditor's Report is attached to this Report as Exhibit A.

Following the issuance of the Legislative Auditor's report, on the night of May 20, a number of Strike Force officers were observed shredding documents at the Strike Force offices. At that time, the Commissioner of the Department of Public Safety shut down the Strike Force pending further investigation by this Panel and the F.B.I.

The Panel's Scope of Work

This Panel was originally charged by the Commissioner of Public Safety with: (1) recommending policies and procedures to implement the findings of the Legislative Auditor so that the Strike Force could be re-opened in early July; and (2) conducting an investigation into the conduct giving rise to the auditor's findings. The Commissioner requested that the Panel report any potentially criminal conduct to the F.B.I. The Panel was tasked to work independently and to report back to the Commissioner as to its findings and recommendations.[1]

Implicit in the Panel's scope of work was the presumption that the Strike Force would be re-opened under the pre-May 2009 configuration with the same Advisory Board and similar structure. Shortly after undertaking its work, however, the Panel learned of credible allegations of misconduct relating to Strike Force employees that went beyond the findings of the Legislative Auditor. These allegations raised serious questions regarding the Strike Force's operations. Consequently, on June 11, 2009, the Panel issued a Preliminary Report recommending that the Department of Public Safety not re-open the Strike Force under its current structure during the pendency of the Panel's investigation. A copy of the Panel's June 11, 2009 Preliminary Report is attached to this Report as Exhibit B.

Following the Panel's Preliminary Report, and consistent with the Panel's recommendation, on June 11, 2009 the Department of Public Safety announced that it would open a temporary gang strike force that would operate out of the offices of the Minnesota Bureau of Criminal Apprehension ("BCA"), utilizing the BCA's evidence room and policies and procedures. Shortly thereafter, some law enforcement agencies announced that they would end their participation in the Metro Gang Strike Force. As a result of these and other developments, the Department of Public Safety announced that it would cancel plans to open a temporary gang strike force.

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[1] This Report contains the independent Findings, Conclusions and Recommendations of the two Panel members.

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The Panel's Work Plan

The Panel's efforts were focused on determining whether officers and employees at the Strike Force engaged in inappropriate conduct beyond that exposed by the Legislative Auditor's report, as well developing an understanding of the root causes for any misconduct. The Panel also developed recommendations regarding the future of multi-jurisdictional anti-gang efforts. In performing our work, the Panel:

- Interviewed former Strike Force officers and employees[2];
- Conducted a thorough inventory of the evidence room at the Strike Force's offices;
- Located and documented the existence of evidence at the Strike Force's offices outside of the evidence room;
- Reviewed hundreds of case files as well as other records maintained by the Strike Force[3];
- Interviewed private individuals who interacted with the Strike Force;
- Interviewed Advisory Board members;
- Compared evidence found in the Strike Force offices with evidence-related information in case files; and
- Discussed with law enforcement officials and others the structural causes for the failures at the Strike Force and ideas for avoiding such problems in the future.

The Panel wishes to express its appreciation for the cooperation of law enforcement officials from the agencies participating in the Strike Force. Sheriffs, Police Chiefs and their deputies were always available to speak with us on short notice and provided us with valuable assistance in our investigation. We are similarly appreciative of the assistance provided by the staffs of the Legislative Auditor and the Office of the Attorney General. The Panel is also grateful for the many hours of hard work provided by various employees and interns working for the Department of Public Safety. This Report would not be possible without their help.

[2] A number of Strike Force officers and employees declined the Panel's requests for an interview.

[3] Many of the case files contained little documentation to explain the work performed on that matter. These poorly documented cases often made it difficult for the Panel to understand and comment on particular investigations.

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OVERVIEW OF THE REVIEW PANEL'S FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

As we detail in this report, the Panel found extensive evidence that the Strike Force conducted important and well thought out investigations of suspected gang members and that the Strike Force, and particularly its Commander, engaged in extensive training and other educational activities related to gangs. This work benefited the community and was commendable. At the same time, however, the Panel uncovered substantial evidence of misconduct by Strike Force employees. For all of the good work that Strike Force employees accomplished, it is this misconduct that will always be associated with the Metro Gang Strike Force. While this is regrettable, it is also understandable. Minnesotans have rightfully come to expect the best from law enforcement. And they should. The behavior uncovered by this Panel is deeply disturbing and must be addressed by law enforcement leaders, policy makers and the community. We hope that this Report contributes to a dialogue that ensures such behavior does not occur in Minnesota again.

The following is a summary of the Panel's findings and recommendations, reached after conducting extensive interviews, reviewing volumes of evidence and hundreds of case files and analyzing the operations and work of the Strike Force:

- **Evidence Issues**

1. Employees, including sworn officers, repeatedly took property obtained during searches for their own personal use. These items included, among other things, flat screen and large screen televisions, laptops and other computer equipment, electronics, jewelry and recreational items. On a few occasions, officers returned property to the Strike Force offices when others made an issue of their conduct. Some of the items removed by officers for their personal use were items that were stolen by a defendant in a case, and could have been returned to their rightful owner.

2. On a number of occasions, officers or their family members were permitted to purchase, at low prices, items from the evidence room including flat screen and large screen televisions, jet skis, a trailer and other items.

3. Substantial quantities of evidence that should still be in the evidence room are missing. These include televisions, electronic equipment, computer equipment, recreational items and jewelry.

4. A large number of valuable items found both in and outside of the evidence room are falsely reported to have been destroyed in Strike Force case files.

5. Many items that were seized by the Strike Force, including narcotics, were never entered into evidence and were found in the offices outside of the evidence room.

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6. Certain items, such as two firearms, were found outside of the evidence room and cannot be traced to any individual case.

- **Issues Related to Interactions With Individuals**

1. Members of the Strike Force engaged in "saturation" details that originally involved providing a law enforcement presence at locations where suspected gang members were expected to congregate. Over time, these saturation details grew to include stops of individuals who had no connection to gang activity, along with searches of these individuals and seizures of money and property.

2. As the saturation details grew to include stops that were not gang-related, Strike Force officers began to seize funds from those stopped, regardless of any intent to file charges against the people stopped and without regard to whether the funds could reasonably be connected to illegal activity.

3. On a number of occasions, individuals stopped during these saturation details were in possession of small amounts of marijuana, amounts associated with personal use. Invariably, when money was found during one of these searches – whether the person possessed marijuana or not – the money was taken by the Strike Force officers.

4. Many of the files we reviewed included no information to suggest that the people stopped and searched had any gang connection or that they could provide the officers with gang-related information.

5. On repeated occasions during these saturation detail stops, Strike Force officers searched the cell phones of the individuals who were stopped. Many of these individuals were not arrested, but merely stopped on the street or at an event. Officers searched their cell phones without a warrant.

6. Strike Force officers regularly required individuals stopped during saturation details to be photographed with Metro Gang Strike Force identification placed in the picture. These photographs included pictures of children and others with no known gang connections.

7. During searches conducted pursuant to lawfully obtained warrants, Strike Force officers often seized money and personal items (including televisions, computer equipment and jewelry) that, based on our review, bore no relation to the matter under investigation and could not be tied to criminal activity. On at least one occasion, seized property was later ordered returned but was missing from the Strike Force offices.

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- **Additional Issues**

1. There is reason to believe that at least one employee of the Strike Force repeatedly accessed the National Criminal Information Center database at the Strike Force's offices for non-governmental purposes.

2. Of the $18,126 in funds that the Legislative Auditor was unable to account for during their review, the Panel is still unable to account for $10,781[4].

3. A relative of a Strike Force employee had regular access to the Strike Force offices and was observed handling seized property.

4. In late 2008, Strike Force officers were asked to sign blank forms permitting the evidence in their cases to be destroyed. Once these documents were signed, Strike Force personnel placed forms noting that evidence was destroyed into files in which the evidence was not, in fact, destroyed.

5. On the day that the Legislative Auditor's report was released, a number of Strike Force officers shredded documents and most likely placed a large amount of additional material in bins inside the Strike Force offices for shredding by a professional firm. These bins were full when reviewed by this Panel shortly thereafter. The bins included material relevant to numerous cases, including one entire case file. Additionally, sensitive material, including official case material, old items of evidence, at least two live rounds of ammunition and sensitive information about a Strike Force officer were placed in a publicly accessible dumpster outside of the Strike Force's offices.

6. In the days following the Legislative Auditor's report, a Strike Force employee tried to delete a file relating to confidential informants working with the Strike Force.

7. The day after the Legislative Auditor's report, a Strike Force officer caused a local crime lab to test narcotics purportedly from a number of cases dating back up to 8 years. Only some of these were active cases and some had little or no documentation in the file. In some cases, the narcotics sent for testing did not relate to the case designated by the officer. Two days after the Report, the lab faxed the results of these narcotics to the Strike Force offices.

8. In many of the case files we reviewed, the file begins and ends with a stop and a seizure, or a search and a seizure. In these cases, there is no apparent follow-up investigation and no attempt to bring the matter to a prosecutor. Although thousands of dollars may have been seized, along with jewelry, electronics and

[4] We have located no documentation detailing what happened to these remaining funds. This money could have been used for Strike Force purposes, but we are unable to make a determination one way or the other in this regard.

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other items, in these cases there was no apparent further action taken and, in many cases, nothing done to return the property taken during the search at the conclusion of the case.[5]

9. Many case files we reviewed were severely lacking: (1) information about searches and seizures; (2) information about the involvement of informants; (3) evidence tracking; (4) case status; and (5) communications with prosecutors. There are many cases in which the file is completely empty, including cases in which the Panel was able to obtain information from other sources to show that there was substantial activity in the case.

- **Causes of the Problems at the Strike Force**

1. In 2003, the predecessor to the Strike Force lost much of its state funding. Some working at the Strike Force developed a mentality that forfeiture funds were necessary to make certain the Strike Force would survive. For those who adopted this mentality, the seizure of funds became a priority.

2. Some Strike Force employees used the term "money police" to describe their focus on financial seizures.

3. The saturation details employed by the Strike Force were ill-defined and not well supervised. The lack of definition and supervision, coupled with the perceived need to obtain forfeiture funds for the operation of the Strike Force, led some officers to turn an otherwise useful technique for lowering gang violence into what appears to the Panel to be an opportunity to obtain money from people with no gang association.

4. The Strike Force was not directed or administered by any one law enforcement agency and therefore was not accountable to any specific police or Sheriff's office or any civilian review panel or similar body.

5. The Strike Force had far less internal supervision than a standard metro area police or Sheriff's office of comparable size.

6. Advisory Board members were focused on running their own agencies, and had insufficient time to oversee a large independent police force.

7. The Strike Force had little administrative support and no clerical staff with sufficient training and experience in law enforcement best practices relating to the handling of evidence and seized funds.

[5] The Panel has been informed that some officers may have kept additional files at their home agencies. It is possible that these additional files, if they exist, may shed additional light on the work performed in these investigations.

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8. The Strike Force did not have a functional Record Management System in place, nor a uniform reporting method for its officers. Strike Force officers were unable to perform routine tasks using computers such as name checks or to determine whether another officer had prior contact with an individual or a location.

9. As a result of issues 1-8 above, some Strike Force officers engaged in conduct that would be unthinkable at their home agencies. As the conduct continued without challenge, it appears to have increased over time.

- **Recommendations of the Review Panel**

1. **Stand Alone Strike Forces**. The Panel recommends against the continued use of stand alone strike forces not administered and directed by any specific law enforcement agency. The lack of accountability and supervision with a stand alone force is too problematic, even if some can function well on occasion. Should law enforcement want to utilize stand alone forces in the future, we recommend that a prosecutor participate in the strike force, overseeing its investigations and tactics. Any stand alone strike force should be staffed by personnel with significant experience in the handling of evidence and the processing of forfeitures. The strike force should be audited by experienced professionals who oversee these matters at other law enforcement agencies and should be given a short time to correct deficiencies. If staffing is inadequate to handle evidence, funds and forfeitures, the strike force should be shut down.

2. **Forfeitures**. The Panel recommends against the use of forfeitures as a significant factor in the funding of a law enforcement agency or strike force. The Panel also recommends that the legislature examine whether Minnesota's current forfeiture statute should be revised to provide more protections against the type of conduct described in this Report. We also recommend that law enforcement adopt best practices guidelines regarding forfeitures – guidelines that would deter the type of conduct that occurred here.

3. **Saturation Details**. The use of saturation details should be carefully supervised by an officer present on the scene to prevent the type of conduct discussed in this Report. Saturation details should have a narrowly-defined scope and purpose and the officers involved should be carefully briefed on their tasks and role.

4. **Appointment of a Special Master**. We recommend the appointment of a Special Master to administer the funds that remain in various Strike Force-related forfeiture accounts and to insure the proper disposition of other evidence and personal property currently in the possession of the Strike Force. The Special Master should be charged with returning funds and property to individuals in situations where the funds and property were not submitted to forfeiture and where the individuals were not given proper notice of their right to challenge a seizure.

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5. **Anti-Gang Efforts in the Future**. We also recommend that the Commissioner of Public Safety convene a meeting of law enforcement officials and local prosecutors to create a new approach to investigating gangs across jurisdictional lines. The new approach should involve coordinated efforts at information sharing and the ability to coordinate investigations and prosecutions.

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THE METRO GANG STRIKE FORCE REVIEW PANEL'S FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

Background

The Metro Gang Strike Force was created by the Minnesota Legislature in 2005. The Mission of the Strike Force is restated a number of times, and is summarized in the "Joint Powers Agreement Creating the Metro Gang Strike Force" as follows:

> The Metro Gang Strike Force (hereinafter "MGSF") is hereby established by the Parties to coordinate efforts to prevent gang activity; and investigate, apprehend and prosecute those individuals engaged in such crimes which could be defined as gang related or crimes committed for the benefit of a gang.

This definition of the Strike Force's mission is consistent with the understanding of Strike Force Advisory Board members as to what they believed their officers were doing while assigned to the Strike Force. As board members explained to the Panel, they believed that the officers assigned to the Strike Force were engaged in gang-related investigations and prosecutions, and that their work was designed to prevent gang violence and develop information on gangs that could be used in state and federal prosecutions. The board members we spoke with explained that they were not told that Strike Force officers were spending a great deal of time on matters having nothing to do with the investigation of gangs.

Prior to its formation in 2005, the Strike Force was part of the Minnesota Gang Strike Force. In 2003, the Minnesota Gang Strike Force lost much of its funding from the state legislature. At that time, the Minnesota Gang Strike Force relied on a variety of sources for funding, including forfeitures. Officers familiar with the Minnesota and Metro Gang Strike Forces told the Panel that many who worked at the two Strike Forces developed a "depression era" mentality about funding that included constant concern that the entities would not survive financially. According to the people who spoke with us about this topic, the concern about the ability to fund the Strike Forces' operations most likely led to the increased focus on forfeitures as a revenue source.

Two Strike Forces

During our review, the members of the Panel were repeatedly struck by the contrast between the hard and thorough work of some Strike Force officers on gang-related cases and the unfocused, and sometimes unethical and highly questionable conduct of others engaged in saturation details and stops and searches unrelated to gang activity. The contrast is so great, that it appeared as though there were in fact two Strike Forces: one that adhered to the mission set out in the Joint Powers agreements, and one that functioned as an independent police force with few constraints.

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In the dialogue that follows the issuance of this Report, it is our hope that the good work of the "first" Strike Force is not lost on the public and policy makers. Despite the egregious conduct of some, the Strike Force made positive contributions in a number of ways. As policy makers consider the needs of law enforcement in fighting gangs going forward, they must take into account the need for these types of positive efforts.

As to the contributions of the Strike Force, our review indicates that:

- Many Strike Force officers worked hard to develop gang-related intelligence that led to important investigations and prosecutions. In support of this work, Strike Force officers coordinated activities with other state, local and federal law enforcement agencies and prosecutors and contributed to successful gang prosecutions. In addition, Strike Force officers coordinated the sharing of gang-related information among a variety of law enforcement bodies and often assisted local police forces through the dissemination of important information.

- Strike Force officers cooperated with investigations outside of the metro area when called upon by other jurisdictions and lent their knowledge and expertise to the efforts of others.

- Strike Force officers, most notably the Commander, willingly gave their time to outreach efforts with schools, non-profits and others to describe efforts and techniques useful to prevent the spread of gangs.

At the same time, these constructive and laudable efforts cannot mask the stain created by the highly questionable conduct described in this Report, the conduct of that "second" Strike Force. As we reviewed documents, members of the Panel were struck by how many cases had no connection to any gang activity and could not be reconciled with the mission of the Strike Force. The Strike Force's mission does not support the creation of roving "saturation" details that stop people for traffic violations or seize the funds of an undocumented alien who has committed no other offense. Yet this is what we found, many times over. The mission of the Strike Force does not contemplate officers seizing large quantities of personal items during the execution of search warrants without any effort to tie these items to criminal activity. Yet this was a regular occurrence. And the mission of the Strike Force does not authorize officers to take seized items home or purchase these items for their own personal use. But this is what happened, time and again.

In this Report, we will provide examples of the egregious conduct we conclude took place at the Strike Force. As professionals who have worked closely with law enforcement, we have nothing but the greatest respect for the work that police officers, investigators and sheriff's deputies perform on a daily basis. Nothing that we found during this investigation changes our views. Yet, something went terribly wrong at the Metro Gang Strike Force, and it should not be allowed to happen again. The misconduct we discovered during the course of our investigation was appalling and outrageous. We provide details about this misconduct, and suggestions for how to avoid it in the future. There are many lessons to be learned from the misconduct that

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occurred at the Strike Force, and, in this Report, we provide our thoughts and recommendations concerning those lessons.

The Panel's Work

Upon formation of the Panel in late May 2009, the Panel members set out a work plan and methodology for organizing our efforts, making findings and reaching conclusions. The plan and methodology are set forth below:

- First, based on the findings contained in the Legislative Auditor's report and our own initial observations, we conducted a thorough inventory of the items in the evidence room.[6]

- Next, we made every effort to match items found in the evidence room to specific case files at the Strike Force offices.

- In addition, we conducted a review and inventory of all evidence (such as weapons, narcotics, photos) and other property related to the work of the Strike Force found in lockers, desks and other areas outside of the evidence room.

- Early on, the Panel obtained the work papers of the Legislative Auditor and the work files related to audits performed by the Department of Public Safety. We reviewed these documents to determine potential problem areas warranting further investigation.

- At the same time as we were conducting evidence and property inventories and reviewing the work performed in prior audits, we began to review select case files. The case files we reviewed consisted of the following:

    - Case files related to evidence logged into the Strike Force evidence room where items were missing and could not be accounted for;
    - Case files related to seizures and forfeitures questioned in prior audits, including files identified as containing "unclaimed evidence";
    - Case files that were believed to provide information concerning unidentified evidence found both in and outside of the evidence room; and
    - Case files reviewed as a result of information obtained from a witness or other information.

- We also reviewed a number of files and documents related to how Strike Force employees and supervisors addressed evidence and procedural issues.

- We obtained records from an on-line auction company utilized by the Strike Force for the sale of property and interviewed the principal of that company.

[6] This work was performed by Panel Member Egelhof with the assistance of employees and interns from the Department of Public Safety. Given the disorganized state of the evidence room, the inventory took many weeks to complete.

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- As we reviewed evidence, prior audits and case files, we identified a number of Strike Force employees and individuals not employed by the Strike Force for interview. We then contacted these individuals to request an interview. A number of Strike Force employees chose not to grant us interviews.

- Lawyers representing individuals who interacted with the Strike Force contacted us to discuss issues related to the Strike Force. We interviewed a number of these individuals.

- We received information relevant to our inquiries from the Office of the Attorney General and the Legislative Auditor.

- Our efforts to reconstruct the activities of Strike Force employees and to understand the rationale for certain actions were repeatedly hindered by the lack of useful documentation in case files.

- Finally, we reviewed certain policy questions with Strike Force Advisory Board members to determine whether they were aware of certain conduct and to understand their views regarding some of the allegations we were investigating.

The Panel's Methodology for Making Findings

During the course of our work, we were presented with many allegations, rumors and suggestions of misconduct by Strike Force officers. We were determined not to allow individual agendas or pure rumor to affect our work, and therefore put into place a protocol for reaching findings and conclusions:

- Whenever possible, we looked for documents or information that would either support or refute an allegation. If we came across a document or information that appeared to be legitimate and disproved an allegation, we did not include that allegation in our Report.

- No allegation was included in the Report unless it was confirmed by at least two sources. On most occasions, allegations were confirmed by more than two sources. On those occasions in which only two sources provided information regarding an allegation, we relied on additional information gathered from documents and other sources to consider the credibility of the allegation.

- As noted above, we met with individuals who interacted with the Strike Force to learn about their encounters. Some we found credible, others less so. If we had any question about the reliability of their information or could not substantiate their allegations through independent means, we did not include their allegations in the Report.

- After gathering the information described above, the Panel members considered the various allegations and areas of inquiry and reached a consensus as to what should be contained in this Report.

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ALLEGATIONS RELATED TO THE SEIZURE AND HANDLING OF EVIDENCE AND PROPERTY

It is difficult to classify, in terms of severity, the areas of misconduct revealed by this investigation. At the outset, however, we want to make clear that we found the allegations related to the handling of evidence to be shocking. Searches – whether conducted pursuant to a warrant or other lawful means – are so highly intrusive that there is an entire body of constitutional law related just to this subject. Law enforcement officers, prosecutors and judges receive extensive training on the law related to searches and the seizure of property. Given the amount of attention and training dedicated to Fourth Amendment issues within law enforcement, there is no excuse for the cavalier attitude displayed by some in the Strike Force with respect to the execution of search warrants and the treatment of seized evidence. The training provided to officers, prosecutors and judges is designed to ensure that all involved in our criminal justice system understand and respect the delicate balance between the legitimate and important needs of law enforcement to investigate and prosecute criminal activity and the profound concern for individual rights and liberties set forth in the United States Constitution. Based on our review, it is clear that some officers at the Strike Force lost sight of this delicate balance.

While our focus on problems related to searches and seizures led us to many areas, we began our inquiry by examining the troublesome and undefined category of "unclaimed evidence." Strike Force documents – whether in case files or in separate files dedicated to evidence issues – listed items seized during searches and placed them into different categories. Some items were held for use in court cases while others were submitted for forfeiture, destroyed or sold at auction.[7] Other items were simply listed as "unclaimed evidence." Because the category "unclaimed evidence" was not defined in any Strike Force documents we reviewed, and there was such a substantial amount of "unclaimed evidence" identified in the files, we spent time tracing the origins of these items, as well as their disposition. Our findings reflect the many problems we uncovered as we conducted our research into this category of seized property.

Unclaimed evidence, for the most part, turned out to represent money and property seized during the execution of search warrants or taken during the stop of an individual but not needed for court cases and not submitted to the Attorney General for forfeiture. In many cases involving unclaimed evidence, it does not appear that Strike Force officers provided the owner with notification of their right to contest the seizure and forfeiture.[8] It is therefore not surprising that much property went unclaimed – the people who could make the claim were not informed of their right to do so and no attempt was made to let them know that the property was available to

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[7] Currency, automobiles and certain valuable items are subject to administrative forfeiture when they are seized pursuant to a lawful search in a narcotics case. Once law enforcement provides notice of the seizure and intent to forfeit the items, these items are presumed to be subject to forfeiture unless challenged by the owner. The owner has 60 days to challenge the forfeiture through a demand for a judicial determination of the forfeiture and must then establish that the items were not the proceeds of criminal activity nor intended for use in a narcotics transaction.

[8] On occasion, there was a last minute attempt to fix the problem by contacting the owner of the property at the end of an investigation.

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be released to them. In a significant number of Strike Force cases, there was no follow-up investigation or prosecution, and thus no need for the property as evidence.

Given the extraordinary volume of property that Strike Force officers seized, and the fact that so much of this property had no apparent nexus to criminal activity and was of no evidentiary value, we explored why Strike Force officers would seize it in the first place. We found two explanations, both deeply concerning.

Taking Property Officers Believed People Did Not "Deserve" to Own

The first explanation for Strike Force officers seizing such a large volume of material that was not needed as evidence comes from a mindset that developed within the Strike Force. This mindset was described by the Commander of the Strike Force in a candid assessment provided to the Legislative Auditor. In his interview with the Legislative Auditor, the Commander was asked about the term "unclaimed evidence" and was asked to distinguish between property constituting evidence and other items seized for forfeiture. His forthright response provides an insight into why some officers engaged in the troubling practice of seizing items unrelated to their cases:

> Q: Okay. Now we've heard different terminology. We heard unclaimed evidence, we heard seizures, we heard forfeitures, we heard evidence. So how, when your guys go out to do a search warrant or a bust, how is the property that is seized identified either as evidence or forfeiture? Or is there a distinct line there?
>
> A: I can't speak to the person that was out there and what was in their mind. If something is pertinent to the charge, we got a gun and we're charging the guy with an assault with a gun, that would go under the, you know, evidence, cause that would be used in court. They go out to a – some mope, he's a dope dealer, he's never had a job and he's got this whole array of stuff that's really neat, that's better than the stuff the copper's got in his house, and they have this thing that they don't deserve so we're going to take it, we're going to forfeit it. You know. That's just the mentality of the coppers. So you almost have to tell 'em, quit taking stuff, you know, just take the, you know.

In our review of Strike Force case files, we found much support for the notion, expressed by the Commander, that some Strike Force officers were engaged in the practice of seizing items that were "really neat" and that officers clearly believed the individual did not "deserve" to have. In many cases, the Commander's explanation appears to be the only one that makes sense. Because officers appeared to seize a large number of personal items from suspects without any consideration of how the personal items might relate to any criminal activity, one is left with the distinct impression that officers simply believed that the owner did not "deserve" to possess those items.

Items that appear to fit this description – that is, items the owner did not deserve to have – included: tools, jewelry, appliances, televisions, computer equipment, electronics equipment and recreational items such as an ice auger. The Panel was struck by the number of

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large screen and flat screen televisions, along with electronics and computer equipment, that officers seized in case after case.

Notably, the Commander was not the only one to spot this problem. Some officers we interviewed expressed their own concerns about the nature of the seizures they observed. Some told us that they refused to participate in these broad seizures, and, when assigned to certain search teams, preferred to wait outside while a search was conducted.

Taking Items for Officers' Personal Use

The Commander's candid statement explained one reason why officers might want to seize items that they did not intend to use as evidence and did not plan to submit for forfeiture. But, we learned, there was another.

The problems at the Strike Force did not end with the overbroad execution of search warrants. Strike Force officers also crossed the line when handling evidence. Interviews with Strike Force employees revealed that officers and employees routinely took property for their personal use. Sometimes officers and employees literally took these items home, while on other occasions they paid for them. Indeed, at the Strike Force offices, we located some isolated records, some of which were handwritten, confirming the sale of items such as televisions, jet skis, trailers, tools, and a washer/dryer to Strike Force employees. Witnesses described that it was common for Strike Force employees to take home televisions and computer equipment, among other items. One witness described it as a "free for all."

There can be no ambiguity regarding this conduct. No professional law enforcement agency allows employees to take seized evidence home for their personal use. Similarly, law enforcement agencies do not allow for private sales of seized property to their employees. Many do not even allow officers to bid on seized evidence sold at public auction. Moreover, this conduct directly violated the policies and procedures governing the Strike Force. The "Operating Procedures and Guidelines" adopted by the Minnesota State Gang/Drug Oversight Council on May 2, 2006 provides for the disposition of evidence at the end of a case.

> *3-14.10 Disposal of Evidence*. When no longer needed for evidentiary purposes, all evidence, except contraband and forfeited property, shall be returned to the owner unless title to the evidence has been transferred by court order or in another lawful manner, or the lawful owner fails to claim the evidence within sixty (60) days of notification. In such cases, the Task Force may:
>
> - Destroy it;
> - Dispose of it at public auction;
> - Retain it for use by the appropriate jurisdiction.

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The Guidelines contain no provision allowing officers to keep seized evidence or to buy it from the Strike Force itself.[9]

Moreover, there may have been some attempt to hide who was purchasing items. One handwritten list we found simply included a list of items sold (two televisions sets and one chainsaw), the cases the items came from and the amounts ($30 and $25 each for the televisions, $35 for the chainsaw). Conspicuously absent from this brief report was any mention of who purchased the items. On other occasions, items were purchased using money orders, cashiers checks or third party checks.

Finally, our review of the evidence room supports the conclusion that many items were taken by Strike Force employees. When the inventory of evidence at the Strike Force offices was complete, we found many items that were listed as being in the Strike Force evidence room that we could not locate. There is no record of these items being destroyed or sent to auction. They are simply missing. We also found many other items of evidence that could not be linked to any specific case. We designated these items as "unidentified" evidence. Some of these items were found in officers' desks, lockers and other locations in the Strike Force offices.

We then compiled a list of possible "missing" and "unidentified" evidence. We reviewed the case files connected to those items where possible. Because the Strike Force was permitted to auction off evidence at the end of a case, however, we compared our preliminary "missing" evidence list with the list of items sent to auction[10], and with the items on the "unidentified" list in attempt to determine whether items were truly missing. This process took many weeks to complete. At the end of this process, we were able to identify some items originally thought to be missing that might have been auctioned. Many items, however, remain unaccounted for and are simply missing.

We not only conclude that officers took items from the Strike Force offices for their personal use, but there is also reason to believe that they did so with the knowledge that the items could be returned to rightful owners. For example, we learned of two instances where apparent stolen property could have been returned to its rightful owner but was not. In one case involving a trailer, the rightful owner was easily identified, yet the trailer was sold to a relative of a Strike

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[9] During Advisory Board meetings, Strike Force representatives stated that property no longer needed for active cases was given to charity or other agencies. The Advisory Board was specifically told that vehicles were sent to auction. As the Legislative Auditor found, the Strike Force entered into an agreement with Cars with Heart for the disposal of many vehicles. We did not find evidence that Strike Force employees informed the board of the Strike Force's relationship with Cars with Heart.

[10] During much of the time in question, the Strike Force sent items for auction to an online auction company, Crankyape.com. We interviewed the owner of Crankyape.com and obtained from him a comprehensive list of all items sent from the Strike Force. We also compared that information with lists maintained at the Strike Force offices of items designated to be sent to Crankyape.com. Notably, some of the lists at the Strike Force contained items that were originally designated for Crankyape.com, but were pulled from the list. These included televisions and computer and electronics equipment.

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Force officer. In the second case, a new, expensive 4-wheel ATV could have been returned to its owner but was converted to the Strike Force's own use by equipping it with police lights. In these instances, there is no evidence in the Strike Force's files to indicate that the owners gave permission for the Strike Force to keep the items.[11]

In addition, we found many troubling examples of items of evidence located outside of the evidence room including:

- narcotics and currency from old cases (either reported destroyed or apparently never entered into evidence) in locked file cabinets;
- electronics apparently seized from an unknown case located in an officer's file cabinet;
- a backpack containing two handguns from a specific case found inside a safe utilized by certain members of the Strike Force despite the fact that the weapons were listed as being in the evidence room.[12]

Finally, we learned that many items listed as "destroyed" in case files were actually still in the evidence room or outside of the room but in the Strike Force offices. In October 2008, the Department of Public Safety conducted a review of the Strike Force that revealed specific problems concerning the handling of evidence and forfeiture funds. The Department and the Advisory Board considered retaining an independent audit firm to conduct a more thorough audit. As a result, on November 14, 2008, the chair of the Strike Force Advisory Board issued a written order that no further property would be destroyed pending the audit. In December 2008, Strike Force officials disregarded the order and instructed officers to destroy items no longer necessary for their cases. A Strike Force employee then requested that numerous officers sign blank destruction authorization forms. Indeed, the Panel found a large stack of signed, blank authorization forms in the Strike Force offices. Many case files contain notations in January 2009 claiming that property was destroyed. Many such items were, in fact, not destroyed, but remain in the evidence room.

FINDINGS CONCERNING ISSUES RELATED TO THE HANDLING AND DISPOSITION OF EVIDENCE AND PROPERTY

The Panel concludes that officers took seized property for their personal use and, on certain occasions, purchased property for themselves and their family members. This is in violation of the Strike Force's policies and procedures and would not have been permitted by

[11] Shortly before finalizing this Report, the Panel was informed that some members of the Strike Force claim that the owner of the ATV did not want it returned. We were unable to verify this information. In any event, there is nothing in the case file to document that the owner did not want the item returned.

[12] Also inside the backpack was a sawed off rifle that we could not identify as belonging to any specific case. In addition, the backpack contained small amounts of narcotics and other items.

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officers' home law enforcement agencies.[13] The Panel only reviewed a small percentage of case files and we were only able to interview a limited number of Strike Force employees. As a result, we believe that there may be many more examples of improper conduct with respect to the handling of evidence and seized property.

The following are some specific examples of what the Panel learned during the investigation:

- **Televisions**. Witnesses told us that, over the years, a number of officers took large screen and flat screen televisions home for their personal use. In one instance, witnesses recalled that an officer took a large screen television home for that officer's child as a present. Other witnesses admitted that they were given valuable items of evidence from the Strike Force evidence room as "presents."

- **Laptops and Computer Equipment.** Witnesses also stated that it was routine for officers to take home for their personal use seized computers. In one example, the Panel was told that an officer took home a seized laptop, and later asked a Strike Force employee to help fix problems with the laptop.[14]

- **The Ice Auger.** Strike Force employees recalled an instance when an ice auger (often used to assist in ice fishing) went missing from the evidence room. The auger was seized as part of a narcotics case. At the conclusion of the case, the owner requested that the ice auger be returned. During ice fishing season, it was widely discussed at the Strike Force that a particular officer had taken the auger. The officer in charge of the case threatened to obtain a search warrant for the home of the officer who took the auger. The auger was then quietly and anonymously returned to the Strike Force offices. We interviewed the owner of the auger who recalled that the officer who returned the item remarked that it had been slightly used by another officer.

- **The Missing Watches.** In one case, an officer executed a search warrant in a matter involving theft of stolen property. Among the items seized, were 70 watches, many with the price tags still on them. Most of the tags indicated that the watches were to be sold for approximately $100. Shortly after the seizure, the officer in charge of the case was approached by a Strike Force employee who asked him to sign a blank form allowing for the destruction of evidence in his cases. The officer was told that this was being done to facilitate the destruction of a large amount of evidence that was no longer needed. The officer refused. The officer then noticed two Strike Force employees and the relative of a Strike Force employee in a conference room. All three were looking through the

[13] We also note that the Advisory Board was told by Strike Force leaders that seized items were given to charity or destroyed. We are not aware of any evidence to suggest that the Board was told that officers took items home or purchased them.

[14] We have been informed that some Strike Force officers have stated that they used laptops removed from the evidence room for official purposes. The Panel has not located any documents authorizing officers to remove laptops for work-related purposes.

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watches. One was holding a watch up to their wrist. Upon seeing the officer in charge of the case watching them, one of the employees stated that they were not doing anything wrong. During our inventory, only 50 of the 70 watches could be found in the evidence room. In addition, the case file contains the statement that all of the watches were sent to a specific jeweler to be sold. The jeweler denies receiving any of the watches. Indeed, the jeweler clearly recalls that a Strike Force employee contacted him to determine if he was interested in selling these watches. The jeweler explained that he was not interested. Yet, the employee entered a notation in the file that all watches were given to this jeweler. As a result, 20 watches potentially worth $2,000 are missing, and the case file contains a false statement that the watches were given to a jeweler for sale.

- **Missing Evidence.** In addition, the following is a sampling of the items that fall under the category of "missing" evidence after a review of the evidence room, case files related to the evidence in the evidence room and a cross check with items auctioned. Based on the statements of witnesses, and the lack of documentation indicating what happened to these items, there is reason to believe that many were taken by employees of the Strike Force for their personal use:

    - Drill set
    - Bosch jigsaw
    - Black and Decker laser level
    - Bostitch air nailer
    - HP laptop
    - Laptop of unknown make and model
    - DVD/VHS player
    - 2 Televisions of unknown make and model
    - 5 DVD players
    - 11 Speakers
    - GE Refrigerator
    - Various sanders
    - Kahler Powerwasher
    - Graco Paint Sprayer
    - Snowblowers
    - Magnavox Flat Screen television
    - Tool set
    - Battery charger
    - Baseball cards
    - Computer equipment
    - Silver tea service and platter
    - Magnavox VHS recorder
    - Reciprocating saw
    - Powermate generator
    - Air compressor
    - A set of dining room chairs
    - Yamaha stereo receiver
    - NEC computer screen

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- HP printer and HP flat screen monitor
- Dell and Gateway laptops
- Sony camcorder
- Jewelry[15]

- **Items Purchased by Strike Force Employees.**[16] We have obtained documents that indicate the following items were purchased by Strike Force employees for the following amounts:

Trailer	$300
Trailer	$500
2 Jet Skis	$800
Television	$30
Television	$25
Washer/Dryer	$75
Electric Stove	$175
Chain Saw	$35
Large chair	$190[17]

- We also found many items in the evidence room, such as jewelry, televisions, electronics equipment and other items that were falsely marked as destroyed in their respective case files.

- In addition, jewelry from different cases was often put together in packages in the evidence room.[18]

ALLEGATIONS RELATED TO STRIKE FORCE INTERACTIONS WITH INDIVIDUALS AND THE SEIZURE OF FUNDS

The Panel investigated two types of allegations related to Strike Force officer interactions with the public and questionable conduct related to the seizure of funds. First, we investigated interactions between Strike Force officers and the public that arose from saturation details.

[15] Over the years, Strike Force officers seized many pieces of jewelry. Because of a significant lack of documentation as to the items seized, photographs or detailed descriptions, it is impossible to determine with any degree of confidence what jewelry might have been destroyed, sold or taken by officers. We are able to conclude, however, that a great deal of jewelry is missing.

[16] Few of the items listed here were processed through formal forfeiture proceedings. For many of these items, we were able to determine that they were sold to officers for far less than their true value.

[17] Through interviews of those involved, we have learned that this chair was sold to an officer as a present for the officer's spouse.

[18] All of these problems lead us to the conclusion that the integrity of the Strike Force evidence room was compromised.

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Second, we investigated allegations that arose from cases in which Strike Force officers chose to follow leads and other information in potential drug cases unrelated to gang activity. Regardless of whether the interaction was part of a saturation detail or a tip of some kind, one thing remained constant: when individuals stopped by the Strike Force on these occasions had money, it was typically seized by the officers.

There were a number of troubling aspects to these allegations. First, most of these encounters had no relation to gang activity. The case files do not mention gangs and there is nothing to indicate that the officers involved suspected the individuals of gang activity. Second, these encounters almost always involved a person of color. Whether the person was in a car, on the street or at a location, they were often singled out for nervous or suspicious behavior. In one case described below, the file simply states that officers were told "Hispanics" would be at a specific location to pick up narcotics. Two families of Hispanic descent had funds seized as a result even though they had nothing to do with drug dealing.

In addition, officers appeared to conduct themselves much differently when working for the Strike Force than if they were still back at their home agencies. Many of the cases we reviewed involved individuals who possessed small amounts of marijuana. Law enforcement officials we spoke with explained that it would be highly unusual for officers to seize large amounts of money from people during street stops simply because they possessed $10 worth of marijuana. But that is exactly what occurred on a regular basis at the Strike Force.

FINDINGS RELATED TO STRIKE FORCE INTERACTIONS WITH INDIVIDUALS AND THE SEIZURE OF FUNDS

The following are a few examples of the type of conduct we learned of through witnesses and case files:

The Impound Lot Case and Seizure of Funds

A minimally documented Strike Force case file indicates that officers received information that people of Hispanic descent would arrive at the Minneapolis impound lot to retrieve a car that had narcotics in the trunk. There was no information in the file to suggest where this information came from, or whether the source was a reliable informant. That evening, two separate families arrived at the impound lot to retrieve two vehicles. One family was of Honduran descent, the other of Mexican descent. They did not know each other prior to that night.[19] When the two families arrived and requested the release of their cars, Strike Force officers appeared, lined them up and forced all family members to stand with hands over their heads while they were frisked. No drugs or weapons were found and the officers recovered no evidence of illegal activity. One man from the Honduran family had $4,500 in his pocket from his position as foreman of a construction crew, while the man from the Mexican family had $100

[19] Our recitation of the facts of this matter is based on a review of the file as well as interviews with the family members who interacted with the Strike Force officers that evening. We also reviewed documents provided by the families related to the funds in their possession that night.

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in his wallet. Strike Force officers seized these funds and, in the case of the $4,500, made a point of remarking to one another about the large amount of money in the man's possession. Despite protests that these funds were legally the property of the men, the funds were not returned. Because both men were undocumented aliens, the Strike Force officers contacted ICE, and federal agents arrived to process the men for deportation proceedings. No drugs or other contraband were recovered from either man, and no member of either family was accused of participating in a gang.

The facts of this case are deeply troubling.

First, the case file does not make clear why the Strike Force officers took on this matter.[20] The tip that they received makes no mention of gang activity and is both vague and of questionable reliability. This matter could have easily been referred to the Minneapolis Police Department.

Second, the stop itself is of questionable validity. Officers conducting a stop must have reasonable suspicion that individuals are engaged in criminal activity. Here, the only information in the officers' possession were: (1) a vague claim that someone had "information" that Hispanics would arrive at the Impound Lot to retrieve a vehicle with narcotics in the trunk; and (2) the unremarkable fact that two families of Hispanic descent had arrived at the Impound Lot to retrieve vehicles.

Third, when they stopped and frisked the two families, the Strike Force officers developed no information leading to the conclusion that they were engaged in illegal conduct. To the extent that this interaction had any validity, it should have ended there. Instead, the Strike Force officers seized funds belonging to the two men.

Fourth, the Honduran man reported that $4,500 was seized from him. The limited documentation in the file indicates that $4,014 was seized. There is no documentation regarding the $100 the second man claims was taken from him. We were unable to resolve these discrepancies.

Fifth, while the men were undocumented aliens, the Minneapolis Police Department has a policy against contacting immigration authorities or asking suspects about their immigration status in situations such as this. It appears as though these Strike Force officers, acting on information in Minneapolis, failed to adhere to Minneapolis Police protocol. The two men now face deportation.

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[20] Strike Force officers complained to this Panel that too many officers dedicated time to "small time drug cases" with no gang connection. They related to the Panel that they believed the Strike Force should have been focused exclusively on developing cases against gangs. This view was reinforced by Advisory Board members who expressed concern with officers spending so much time on drug cases with no gang connection.

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The Motorcycle Stop and Seizure of Funds

Strike Force officers were working a saturation detail, driving the streets of a neighborhood where gang members were known to congregate. They noticed a man on a motorcycle violating traffic laws and pulled him over. Upon review, the motorcycle was unregistered. They then frisked the man and found a small amount of marijuana and $1,306 in cash. They seized the motorcycle and the $1,306 in cash. There is no evidence in the file to indicate that the man had any gang connections or that the officers tried to convince him to provide information on gangs (if he had any). There was no follow-up investigation in this matter, and the man whose funds were seized was not prosecuted for any offense.

This matter is of concern to the Panel for the following reasons. First, the purpose of a saturation detail is to show gang members that Strike Force officers are in the vicinity. The goal is to lower gang-related violence by establishing a deterring presence. Strike Force officers have access to a database of suspected gang members and their associates. Here, the officers stopped a man with no known gang connection for what amounts to a traffic type violation. Second, the amount of marijuana in his possession was equivalent to personal use, not trafficking. Third, while the officers may have technically had the ability to seize the $1,306 because the funds were in proximity to a controlled substance, police officers typically do not make seizures of this size when they encounter such a small amount of marijuana.[21]

Finally, this case – and the others just like it – gives the impression of officers roaming the streets, for the most part unsupervised, in search of funds to seize. Advisory Board members we spoke with were troubled by these types of encounters. In essence, they communicated to the Panel that this case is not what the Strike Force was supposed to be doing. If this was an isolated example of such conduct, it might not raise so many concerns. But it was not.

A Suspicious Car and the Seizure of Funds

During a saturation detail, an officer stopped a vehicle for suspicious activity. During the car stop, the officer found one marijuana cigarette, a bottle of Grey Goose vodka and $2,440 in cash. The officer seized the cash.

The Bar Stop and Seizure of Funds

One evening, a young man arrived at a bar in Minneapolis. It is a bar he has frequented on previous occasions. The bar employs a bouncer who frisks everyone who enters. This particular man had a large amount of cash on him and he showed it to the bouncer who frisked him. Within a minute after he entered the bar, the man was brought to a private room, along with another patron, and told to stand facing the wall with his hands above him. A Strike Force officer questioned him about gang affiliation, which he denied. The Strike Force officer then took the cash from his pocket ($3,600) along with about $10 worth of marijuana. The officer

[21] While no officer we spoke with condoned the use of marijuana or driving an unregistered vehicle, they were in agreement that police departments do not typically seize funds under these circumstances.

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accused him of engaging in a drug deal with the other gentleman who was brought to the office. The man with the $3,600 in his pocket explained that this was tax refund money and that he was shopping for a car for his fiancé. He offered to call the car dealer he had just visited. Both men stated that they came to the bar alone, and had never met before. The second man also had cash on him, money that the bouncer noticed upon his entrance to the bar. The second man did not have any marijuana on him. Both men were placed under arrest, and their funds, totaling over $5,600 were seized by the Strike Force.[22] The Strike Force conducted no further investigation and neither man has been prosecuted.

For many of the same reasons as set forth above, the Panel is deeply concerned about this encounter. There was no allegation that these men were engaged in gang activity, and no reason for officers from the Metro Gang Strike Force (as opposed to the Minneapolis police) to be handling this matter. The allegation that they were involved in a narcotics transaction makes no sense on its face, and neither man was subject to any follow-up investigation or prosecution. Again, if this was one isolated incident, it might not be as troubling (although we do not condone what occurred). But our review of case files suggests that this was not an isolated occurrence.

At the end of our interview, the young man with the $10 of marijuana in his pocket explained that he was still trying to get his money back. He expressed shock that officers would seize his funds and arrest him under these circumstances. As we ended the interview, he shook his head and stated: "I thought the police were supposed to protect us."

The Mistaken Identity Case

While staking out the home of an alleged fugitive, Strike Force officers noticed two men outside of the home, one of whom they believed to be the fugitive. They approached and stopped the two men and quickly realized that neither was the fugitive. Both acted suspiciously, however, and one tried to run from the officers. They were both handcuffed and searched. One man had a small amount of marijuana on him and $224 in cash. The second man had $230 in his possession and no marijuana. The officers seized both the $224 and the $230. Neither man appears to have been referred for prosecution, although both were arrested for possession and distribution of narcotics.

Searches of Cell Phones

Based on our review of case files, along with our interviews of officers and people who interacted with the Strike Force, it appears as though Strike Force officers routinely searched the cell phones of people stopped pursuant to saturation details. We found no evidence that officers conducting these stops obtained search warrants before searching the cell phones. While there

[22] When we interviewed the man whose $3,600 was seized, he was visibly shaken by this encounter and explained in detail where he had gone with the funds to look for a car, and the origin of the funds. The man is employed and denied any gang affiliation or involvement. He admitted that he smokes marijuana, and that the marijuana in his possession that night was for his own personal use.

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may be occasions when exigent circumstances require an officer to conduct such a search, this was a regular practice at the Strike Force. We found this conduct to be highly questionable.[23]

Pictures of Individuals Stopped On the Street

Similarly, we found a great deal of evidence to suggest that Strike Force officers conducting saturation detail stops would routinely take pictures of the individuals they encountered, including photographs with individuals holding Metro Gang Strike Force identifying information. These included pictures of children. We are troubled by this practice of requiring innocent people to be photographed as though they had engaged in illegal conduct. It is our understanding that these photographs were maintained at the Strike Force offices.

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[23] Similarly, the case files and the evidence room indicate that officers routinely seized cell phones and computers. There are dozens of cell phones and computers in the evidence room at this time. Yet, we found almost no evidence to suggest that officers conducted forensic analysis of the phones or laptops and few examples to suggest that they applied for warrants once the seizures were made. Search warrants would have been necessary if the officers wanted to investigate the contents of these items. Rather, it appears as though these items simply sat in the evidence room.

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ADDITIONAL ALLEGATIONS AND AREAS OF CONCERN

Potential Abuse of the NCIC Database

The Strike Force had access to the Criminal Justice Information System database, and, through it, the records of the National Criminal Information Center ("NCIC") database. This is a highly regulated database that the F.B.I. provides to law enforcement agencies for use in the investigation of criminal conduct. Law enforcement agencies receive training and strict instruction that the database is to be used for law enforcement purposes only.

The Panel heard from a number of witnesses who alleged that the NCIC system was accessed by Strike Force employees for non-governmental purposes. If true, this is a direct violation of the terms of use of the NCIC database.

Relative of a Strike Force Employee Given Access to Evidence

Numerous witnesses told the Panel that they observed a relative of a Strike Force employee in the Strike Force offices on a frequent basis handling evidence and seized property. There is no justification for allowing someone who is not employed by the Strike Force this type of access to the offices and seized property. This practice simply flies in the face of standard law enforcement protocol.

Blank Pre-Signed Property Destruction Forms

The Panel discovered a stack of blank, pre-signed evidence destruction authorization forms in the Strike Force offices. Witnesses explained that a Strike Force employee asked officers to sign the forms so that large quantities of property that was no longer needed could be destroyed. According to witnesses, the forms were to be signed in blank to speed up the process. Many were. Unfortunately, the forms were signed and placed into case files with notations that the property seized in those cases was destroyed. In some cases, this form was used to justify the destruction of evidence without the knowledge or permission of the case officer. In many instances, the property was not destroyed but remains in the evidence room. The case files therefore contain false documents and it is difficult to know whether items that are not in the evidence room were actually destroyed.

Remaining "Unclaimed Evidence"

Prior to our investigation, the Legislative Auditor and the Department of Public Safety identified a significant amount of currency and vehicles, along with other items of value, that were seized but never submitted to the Minnesota Attorney General's office for forfeiture. In most of these cases, there is no evidence that the required notification was given to the person from whom the item was taken. In other cases, the Attorney General rejected the forfeiture for failure to comply with legal requirements.

Similarly, both the Legislative Auditor and the Department of Public Safety have identified vehicles and other property that were seized but never submitted for forfeiture.

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In addition, the Legislative Auditor has noted that the Attorney General's office did not receive its 20% of forfeited proceeds as required by statute. Although there appears to have been an agreement between then Attorney General Hatch and the Strike Force in which the Attorney General allowed the Strike Force to keep this 20% of forfeited proceeds, the Legislative Auditor has not found any support in the statute permitting such an agreement. The Legislative Auditor recommends that the Strike Force pay to the Attorney General its statutory share of past forfeited funds.

The Panel is informed that various law enforcement agencies are holding, for resolution of these issues, approximately $1,000,000 in forfeited funds. In our list of Recommendations, we call for the appointment of a Special Master or Receiver with authority over these remaining forfeiture funds. The Special Master should return funds and property that were not properly forfeited and resolve the question of funds owed to the Attorney General.

Activities Immediately Following the Legislative Auditor's Report

The same day that the Legislative Auditor's Report was released, a small group of Strike Force officers started shredding documents at the Strike Force offices. We have been unable to determine what the officers shredded or why. Most likely at the same time, however, these officers placed large volumes of material in storage bins to be accessed by a professional document destruction firm used by the Strike Force. The firm had recently been to the Strike Force and emptied the bins. According to this firm, the bins were typically not full when they came to retrieve the items for destruction. The Panel examined the bins as part of our investigation. They were completely full, and contained a great deal of material from Strike Force case files. Some of the items placed in the bins for shredding included: several lists identifying Strike Force informants, information relating to currency held at the Strike Force offices, copies of documents confirming the amount of money seized in various cases and one entire Strike Force case file.

Within days of the Legislative Auditor's Report, a Strike Force employee tried to delete a computer file listing Strike Force informants. Two days after the Legislative Auditor's Report, the Strike Force received a fax from a local crime lab. The fax contained lab reports confirming that substances from a series of cases dating back up to eight years were narcotics. In some instances, the case numbers were incorrect in that the case files did not indicate that the substances tested in May 2009 were part of the case identified on the lab report.

Poor Security and Safety Practices

The Panel noticed many problematic practices that negatively affected the integrity of Strike Force records and personnel. These included the following:

- A large number of Confidential Informant ("CI") files, including names of the informants and other identifying information were found in an open box in the warehouse area at the Strike Force;

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- A card-index file of informant names and information was discovered in the unsecured file cabinet of a Strike Force employee;

- Two firearms in the evidence room had live rounds in the chamber, without any warnings or notification that this was the case;

- A can of highly flammable material was found in the evidence room.

Documentation Issues Regarding Confidential Informants

Our review of both case files and CI files[24] reveals a number of substantial issues, including the following:

- Many cases involving the use of a CI did not contain any reference to the CI by symbol or code number, thus eliminating any ability outside of personally contacting the officer who handled the CI to determine which CI provided information should that become necessary;

- In several instances, CI files did not contain any biographical data about the CI, thus, outside of the officer who handled the CI there is nothing to identify that CI;

- Often, CI files contained payment receipts that were not signed by the CI and there is nothing in the file in which the CI acknowledges receipt of payment. In addition, there are questions regarding the authenticity of the CI signatures in several files;

- The CI files themselves generally do not contain any independent debriefings or record of the content of information provided by the CI;

- On at least one occasion, a CI was paid with funds that had not cleared forfeiture by the Attorney General's office following a seizure;

- The above-mentioned practices and situations are in direct conflict with currently-accepted best practices utilized by most law enforcement agencies.

General Documentation Issues

- The Panel feels compelled to emphasize the unusually poor and problematic state of Strike Force investigative documentation. The most basic underpinning of criminal investigation is preservation and documentation. While there are a number of examples of well-documented cases, many of the Strike Force's case files fail to meet even minimal standards. This includes dozens of case files which are completely empty.

[24] The review of CI files was performed at the request of the Panel, but was undertaken by sworn officers.

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- Among the documentation problems we noted were those relating to the handling of evidence. In many cases, there was no documentation to establish when evidence was removed from the evidence room and when it was returned. In other cases, the signatures of officers on removal documents were illegible. Chain of custody sheets were often missing and various types of evidence were combined on one sheet, contrary to typical law enforcement practice. In a number of cases, the file contains no information to suggest that evidence signed out to another agency (such as a prosecutor's office) was received by that agency.

- Letters to property owners/subjects regarding the disposal of seized items were absent from many of the case files reviewed.

- In many cases, property owners were not given seizure notices informing them of their right to challenge the forfeiture of their property.

Documentation Concerning the Execution of Search Warrants

- While there may be additional records at officers' home agencies, many case files in which there were search warrants and seizures contain inadequate documentation, and more than a few contain nothing more than a brief report. In many cases, there were few photographs of the search, and those photographs that were taken were often inadequate.

Additional Issues Related to Cars with Heart

- The Legislative Auditor addressed the existence of a "hand shake" deal between a Strike Force employee and Cars with Heart. The Panel learned of additional concerns relating to the Strike Force's interactions with Cars with Heart.[25]

- The Panel has learned that Cars with Heart entered into an earlier agreement with the Strike Force, in addition to the agreement described by the Legislative Auditor. In that second agreement, Cars with Heart received two vehicles from the Strike Force in exchange for one vehicle donated by a private citizen.

- In addition, the principal of Cars with Heart informed the Panel that he provided a car to a Strike Force officer and one of the officer's relatives at discounts.

- Several of the vehicles transferred and ultimately disposed of by Cars with Heart apparently were never properly forfeited.

[25] At the time of the Legislative Auditor's original report, there was a question about the location of a number of vehicles. It is our understanding that the vehicles have been located. While this does not resolve other questions regarding the vehicles, it is useful that they have been found.

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THE PANEL'S FINDINGS AS TO THE CAUSES OF MISCONDUCT AT THE METRO GANG STRIKE FORCE

Part of the Panel's charge was to determine the causes of the problems at the Strike Force. As we discovered evidence of misconduct, questionable conduct and activities that would not be tolerated at a police force or Sheriff's office, we asked witnesses why they believed this happened. While there is no simple answer to this question, our work has revealed at least a basic framework for understanding how and why the Strike Force lost its way.

Based on our review, we believe that the problems discussed in this Report started as a result of two otherwise independent factors.

First, the predecessor to the Strike Force lost most of its funding in 2003. When the statewide Strike Force became the Metro Gang Strike Force, some of the same people made the transition. As noted earlier, these people never lost their concern over funding and the future of the Strike Force as an entity. This "depression era" mentality led, we believe, to an inordinate focus on forfeitures as the lifeblood of the Strike Force.

Second, the Strike Force was created to be a stand alone police agency. This is what law enforcement, and, ultimately, the legislature wanted. In the abstract, this makes sense: a group of dedicated officers from different agencies come to a neutral site in order to work across jurisdictional lines to fight a common problem. Because gangs do not operate within city and county boundaries, the agency fighting them also should not.

But there were significant flaws with this concept that, along with the perceived need for forfeiture funds, became major factors in what ultimately occurred. One flaw was the lack of external supervision. The Strike Force was to be supervised by the leaders of the law enforcement agencies that contributed officers to the organization. Each of these leaders, however, had more than enough on their plates. They had their own agencies to run, and little time to scrutinize the direction of the Strike Force. The other flaw has to do with the very nature of an independent stand alone law enforcement body. Our review shows that some officers took the idea of independence literally. Traditional law enforcement agencies have strict supervision protocols and multiple layers of review. Some officers likely viewed their time at the Strike Force as an escape from the onerous supervision at their home agencies. As a result, they believed that the independence provided by the stand alone structure gave them the ability to do what they wanted, even if they could not do it at their home agency.

The funding concerns and the fact that the Strike Force was a stand alone agency combined to allow for the development of other problems that led to the issues described in this Report. Were it not for the fact that the Strike Force was a stand alone agency with little internal or external supervision, officers would not have been able to engage in the types of ill-defined saturation details as occurred here. But even the saturation details would not have been possible had the officers stuck to the original mission of the Strike Force. How were they able to stretch the force's mission to permit the type of conduct exhibited during saturation details? The answer is important to an understanding of the problems associated with the saturation details.

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Working at an independent stand alone agency with little supervision, some officers were able to define their mission broadly. Since a good deal of gang activity involves the distribution of narcotics, they believed they could justify investigating all potential narcotics cases, regardless of overt gang connections. The same was true for cases involving the potential for violence, stolen property and a whole array of other crimes. Because gangs *could* be involved in any of these matters, they seemed to have taken the position that the Strike Force *should* investigate all of them. This type of "mission creep," (defining the mission so broadly as to encompass purely non-gang activity) in our view, when coupled with the ability to engage in roaming patrols for illegal conduct, was a disastrous combination. Freed of the constraints of a highly supervised environment, their broad definition of the Strike Force's mission became the rationale for officers driving through neighborhoods stopping people for traffic violations with small amounts of marijuana.

Finally, there is a reason why so many law enforcement agencies have strict evidence reporting and handling procedures, provide oversight relating to seizures and employ highly trained and experienced property and forfeiture professionals. The temptation to take an item that you believe no one needs or does not "deserve" (whether for personal gain or punitive reasons) exists. The vast majority of law enforcement officers do not require policies and procedures to avoid the temptation. But some do. And the Strike Force was sorely lacking in policies, procedures and highly trained staff to prevent such activity. When taken in combination with the other factors described above, this failing was the final straw. There is no excuse for the conduct of the officers who took items for their personal use. But as we look to the future, we should make certain that we do not take officers from a highly regulated environment and place them into a chaotic one. The risk that some will stray is too high.

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RECOMMENDATIONS

1. **Stand Alone Strike Forces**. We recommend against the continued use of stand alone strike forces not administered and directed by a specific law enforcement agency. While some stand alone forces may work well under certain circumstances, stand alone agencies are too prone to a lack of supervision and a lack of accountability. Police agencies need accountability and careful supervision. It is simply too difficult to make certain that this is done when no one police agency is in charge. Rather, we recommend coordination of anti-gang efforts across jurisdictional lines and a mechanism for the sharing of information. Despite this recommendation, to the extent that policy makers decide to utilize stand alone strike forces in the future, we suggest that they need an active and engaged board that includes an executive committee with the time to ensure that audits, evaluations and staff reviews are performed promptly and in a meaningful fashion. In short, if they agree to participate in a stand alone agency, board members must commit to taking the time to make certain that the strike force operates with the same type of supervision, review, documentation standards and oversight as their own home agency. In addition, if a stand alone strike force is to be used in the future, there should be strict time limits on how long Commanders and Assistant Commanders can be in place along with time limits on strike force officers.

2. **Prosecutors as Strike Force Participants**. Many strike forces around the country are either run by a prosecutor, or have a prosecutor overseeing investigations and law enforcement tactics. This is one important way to make certain that investigations follow the mission of the strike force and stay on track. We recommend that law enforcement consider this model for any future anti-gang efforts.

3. **Saturation Details and Forfeitures.** Our review of a number of case files suggests that officers used saturation details to obtain large seizures. Saturation details must be carefully constructed such that the roaming, unsupervised police actions that took place in this instance cannot occur again. Strike forces need written guidelines governing the circumstances in which seizures will be made in cases in which no follow-up investigation or prosecution is contemplated. Strike force officers engaged in saturation details must be closely supervised. Saturation details must be carefully scrutinized so that they are consistent with the mission of the strike force and not simply a means for making seizures or confronting individuals. Moreover, command and control should be exercised by a supervisor from the jurisdiction in which the detail is taking place.

4. **Staffing.** Any strike force or task force that will handle large amounts of evidence and seized assets requires experienced and professionally trained staff dedicated to overseeing these functions. These staff members must have the appropriate technological resources to perform their work.

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5. **Auditing**. Similarly, strike forces and task forces should be subject to rigorous audits by teams comprised of professionals with significant experience in the handling of evidence and seized property. These audits should be made available to the public. If the audit teams raise any concerns for the force's handling of these matters, they should issue a list of corrective actions and schedule a follow-up audit to determine if the issues have been resolved. No strike force or task force should be permitted to operate with insufficient staffing or with apparent flaws in its system of handling evidence and seized assets.

6. **Forfeitures as a Funding Mechanism.** We recommend against the use of forfeitures as a significant source of funding for law enforcement operations. No law enforcement officer's employment or salary should be dependent upon seizures or forfeitures. The same should be true of any law enforcement agency. This is consistent with the guidance of the Department of Justice's "National Code of Professional Conduct for Asset Forfeiture."

7. **The Forfeiture Statute.** Under Minnesota's forfeiture laws, officers can seize funds and other valuable items under circumstances that create a presumption that the items are subject to forfeiture. This presumption requires an individual to challenge the forfeiture and establish that the items were not related to criminal activity. If no challenge is made, no lawyer reviews the facts of the case and the items are cleared for forfeiture. In some of the cases described in this Report, individuals retained lawyers and are challenging the attempt to forfeit their funds. Based on what occurred at the Strike Force, we have concerns about the breadth of the forfeiture statute and the lack of legal oversight of the process. We recommend that the legislature, in conjunction with law enforcement officials, prosecutors and defense lawyers, consider whether Minnesota's forfeiture laws provide sufficient oversight and protection for the rights of individuals and whether principles or guidelines binding on law enforcement are warranted given the practices detailed in this Report.

8. **Appointment of a Special Master to Handle Remaining Forfeiture Funds**. The Panel has been informed that there are approximately one million dollars remaining in forfeiture funds in various Strike Force law enforcement accounts. Because proper notice has not been provided in some cases and the funds have not been submitted for forfeiture, and for other reasons, every effort should be made to return some of these funds. In addition, a number of vehicles have been seized without proper notification and have not been submitted for forfeiture. These vehicles will have incurred significant towing and storage fees that the owner should not have to pay. Moreover, the Legislative Auditor has recommended that funds be paid to the Attorney General pursuant to the statutory requirement that the Attorney General receive 20% of seized funds it handled for the Strike Force.[26] We recommend the appointment of a Special Master with authority to locate property owners, return property not lawfully forfeited

[26] The Panel was able to confirm that the agreement between Attorney General Hatch and the Strike Force regarding the Attorney General's share of forfeited funds (as reported in the Legislative Auditor's Report) was disclosed by the Commander to the Advisory Board.

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to them (including funds, vehicles and other items), pay for fees incurred on vehicles and determine how much needs to be paid to the Attorney General. The Special Master should be given a budget and a time frame to complete these tasks.

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CONCLUSION

Many of the officers of the Metro Gang Strike Force investigated gangs, followed the law and good police procedures, developed appropriate information on gang-related activity and assisted communities in their fight against the gang problem. But others took seized property for their personal use, engaged in highly questionable stops, searches and seizures and acted in a manner wholly inconsistent with the standards expected of Minnesota law enforcement officers. This is now a time to repair the damage by developing a new anti-gang approach that focuses on information sharing and the coordination of investigations and prosecutions. The public, along with law enforcement, should be involved in discussions going forward.

The Metro Gang Strike Force was started with the best of intentions. Along the way, some of its members lost their focus, engaged in egregious conduct and tarnished the reputations of all associated with this multi-jurisdictional body.

The temptation to lay blame for this course of events with one agency or another, and to point fingers, will be high. But this Panel believes that the opposite is necessary. Our charge was to disclose what went wrong, and to make recommendations for the future. Perhaps our strongest recommendation is that the discussions about the Strike Force that must now take place not resort to an exercise in placing blame. The appropriate authorities will review the conduct of the specific personnel who engaged in the wrongful acts set forth in this Report. They should carefully analyze the facts and take strong action where appropriate. But law enforcement and the public are still left with determining how to fight gangs appropriately and within the law. We encourage policy makers, law enforcement officials, community leaders and our elected representatives to engage in a constructive dialogue about the future of anti-gang efforts, a dialogue that will address the causes of this unfortunate episode without pointing fingers. We recommend that the Commissioner of Public Safety immediately convene a meeting of law enforcement leaders to develop constructive ideas for the future consistent with our recommendations. What occurred at the Metro Gang Strike Force is not the fault of any one person or any one governmental body. Anyone who chooses to lay such blame is oversimplifying what went wrong and why. In our discussion of the root causes of the misconduct and our list of recommendations, we have tried to provide some guidance for a productive dialogue about the Strike Force and future efforts to fight gangs. Our community deserves such a discussion.

Andrew Luger
John Egelhof

August 20, 2009

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STATE OF MINNESOTA

FINANCIAL AUDIT DIVISION REPORT

Metro Gang Strike Force

Special Review

May 20, 2009 **Report 09-18**

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EXHIBIT A

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The Financial Audit Division annually audits the state's financial statements and, on a rotating schedule, audits agencies in the executive and judicial branches of state government, three metropolitan agencies, and several "semi-state" organizations. The division has a staff of forty auditors, most of whom are CPAs. The division conducts audits in accordance with standards established by the American Institute of Certified Public Accountants and the Comptroller General of the United States.

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OLA
OFFICE OF THE LEGISLATIVE AUDITOR
State of Minnesota • James Nobles, Legislative Auditor

May 20, 2009

Senator Ann H. Rest, Chair
Legislative Audit Commission

Members of the Legislative Audit Commission

Sheriff Rodney Bartsh, Chair
Minnesota Gang and Drug Oversight Council

Chief Manila (Bud) Shaver, Chair
Metro Gang Strike Force Advisory Board

Captain Chris Omodt, Commander
Metro Gang Strike Force

This report explains the results of our special review of the Metro Gang Strike Force for the period July 1, 2005, through March 31, 2009.

Page 1 contains a Report Summary that presents our audit conclusions, key findings, scope and objectives, and background about the strike force. The Table of Contents indicates where to locate more detailed information about the audit within the report.

We discussed the results of the special review with the strike force's staff at an exit conference on May 7, 2009, and with the Metro Gang Strike Force Advisory Board on May 14, 2009. This audit was conducted by David Poliseno, CPA, CISA, CFE, (Audit Manager) and Sonya Johnson, CPA (Auditor-in-Charge), assisted by auditors Pat Ryan and Jerry Foty.

We received the full cooperation of the strike force's staff while performing this special review.

James R. Nobles
Legislative Auditor

Cecile M. Ferkul, CPA, CISA
Deputy Legislative Auditor

CC: Members of the Minnesota Gang and Drug Oversight Council
Members of the Metro Gang Strike Force Advisory Board
Sheriff Bob Fletcher, Ramsey County Sheriff's Office, fiscal agent
Mr. Michael Campion, Commissioner, Department of Public Safety

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Report Summary

Conclusions

The Metro Gang Strike Force's internal controls were not adequate to safeguard seized and forfeited property, properly authorize its financial transactions, accurately record its financial activity in the accounting records, and conduct its financial activities in a reasonable and prudent manner. The Metro Gang Strike Force was unable to account for at least $18,126[1] of seized cash and could not locate or support the legal disposition of at least 13 forfeited vehicles and one seized vehicle held as evidence. The Metro Gang Strike Force did not comply with some finance-related legal requirements for seized and forfeited property. The Minnesota Gang and Drug Oversight Council and the Metro Gang Strike Force Advisory Board did not provide sufficient oversight of the Metro Gang Strike Force's financial activity.

Key Findings

- The Metro Gang Strike Force did not develop basic internal controls to ensure that it properly safeguarded or accounted for all seized cash (Finding 1, page 7), seized or forfeited vehicles (Finding 2, page 9), or other seized property (Finding 3, page 10).

- The Metro Gang Strike Force did not adequately segregate key duties over its local checking accounts (Finding 5, page 11) or properly use confidential informant funds (Finding 6, page 12).

- The Metro Gang Strike Force used significant resources to send six officers to a conference in Hawaii without required prior approval from the board (Finding 7, page 14).

- The Metro Gang Strike Force frequently did not follow the state's statutory forfeiture procedures (Finding 8, page 15).

- The Metro Gang Strike Force did not distribute forfeited money and proceeds from the sale of forfeited property in compliance with statutory requirements (Finding 9, page 16).

[1] In its response to the draft report, the Ramsey County Sheriff's Office, the Metro Gang Strike Force's fiscal agent through December 31, 2008, asserted that it had deposited $2,960 of this amount, and that the unaccounted for amount was actually $15,166. We did not validate this claim.

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Audit Objectives and Scope

Our special review of the Metro Gang Strike Force covered the time period from July 1, 2005, through March 31, 2009, and included internal controls and legal compliance over forfeiture receipts and expenditures, confidential informant fund uses, local checking account activity, and seized and forfeited property.

Background

In February 2009, the Office of the Legislative Auditor (OLA) was asked to review certain financial concerns at the Metro Gang Strike Force. Based on a preliminary assessment of the issues involved, we decided to conduct an immediate review, primarily to determine whether the Metro Gang Strike Force had adequate policies, procedures, and internal controls to ensure appropriate handling of seized and forfeited money and property.

The Legislature created the Metro Gang Strike Force in 2005 as part of a reorganization of the state's approach to addressing gang and drug-related crimes. The Legislature dissolved the existing Minnesota Gang Strike Force and created a state level Gang and Drug Oversight Council with a mandate to establish and supervise multi-jurisdictional task forces and strike forces across the state. The law specifically directed the council to establish a Metro Gang Strike Force.

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Metro Gang Strike Force

In February 2009, the Office of the Legislative Auditor (OLA) was asked to review financial concerns at the Metro Gang Strike Force. Based on a preliminary assessment of the issues involved, we decided to conduct an immediate review, primarily to determine whether the Metro Gang Strike Force had adequate policies, procedures, and internal controls to ensure appropriate handling of seized and forfeited money and property.

Objective, Scope, and Methodology

We examined certain financial operations of the Metro Gang Strike Force from July 1, 2005, through March 31, 2009. Our objective was to answer the following questions:

- Did the Metro Gang Strike Force have adequate internal controls to safeguard seized and forfeited assets, including cash, vehicles, and other property; properly authorize its financial activity; accurately record transactions in the accounting records; and conduct its financial activities in a reasonable and prudent manner?

- Did the Metro Gang Strike Force comply with finance-related legal requirements, including state laws, joint powers agreements, and policies and procedures of the Minnesota Gang and Drug Oversight Council and Metro Gang Strike Force Advisory Board?

- Did the Minnesota Gang and Drug Oversight Council and the Metro Gang Strike Force Advisory Board provide sufficient oversight of the Metro Gang Strike Force's financial activity?

To answer these questions, we interviewed the Minnesota Gang and Drug Oversight Council's statewide coordinator, the chair of the Metro Gang Strike Force Advisory Board, the Metro Gang Strike Force's current and former commanders, other Metro Gang Strike Force staff, and employees of the Department of Public Safety and Ramsey County Sheriff's Office (the strike force's fiscal agent through December 31, 2008). We examined and tested documentation supporting transactions related to seized and forfeited property, confidential informant funds, and selected expenditures of state grant funds.

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Background

The Legislature created the Metro Gang Strike Force in 2005 as part of a reorganization of the state's approach to addressing gang and drug-related crimes. The Legislature dissolved the existing Minnesota Gang Strike Force and created a state level Gang and Drug Oversight Council with a mandate to establish multi-jurisdictional task forces and strike forces across the state. The law specifically directed the council to establish a Metro Gang Strike Force.[2]

As a multi-jurisdictional strike force, the strike force operates through joint powers agreements with the participating law enforcement agencies. The agreements provide that the strike force will be under the direction of a commander appointed by the Metro Gang Strike Force Advisory Board. According to the agreements, the board consists of the chief law enforcement officers (or their designees) from the agencies that participate in the strike force. As of March 2009, the Metro Gang Strike Force had 34 law enforcement officers from 13 local law enforcement agencies.

In 2005, Ron Ryan, who had been the statewide commander of the Minnesota Gang Strike Force, became the commander of the Metro Gang Strike Force. He served as commander until his retirement in October 2008. The Ramsey County Sheriff's Office was the strike force's fiscal agent and provided it with administrative support. In December 2008, after Commander Ryan's retirement, the advisory board appointed Chris Omodt, a captain with the Hennepin County Sheriff's Office, as commander of the strike force. It also designated the Hennepin County Sheriff's Office as its fiscal agent, effective January 1, 2009; as of March 31, 2009, it had not transferred these responsibilities to Hennepin County.

During the time period we reviewed, the participating law enforcement agencies paid the salaries, benefits, and expenses for staff assigned to the strike force.[3] The strike force funded its other operating costs, such as rent and supplies, primarily through state grants from the Department of Public Safety and with proceeds obtained through forfeiture of seized cash and property. State grants totaled about $2 million each fiscal year. The strike force's fiscal agent reported forfeited money and property to be $125,913, $148,238, and $394,283 for fiscal years 2006, 2007, and 2008, respectively. As noted in the findings in this report, the strike force did not deposit all forfeiture proceeds with the fiscal agent.

[2] *Minnesota Statutes* 2008, 299A.641, subd. 3(2).

[3] The participating law enforcement agencies received partial salary reimbursement through state grants from the Department of Public Safety.

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Conclusions

The Metro Gang Strike Force's internal controls were not adequate to safeguard seized and forfeited property, properly authorize its financial transactions, accurately record its financial activity in the accounting records, and conduct its financial activities in a reasonable and prudent manner. The Metro Gang Strike Force was unable to account for at least $18,126[4] of seized cash and could not locate or support the legal disposition of at least 13 forfeited vehicles and one seized vehicle held as evidence.

The Metro Gang Strike Force did not comply with some finance-related legal requirements for seized and forfeited property.

The Minnesota Gang and Drug Oversight Council and the Metro Gang Strike Force Advisory Board did not provide sufficient oversight of the Metro Gang Strike Force's financial activity.

The following *Findings and Recommendations* further explain the basis for these conclusions.

[4] In its response to the draft report, the Ramsey County Sheriff's Office, the Metro Gang Strike Force's fiscal agent through December 31, 2008, asserted that it had deposited $2,960 of this amount, and that the unaccounted for amount was actually $15,166. We did not validate this claim.

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Findings and Recommendations

Inadequate Internal Controls and Financial Practices

Finding 1

The Metro Gang Strike Force did not properly deposit or account for all seized cash.

After a complete review of strike force and fiscal agent documentation of forfeited cash transactions, we were unable to substantiate the disposition of $18,126 of forfeited cash.[5] The strike force's records showed that on 15 occasions, from September 2004 through July 2008, cash was removed from the property room, but the fiscal agent had no record of a corresponding deposit.

The strike force's seized cash process lacked fundamental internal controls, as follows:

- The strike force did not deposit seized cash immediately with the fiscal agent. The strike force held seized cash in the property room for extended periods. For example, during August through November 2008, the strike force deposited about $378,000 that it accumulated over a lengthy period of time. As of February 2009, the strike force still had on hand nearly $400,000 of seized cash, some of which related to cases dating back to 2000 when the strike force's former commander was the head of the Minnesota Gang Strike Force.[6]

  The former commander told us he believed that the inability to produce the actual cash seized as evidence at trial would negatively affect the outcome of the case. The oversight council's operating procedures and guidelines stated that digital pictures of seized cash were acceptable evidence at court trials and required that all seized cash be deposited immediately with the fiscal agent. Other law enforcement agencies we spoke with, including the state's Bureau of Criminal Apprehension, followed this practice. The delay in depositing this cash increased the risk of loss or theft.

[5] In its response to the draft report, the Ramsey County Sheriff's Office, the Metro Gang Strike Force's fiscal agent through December 31, 2008, asserted that it had deposited $2,960 of this amount, and that the unaccounted for amount was actually $15,166. We did not validate this claim.

[6] In 2005, the Legislature dissolved the Minnesota Gang Strike Force and created the Minnesota Drug and Gang Oversight Council with a mandate to establish and supervise multi-jurisdictional task forces and strike forces across the state, including a metro gang strike force.

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- The strike force did not maintain adequate records of cash seizures. The administrative assistant's tracking records were not complete to track the flow of cash. Once the former commander prepared a deposit, the administrative assistant would delete these transactions from her tracking record so that her record would only include cash held in the property room. She also did not always update the tracking records when seized cash was returned to the owner. Without a complete record of the disposition of the seized cash, there was no assurance that all cash removed from the property room was actually deposited.

- The strike force did not adequately separate incompatible duties. Once the investigators brought the seized cash to the office, only the administrative assistant had access to the cash, the receipt tracking records, and the investigators' case files. No one independent of the cash handling process verified that the cash seizures reported in the case files and the receipt tracking records agreed to cash held or deposited with the fiscal agent.

  Once the strike force decided that it would make a deposit, the strike force's former commander had complete control of the deposit process. He notified the administrative assistant when funds were forfeited and cleared for deposit, prepared the deposit, and brought the funds to the fiscal agent. He sometimes made errors in his deposit memos to the fiscal agent; in 13 instances, he inaccurately identified related case numbers or had math errors. The strike force's former commander did not have someone review the deposit memos or verify the supporting currency count sheet. Such a review could have detected these errors.

- The strike force sometimes bypassed the fiscal agent deposit process and used seized cash for other purposes. We identified three instances when seized cash, totaling $15,111, was not deposited with the fiscal agent and used directly for confidential informant activities. We also identified one instance when the strike force deposited $11,657 of seized funds into its "travel and training" account. To maintain appropriate accountability over seized cash, the strike force should have deposited these funds with its fiscal agent.

This lack of fundamental internal controls created an unacceptable risk of fraud and, together with the discrepancies identified, made it impossible for us to conclude that all seized cash was either held in the property room or deposited with the fiscal agent.

Recommendations

- *The strike force should immediately deposit all seized cash with its fiscal agent.*

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- *The strike force should comply with the oversight council's operating procedures and guidelines for seizures.*

- *The strike force should develop fundamental internal controls for its cash receipts process, including maintaining accurate accounting records, separating incompatible duties, and reconciling the case files, the accounting records, and the deposits.*

Finding 2

The Metro Gang Strike Force did not adequately safeguard or account for seized or forfeited vehicles.

The strike force could not locate 13 of the 80 vehicles forfeited between August 2005 and October 2008. The strike force's records and the case files did not contain information to document the vehicles' locations. Through the administrative forfeiture process, seized vehicles that are forfeited become the property of the strike force. The Department of Public Safety provided us with evidence showing that as of April 2009 these vehicles had active titles, and three of them were still registered to the person they were seized from or a lien holder. In addition to the 13 forfeited vehicles, the strike force was also unable to locate one seized vehicle it was holding pending a court hearing.

The strike force's vehicle seizure process lacked fundamental internal controls. The strike force did not have accurate records to show the location of seized and forfeited vehicles. Although the strike force had a contract for towing and impound services, strike force investigators sometimes had the cars towed to other law enforcement impound lots. The strike force's vehicle tracking report was not always consistent with the information contained in the criminal case files about where a vehicle was actually towed.

The oversight council's operating procedures and guidelines did not adequately address vehicle seizure and tracking practices. Without formal operating procedures, there is an increased risk that the strike force will not properly safeguard and account for seized and forfeited vehicles.

Recommendations

- *The strike force should develop fundamental internal controls for its vehicle seizure and forfeiture process, including maintaining accurate inventory records. The system should include information about the location of the vehicles, the status of forfeiture proceedings, and the final disposition of vehicles.*

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- *The strike force should develop formal policies that address towing and storing of seized vehicles and tracking seized and forfeited vehicles.*

Finding 3

The Metro Gang Strike Force did not establish sufficient internal controls for other seized property.

The strike force did not adequately account for and secure seized property. We learned of the following two instances when strike force personnel improperly handled seized property:

- The former strike force commander sold a seized flat screen television for $30 to a student worker employed by the Department of Public Safety working at the strike force. When the original owner later had a legal right to get the television back, the strike force had to recover the TV and refund the money to the employee.

- The administrative assistant gave some seized jewelry determined to have no value to another Department of Public Safety employee working at the strike force. Later, the employee's supervisor required her to return the jewelry to the strike force.

In addition, the strike force's property room lacked basic physical security, and inventory records did not agree to items in the property room. We saw numerous items in the property room that the strike force's records identified as destroyed. In addition, we were unable to find 7 of a sample of 62 items recorded on inventory records. Strike force personnel did not periodically compare its inventory records to items held in its property room.

In 2006, the Department of Public Safety's Office of Justice Programs approved a grant to the strike force that it could have used to obtain a computerized inventory system for its evidence and seized property. The Project Safe Neighborhood Grant for $168,000 provided funding to the strike force for technological equipment, software, and services. The strike force used some of these funds for other technology needs. However, because the strike force failed to submit a needs assessment, the Department of Public Safety cancelled $73,000 of the grant.

Recommendations

- *The strike force should dispose of seized property in accordance with applicable rules and regulations.*

- *The strike force should ensure that the property room has adequate physical security.*

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- *The strike force should maintain accurate inventory records. It should consider obtaining a computerized inventory system.*

- *The strike force should conduct a periodic physical inventory of the property room to ensure the accuracy and integrity of the property room's inventory records.*

Finding 4

The Metro Gang Strike Force did not have sufficient administrative staff to conduct its operations.

The strike force had one administrative assistant to perform all of its administrative functions. This person maintained all of the inventory records, was the property room custodian, was responsible for two local checking accounts, controlled the confidential informant funds, sent seizure notices to the Attorney General's Office, obtained reimbursements from the fiscal agent, maintained the case files, and performed other office functions, such as answering phones and providing clerical services. The strike force had not documented the work performed by this person or developed any backup plans in the event of this person's absence.

The administrative assistant told us that she often worked weekends and evenings to try to keep up with her workload, and that even on her vacation days, she would regularly report to the office. Nevertheless, the oversight council's annual evaluation of the strike force's operations identified weaknesses in areas under the administrative assistant's control. By relying on one person for so much of its administrative functions, the strike force increased the risk of a breakdown in its financial operations.

Recommendations

- *The strike force should ensure that it has sufficient administrative resources to carry out its financial operations.*

- *The strike force should document key aspects of its financial operations.*

Finding 5

The Metro Gang Strike Force did not adequately segregate key duties over its local checking accounts and did not adequately control some of the accounts' activities.

The strike force did not segregate incompatible duties for checking accounts it has for its confidential informants and "training and travel" activities. The administrative assistant performed all functions related to these accounts. She signed all the checks, reconciled the bank statements, requested, endorsed, and

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deposited or cashed the checks from the fiscal agent, prepared the deposits, and made cash withdrawals for both accounts. From July 2005 through March 2009, the fiscal agent replenished about $138,000 to the confidential informant account and reimbursed about $56,000 to the training and travel account.

The strike force did not always obtain funds for the travel and training account through reimbursement from the fiscal agent. We identified two instances when this occurred. Finding 1 discussed the inappropriate deposit of $11,657 forfeited cash. In addition, the strike force inappropriately deposited into the travel and training account $12,252 from Reachout, Inc., identified by the former commander as a donation to be used for strike force vehicle repairs.

A good system of internal controls requires that policies and procedures are in place to ensure that receipts are properly safeguarded, deposited, and recorded, and an adequate segregation of duties exists. The lack of proper segregation of duties increased the risk of errors or irregularities from occurring and not being detected and created an unacceptable risk of fraud.

Recommendations

- *The strike force should ensure an adequate segregation of duties over the local checking accounts to ensure that no one person has complete control of the process.*
- *The strike force should only deposit reimbursements from the fiscal agent into the training and travel account.*

Finding 6

The Metro Gang Strike Force did not properly use or control its confidential informant fund activity.

The Metro Gang Strike Force failed to comply with the oversight council's operating procedures and guidelines and its own internal procedures related to the confidential informant fund. The strike force used this fund to pay confidential informants for information about criminal activity, to purchase evidence associated with criminal activity, and to purchase services and equipment for authorized undercover operations. The strike force mainly funded this activity through the grant from Department of Public Safety. It could supplement the grant funds with forfeitures. The strike force had the following weaknesses in its administration of this fund:

- The strike force inappropriately used about $5,100 of confidential informant funds for unallowable or unreasonable purposes, including the following:
  - $1,807 for evidence room shelving.

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- $1,000 advanced to the assistant commander without sufficient documentation.
- $850 advanced to investigators for evidence purchases that were not supported by information in the case files.
- $600 for a travel advance.
- $279 advanced to the former commander in violation of the oversight council's guidelines, which prohibit a strike force commander to disburse confidential informant funds to himself.
- $250 to purchase beverages at a bar for an investigator and/or informant.
- $138 reimbursed to the council's statewide coordinator for office supplies.
- $103 for a canister vacuum.
- $72 for doughnuts during a search warrant briefing.

- The fiscal agent did not perform an effective reconciliation of the confidential informant account. He did not reconcile the account to an authorized balance, did not resolve variances identified on the reconciliations, did not include all confidential informant funds in the reconciliation, and could not reconstruct prior months' reconciliations because he overwrote the files.

- The former commander kept $1,400 of seized funds in his office in case an officer needed confidential informant funds when the administrative assistant was not available. Strike force staff could not tell us how these funds were used, reimbursed, reconciled, or the disposition of these funds when the former commander retired.

- We also identified 179 instances where advances taken out by investigators were not settled within 10-14 days of the initial advance, as required by the strike force's internal policy. In one instance, the investigator failed to settle the advance for a year. To settle an advance, the investigator had to provide evidence of how it was used and return any unspent amounts to the administrative assistant.

- Finally, the fiscal agent did not require any documentation to support the amount requested to replenish the confidential informant account. Instead, the strike force's administrative assistant periodically requested a check from the fiscal agent for an arbitrary amount. The grant agreement requires that grant funds only be used to reimburse the strike force for actual costs.

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The oversight council's operating procedures and guidelines outline the management and operation of the fund. The strike force also had its own internal procedures for using this fund. The strike force's confidential informant fund practices did not comply with either of these procedures.

Recommendations

- *The strike force should only use the confidential informant funds for allowable and reasonable activities.*
- *The strike force should maintain adequate documentation to support all confidential informant fund activities.*
- *The strike force should ensure that it independently reconciles its confidential informant fund to an authorized amount, resolves all variances, and retains sufficient documentation.*
- *The strike force should require investigators to settle all advances within the required timelines.*
- *The confidential informant fund should be replenished on a reimbursement basis.*

Finding 7

The Metro Gang Strike Force used significant resources to send six officers to a conference in Hawaii without required prior approval from the board.[7]

Six officers from the Metro Gang Strike Force attended the International Conference on Asian Organized Crime and Terrorism held in Honolulu, Hawaii, March 22-27, 2009. The former commander approved the officers' participation in the conference without authorization from the advisory board. A board bylaw requires prior authorization by the board of expenditures exceeding $5,000. As of March 31, 2009, the strike force had paid $8,961 in costs related to the conference, with the possibility that additional costs could be paid. We estimated that the cost of the officers' participation in the conference totaled approximately $17,000, although some of those costs may be paid by the officers' home law enforcement agencies.

In January 2009, the new commander discussed with the board chair whether to cancel the strike force officers' participation in the conference based on concerns about the lack of board approval and the growing financial crisis in the public and private sectors. In a February 18, 2009, e-mail to the assistant commander, the commander stated that he was "quite upset" to learn that airline tickets to Hawaii

[7] Although the strike force paid for seven conference registrations, only six officers attended the conference.

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for strike force officers had been purchased. In the e-mail, the commander referred to an earlier conversation with the assistant commander when he had expressed concern that the conference was "not a good idea" and that they needed to reevaluate the situation. Despite the commander's concern, on March 18, 2009, the advisory board retroactively approved the strike force paying costs associated with officers attending the conference.

In addition to the advisory board not authorizing the trip in advance of expenses being incurred, the strike force did not obtain prior approval from the Department of Public Safety. The grant agreement between the strike force's fiscal agent and the Department of Public Safety required the department's prior approval for out-of-state travel. The fiscal agent reimbursed the strike force for $1,365 of the conference registration fees from grant funds.

Recommendations

- *The strike force should obtain prior approval from the Metro Gang Strike Force Advisory Board for all expenditures exceeding $5,000, as required by board bylaws.*

- *The strike force should obtain advance approval from the Department of Public Safety for any out-of-state travel paid with grant funds.*

Noncompliance with Legal Requirements

Finding 8

The Metro Gang Strike Force frequently did not follow the state's statutory forfeiture procedures.

The strike force did not have documentation to show that it served seizure notices for 202 of 545 cash seizures we tested, totaling about $165,650. By not serving the required notice of seizure, the strike force violated the statutory administrative forfeiture process and may not have a legal right to retain the seized cash. As part of its operations, strike force investigators often seized property, including cash, suspected to be associated with criminal activity. They held this property for use as evidence in court trials, returned it to the owner, or took possession of it through the statutory administrative forfeiture process.[8]

Minnesota Statutes 2008, 609.5314, states that money, precious metals and stones, vehicles, and firearms and ammunition are presumed to be subject to administrative forfeiture if seized in connection with the seizure of a controlled substance. This statute prescribes the administrative forfeiture process, including a requirement to provide written notice to the owner of the property at the time of

[8] The strike force also seized property that did not qualify for administrative forfeiture.

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seizure or within a reasonable time after that, about their right to a judicial review. To invoke that right, the owner must file a demand for a judicial review within 60 days following service of the notice of seizure and forfeiture. If the owner does not file a demand for judicial review within 60 days, the property forfeits to the strike force. Failure to follow the statutory administrative process, including to properly safeguard and account for seized property, could jeopardize court cases or prevent the strike force from complying with the administrative and judicial review process.

Recommendations

- *The strike force should ensure that it serves notices to owners of seized property within a reasonable time after the seizure.*

- *The strike force should review all case files to determine whether it properly served the owner with a notice of seizure. If not, the strike force should work with the Attorney General's Office to determine the proper disposition.*

Finding 9

The Metro Gang Strike Force did not distribute forfeited money and proceeds from the sale of forfeited property in compliance with statutory requirements.

The strike force's former commander routinely directed the fiscal agent to retain forfeited amounts that should have been paid to the Attorney General's Office. Our review of forfeiture distributions made by the fiscal agent identified at least $229,000 retained by the strike force that should have been paid to the Attorney General's Office.

Minnesota Statutes 2008, 609.5315, prescribe how the strike force can dispose of forfeited property and how it must distribute forfeited money and proceeds from the sale of forfeited property. It requires that the strike force distribute the funds as follows:

- The strike force can keep 70 percent of the money or proceeds as a supplement to its operating fund for use in law enforcement.

- The strike force must pay 20 percent of the money or proceeds to the prosecuting agency that handled the forfeiture for deposit as a supplement to its operating fund for prosecutorial purposes. The Minnesota Attorney General's Office handles forfeiture proceedings for the strike force.

- The strike force must pay the remaining 10 percent of the money or proceeds to the state treasury, credited to the state's General Fund, within 60 days after resolution of the forfeiture.

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The strike force's former commander told us that when he had been commander of the Minnesota Gang Strike Force, he had a verbal agreement with the Attorney General allowing the Minnesota Gang Strike Force to keep the Attorney General's statutorily required 20 percent of forfeited funds. He said that, at that time, the Minnesota Gang Strike Force lacked sufficient funding for its operations. We are not aware of the Attorney General's authority to redirect forfeiture distributions required by statute. In addition, it was inappropriate for the commander to carry forward an agreement from the Minnesota Gang Strike Force to the operations of the Metro Gang Strike Force. Finally, in March 2009, the Attorney General's Office notified us that it had no knowledge or record of this agreement with the former Attorney General, and it expected to receive the forfeited funds that it was due under statute.

Recommendations

- *The Metro Gang Strike Force should remit to the Attorney General's Office its statutory share of past forfeiture money that the strike force inappropriately retained.*

- *The Metro Gang Strike Force should ensure that the Attorney General's Office receives its share of future forfeiture funds, as required by statute.*

Finding 10

The Metro Gang Strike Force did not report seizures to the Office of the State Auditor.

The strike force did not file an annual report with the Office of the State Auditor as required by *Minnesota Statutes*.[9] The statute requires all law enforcement agencies to file an annual report of each seizure incident to the State Auditor. Although the strike force had often seized property, it only reported one seizure to the State Auditor since 2005. According to that filing, the seizure occurred in 2007 for $1,322. The former commander stated that he believed the fiscal agent filed these reports.

Recommendation

- *The strike force should report all seizure incidents to the State Auditor, as required by Minnesota Statutes.*

[9] *Minnesota Statutes* 2008, 609.5315, subd. 6.

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Lack of Oversight by Council and Advisory Board

Finding 11

The Minnesota Gang and Drug Oversight Council and the Metro Gang Strike Force Advisory Board did not sufficiently oversee the Metro Gang Strike Force's financial operations.

Neither the Minnesota Gang and Drug Oversight Council or the Metro Gang Strike Force Advisory Board oversaw the financial practices of the Metro Gang Strike Force, allowing the strike force's commander to determine how the strike force would operate. Those practices put at risk the strike force's ability to safeguard and account for seized assets and maintain the integrity of criminal evidence.

The Minnesota Gang and Drug Oversight Council had broad responsibilities for drug task forces and gang strike forces throughout the state, including the Metro Gang Strike Force. In May 2006, the oversight council issued the *Multijurisdictional Task Force Operating Procedures and Guidelines Manual.* The council stated that this document served as the minimum professional standards for the strike forces' operations. Further, the council cautioned that variances from these minimum standards may jeopardize future grant funding through the Department of Public Safety. The oversight council's statewide coordinator used the guidelines as a basis to annually evaluate the strike forces' operations.

The Metro Gang Strike Force Advisory Board had direct oversight of the strike force. The advisory board's responsibilities included selecting and supervising the strike force's commander, reviewing the strike force's operations and other business, approving its expenditures, and selecting the strike force's fiscal agent. The advisory board chair had the authority to act on the board's behalf, if needed, to conduct day-to-day operations of the strike force. The advisory board met every other month.

Despite their expectations and authority, neither the oversight council nor the advisory board provided effective oversight to the Metro Gang Strike Force or its commander. For example:

- The advisory board did not create a position description for the strike force's former commander. A position description would define performance expectations and limits of authority. The advisory board also did not formally evaluate the commander to assess his performance. These were both provisions of the oversight council's operating procedures and guidelines.

- The oversight council's annual examination of the strike force's operations did not sufficiently consider whether its financial controls and practices met the minimum standards stated in the oversight council's operating procedures

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and guidelines. For example, the examination did not identify that the strike force routinely held cash for unreasonable periods of time after seizure, contrary to the guidelines, which required that the strike force deposit the cash as soon as possible. The former commander told us that he did not use the guidelines as a basis for his operating practices.

- The advisory board did not ensure that the strike force's former commander implemented recommendations made by the oversight council's statewide coordinator following his evaluation of the strike force's 2007 operations. For example, this report noted that the strike force had incomplete investigative case files, lacked data to track and organize case file information and investigative activities, and did not have appropriate documentation in its confidential informant files. When the statewide coordinator reviewed the 2008 operations, he found that the strike force continued to have deficiencies in these areas. The advisory board failed to ensure the commander resolved these deficiencies.

- Although the advisory board's bylaws required the commander to provide board members with a monthly accounting of all funds disbursed, the advisory board's meeting minutes did not indicate that it routinely reviewed expenditures to determine whether activities were authorized and appropriate. For example, the advisory board failed to identify that during 2008 the strike force had paid $3,185 in registration fees for seven strike force officers to attend a March 2009 conference in Hawaii.[10]

Recommendations

- *The Metro Gang Strike Force Advisory Board should perform an annual evaluation of the commander's performance.*

- *The Minnesota Gang and Drug Oversight Council should expand its annual reviews of strike force operations to ensure compliance with the minimum operations standards it adopted in its* oversight *council's operating procedures and guidelines.*

- *The Metro Gang Strike Force Advisory Board should actively monitor the strike force's financial operations, as outlined in its bylaws, to ensure that financial activity is authorized and appropriate, and that the strike force implements recommendations from the oversight council's annual evaluation.*

[10] Although the strike force paid for seven conference registrations, only six officers attended the conference.

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METRO GANG STRIKE FORCE

May 18, 2009

Mr. James R. Nobles, Legislative Auditor
Office of the Legislative Auditor
State of Minnesota
Room 140 Centennial Building
658 Cedar Street
St. Paul, MN 55155-1603

Subject: Response to the Legislative Audit

Legislative Auditor Nobles:

Thank you to you and your staff for conducting the audit of the Metro Gang Strike Force (MGSF). In working with your staff we found them to be professional and amicable. Below is our response to the draft audit report, including specific comments and actions plans for each of the individual findings; many of which are already in progress.

Starting back in the Fall of 2007 the Advisory Board began and continues the process of reviewing the structure and procedures established at the MGSF. This review resulted in the need to more comprehensively evaluate our evidentiary system, a plan for which was developed and adopted by the Board in October 2008. In this plan the Board opted to request a legislative audit if our original audit indicated concerns or other issues. However, during this process the Advisory Board was notified of your upcoming audit and the need to place our work on hold. Although the legislative audit was an option to our original plan, the result of the legislative audit has provided an independent review of the MGSF. The Advisory Board has seized this review as an opportunity to establish the framework for the Advisory Board and the MGSF commander to proceed forward in improving MGSF operations.

Finding 1

Inadequate Internal Controls and Financial Practices – The Metro Gang Strike Force did not properly deposit or account for all seized cash.

With the selection of a new commander, the fiscal agent responsibilities are in the

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process of being transferred to Hennepin County. This has allowed for an additional review of our records and processes. Currently, the Hennepin County Sheriff's Office readily allows for cash seizures from 2009 to be deposited at their Accounting Division and to date all seized monies from 2009 have been deposited. In addition, monies seized prior to 2009 have been separately deposited. These seizures are pending a thorough review of their status. To date all monies have been deposited with the exception of roughly $4,000 that is being held pending a civil litigation claim.

The Seized Evidence Currency Log that is utilized by investigators to verify seized monies was modified to allow for the investigator to notify their supervisor whether or not the seized cash needs to be held as evidence or can be deposited. A review for an electronic accounting/evidence system is also underway. It is anticipated the electronic system will enable better tracking of seized cash.

The legislative audit clearly points out some failures to follow established protocols, including submitting proper notifications and paperwork. The new commander has reviewed established protocols and reinforced with his staff the need to stringently enforce these procedures. Supervisors were instructed that any deviation from these procedures must have their signed approval. A secondary check and balance is being established at the case filing and journal entry points to ensure missing or incomplete paperwork is caught early on.

The MGSF is currently in the process of hiring the services of a bookkeeper on a contractual basis to improve internal controls in order to better track seized assets and property. The first task for the bookkeeper will be to review the accounting processes that are currently in place and to develop an improved system to mitigate concerns pointed out in the legislative audit. The target date for this bookkeeper to start is June 1st. As previously mentioned, the bookkeeper position provides an additional check and balance as seized monies are processed through our system. Serious consideration is being given to keep the bookkeeper position as an independent contractual person in order to build-in autonomous and segregate duties.

Finding 2

Inadequate Internal Controls and Financial Practices – The strike force did not adequately safeguard or account for seized or forfeited vehicles.

The new commander is in the process of revising the MGSF vehicle seizure policy so that all vehicles seized by MGSF personnel are reviewed by a supervisor as soon as practical after the seizure. This new process allows for a supervisory review of the legal basis of the seizure, to ensure that required legal forms have been served and that the vehicle is properly recorded.

Because there are multiple towing vendors used by MGSF personnel, it has complicated an inventory check. The commander is currently considering simplifying the use of multiple towing vendors in order to better account for seized and towed vehicles.

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As stated in our response to Finding #1, the MGSF is currently in the process of hiring the services of an independent bookkeeper to improve internal controls to better track seized assets and property. This would also include the tracking of seized and/or forfeited vehicles.

As outlined in our response to Finding #3 below, the MGSF will be moving to an independent, electronic evidentiary system. Seized vehicles are considered "evidence," and as such need to be entered into and tracked by MGSF's evidentiary system. The bookkeeper's records of seized assets and property, including vehicles, will be compared to the independent records of the evidence system on a monthly or quarterly basis.

Finding 3

Inadequate Internal Controls and Financial Practices – The strike force did not establish sufficient internal controls for other seized property.

The Advisory Board and the new commander are in the process of obtaining a contract with the New Brighton Police Department to utilize their property room. The New Brighton Police Department has recently completed a new, state-of-the-art property room with a 24-hour property staging area via an electronic, traceable, card entry system into their facility. A staging area consists of lockers where investigators can temporary place items to be formally placed into the property room and recorded in the evidence system by the property room specialist. This system in effect, keeps investigators out of the evidence room. Moreover, the New Brighton Police Department is in close proximity to the MGSF office thereby minimizing travel time for MGSF investigators.

Part of this agreement will be to establish a property room specialist to supervise the property room for both the MGSF and the New Brighton Police Department. The New Brighton City Council has conditionally approved the hiring of this position. Again, like the bookkeeper, to improve internal controls, the property room specialist is designed to be an independent position. The property room specialist would be responsible for receiving, storing, tracking, and disposing of evidence and conducting periodic audits of the property room. This is a desirable approach as consolidating resources, particularly in these tough economic times, simply makes sense.

The new commander has been in regular communication with the staff at the Minnesota Bureau of Criminal Apprehension (BCA) to possibly obtain a computerized record management system (RMS). The BCA is in the process of implementing a new RMS and should have this RMS in place by June 2009. The BCA has indicated they will allow the MGSF to connect into their system once their system is up and running. The BCA has assured that MGSF data will remain separate from other data in order to segregate different data and to mitigate any violation of data privacy laws.

This will be a significant improvement from the fractionized paper reporting and tracking system currently used by MGSF members. Having a single RMS will allow for supervisors to readily identify missing or lacking reports, as well as ensuring seized

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property has a corresponding incident report. Lastly, the new RMS will encapsulate a supervisory approval process, thereby bolstering accountability. The MGSF should have this new RMS in place by August 2009.

Finding 4

Inadequate Internal Controls and Financial Practices – The strike force did not have sufficient administrative staff to conduct its operations.

Administrative staffing is being actively discussed and is anticipated to be acted upon by the MGSF Advisory Board in the near future. The previous commander was provided resources to hire additional staff, but chose not to do so. With the new commander just starting, the Advisory Board wanted to let the commander make an assessment and propose a recommendation as to the staff he may require to properly manage the MGSF unit. Even prior to the legislative audit, he had recognized the need for additional support staff.

One sergeant recently returned to his home agency leaving the MGSF unit short one first-line supervisor, but this is expected to be a temporary vacancy. Currently, MGSF's structure consists of the Commander, Assistant Commander, three sergeants (line supervisors), 32 investigators, three criminal analysts (who are assigned from the Department of Public Safety), one office assistant and four student workers. The hiring of a property room specialist by the New Brighton Police Department will reduce some of the administrative and evidence duties that are currently assigned to the office assistant. The bookkeeper contract will also help in segregating administrative responsibilities, as well as expediting the implementation of improved internal controls. To maintain a separation of duties and multiple checks and balances, it is anticipated that both the property room specialist and the bookkeeping position will be requested as permanent, independent assignments/contracts.

The Advisory Board and the new commander are in discussion as to whether there should be two assistant commanders, a civilian assistant to the commander or an additional line supervisor to better manage and oversee this active and complex investigative unit. The previous commander and Board had struggled some in balancing the limited financial resources among administrative personnel and field investigators.

Finding 5

Inadequate Internal Controls and Financial Practices – The Metro Gang Strike Force did not adequately segregate key duties over its local checking accounts and did not adequately control some of the accounts' activities.

When the Hennepin County Sheriff's Office assumes the responsibilities as the fiscal agent, consideration in abolishing local checking accounts will be strongly considered in lieu of an alterative system, such as debit cards, in order to readily track expenditures

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while streamlining requests such as for informant reimbursement. If there is a continued need to maintain some type of checking account, the independent bookkeeper will provide a separate, autonomous control and review of funds associated with the account.

Finding 6

Inadequate Internal Controls and Financial Practices – The Metro Gang Strike Force did not properly use or control its confidential informant fund activity.

It is acknowledged better internal controls are required for this sensitive expense area. Supervisors need to more closely scrutinize these requests and subsequent documentation. Implementation of a debit card system should help in the documentation of transferred funds, as well as making access to funds easier for investigators at odd hours. This type of system has a proven track record in other task forces.

Finding 7

Inadequate Internal Controls and Financial Practices – The Metro Gang Strike Force used significant resources for six officers to attend a conference in Hawaii contrary to the direction of the commander and the advisory board chair.

The Metro Gang Strike Force Advisory Board has bylaws that were not followed by a number of personnel. As pointed out in the finding, any MGSF expense exceeding $5,000 needs pre-approval from the Advisory Board. The imminent hiring of a bookkeeper to set up internal controls should assist with the safeguarding of large expenditures. In addition, Advisory Board expense reports showing greater detail should alert Board members to non-routine expenditures. Lastly, the lack of written training requests, approvals and overall MGSF training records exasperated this incident. The new commander has been requested to improve this process.

Finding 8

Noncompliance with Legal Requirements – The Metro Gang Strike Force frequently did not follow the state's statutory forfeiture procedures.

All line supervisors have been re-trained in the review process of case files. They have been assigned to review past investigative files for completeness. Current investigative cases files are required to be approved by the unit's supervisor before the case can be closed or charged. Each unit supervisor is responsible for the completeness of his or her unit's cases.

In addition, the commander will be establishing a procedure to incorporate the property room specialist, the bookkeeper, the case file and the case attorney, as a multi-layer, autonomous check and balance system. Of primary importance, as supervisory approvals

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and internal control improvements are made, is the proper tracking, coding and reporting of forfeited assets.

Finding 9

Noncompliance with Legal Requirements – The Metro Gang Strike Force did not distribute forfeited money and proceeds from the sale of forfeited property in compliance with statutory requirements.

This finding illustrates the need to more clearly document and communicate with the Advisory Board when special circumstances are agreed too. The likelihood in resolving this claim will prove difficult and will likely consume considerable legal time. For future forfeitures the bookkeeper will be instructed to develop a record system to separately track individual forfeitures depending on the specific disbursement rule or law that applies to that forfeiture. The bookkeeper and Assistant Attorney General will need to conduct a comprehensive review of the separately deposited forfeitures (pre 2009), to determine the legal status of each forfeiture and the lawful requirements for their disbursement.

Finding 10

Noncompliance with Legal Requirements – The Metro Gang Strike Force did not report seizures to the Office of the State Auditor.

The new commander is considering developing a series of monthly reports in order to monitor MGSF performance based upon a specific activity. For instance, there may be property room reports, accounting balance sheets, open case status reports, open and completed forfeiture reports, etc., etc.. These reports may be used to more easily create an annual report. Required monthly reports, such as the report of seizures to the Office of the State Auditor, will be listed on a log or monthly "to do" list to be signed-off as each report or requirement is completed.

Finding 11

Lack of Oversight by Council and Advisory Board – The Minnesota Gang and Drug Oversight Council and the Metro Gang Strike Force Advisory Board did not sufficiently oversee the Metro Gang Strike Force's financial operations.

The Advisory Board acknowledges its responsibility for MGSF oversight. The previous commander had been with MGSF since its inception in 2006 and also had a long tenure with the Minnesota Gang Strike Force that was created in 1997. There may have been a belief that the commander was following duties and responsibilities carried over from being the statewide task force administrator. The previous commander's expertise with task forces, his lack of concern or reports to the Advisory Board about daily operations,

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impressive statistical annual reports and acceptable task force report cards most likely provided a false sense of accomplishment to the Advisory Board. That said, the Advisory Board's responsibilities are clear, the Board needs to have a more significant role in verifying that MGSF tasks are being properly accomplished and goals are being reached.

In pursing a possible solution to this recommendation, the Advisory Board has begun discussions on creating specific subcommittees to assist the commander and monitor particular MGSF functions. As an example, one subcommittee is proposed to help develop, support and monitor operational activities; the "how we do it" operations. Another subcommittee is proposed to assist in the support function (computers, building, supplies, etc.) or the "what we do it with" activities. This is comparable to established governance models in our county boards and city councils.

Prior to the selection of the new commander in 2009, a detailed position description, specifically designed for MGSF operations, was created and approved by the Advisory Board. The listed responsibilities in the commander's position description will be just one part of the commander's required annual review process. In addition, the Gang and Drug Oversight Council's annual task force report card will also be incorporated into the commander's goal and review process.

As the new commander assesses his staff and their specific assignment responsibilities required to manage the MGSF, additional position descriptions will be established. Having articulated, detailed responsibilities, combined with written measurable goals, is essential to accountability and continued improvement of MGSF operations.

With the establishment of independent support staff persons, such as the bookkeeper and property room specialist, and the Advisory Board subcommittees, combined with increased details in Advisory Board reports, will enhance the Board's ability to more readily identify and respond to operational deficiencies. While improvements to the MGSF are being made, specific reviews or increased audits may be in order. How this is going to be accomplished is currently being discussed by the Advisory Board.

Although this response cannot speak for the Gang and Drug Oversight Council, we both share an oversight responsibility. A specific dialog needs to take place on how task force advisory boards and the Council can better work together to administer and monitor task forces for compliance. Together we need to review the monitoring and evaluating processes in order to identify overlooked or underrated high-risk operational areas so that they are reviewed and rated in accordance to their risk. I am sure that as the result of this audit that discussion will take place.

Closing Comments

The objective and scope of the legislative audit was specific, a review of internal controls and legal compliance over forfeited assets. The purpose of any audit is to raise and identify areas of concern, which has been done. The Advisory Board acknowledges the

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results of this audit and is already using the recommendations as a basis for an improvement plan to mitigate these concerns and bolster MGSF operations.

Although specific issues have been identified, some of the findings such as unaccounted monies and forfeited vehicles still need further investigation. The exact status of these items has yet to be determined. This is the responsibility of the Advisory Board as we move forward.

Furthermore, the auditor's criticisms are one of management, not enforcement. It was not the audit's purpose to examine the growing drug and gang problem in the metro area, nor were the auditors responsible for measuring the effectiveness or value of MGSF investigators. The MGSF is and continues to be a formidable task force in mitigating gang and drug violence. No other task force is able to gather and share the information and intelligence as the MGSF is doing. Because of our unique multiagency partnerships, informational flow between MGSF members, their home agencies and communities is amplified. It is this informational flow that solves crimes and is essential in keeping violence in check.

The MGSF consistently partners to a much greater degree than any other task force in Minnesota with federal and state law enforcement agencies. In essence, the MGSF often becomes the hub in this collaborative enforcement relationship. This relationship is critical as gang and drug trends continue to expand across state lines.

No other task force in Minnesota can assemble and respond in the numbers that MGSF can. This resource and the MGSF investigators' unique expertise are vital for midsize and smaller agencies in their response to gang expansion and violence. It is essentially their community's only way to respond.

In closing, the issues raised in the auditor's report were long in their making. Many individuals during that time frame contributed to this problem. It will be the responsibility of the current Advisory Board and the new commander to make sure our response plan, which is already in progress, is implemented in short order.

Sincerely,

Manila Shaver, Advisory Board Chair
Metro Gang Strike Force

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BOB FLETCHER
RAMSEY COUNTY SHERIFF

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May 11, 2009

James Nobles, Legislative Auditor
Suite 140, Centennial Building
658 Cedar Street
St. Paul, MN 55155

Dear Sir,

After a review of the draft audit report for the audit of the Metro Gang Strike Force, the Ramsey County Sheriff's Office would like to provide the following comments for findings related specifically to the department's role as the fiscal agent.

Finding 1 - Page 7, line 8
"After a complete review of strike force and fiscal agent documentation of forfeited cash transactions, we were unable to substantiate the disposition of $18,126 of forfeited cash. The strike force's records showed that on 15 occasions from September 2004 through July 2008, cash was removed from the property room, but the fiscal agent had no record of a corresponding deposit."

Comment
Two of the case amounts totaling $2,960 were included in a deposit with the fiscal agent, but were inadvertently missed in the typed memo itemizing the cases included in the deposit. Unaccounted cash would therefore be $15,166.

Finding 6 - Page 13, line 32
"The fiscal agent did not perform an effective reconciliation of the confidential informant account. He did not reconcile the account to an authorized balance, did not resolve variances identified on the reconciliations, did not include all confidential informant funds in reconciliation, and could not reconstruct prior months' reconciliations because he overwrote the files."

Comment
The fiscal agent was never tasked with the responsibility of auditing the confidential funds. Our Account Clerk would monthly review the confidential cash by verifying that amounts issued by check from the operating grant were added into the account, and matching the balance of cash on hand plus outstanding advances and receipts to the authorized amount. He documented this

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reconciliation on a spreadsheet and kept copies, and updated the file each month for the new reconciliation. The monthly review was effective for keeping the confidential funds in balance and for pushing for the return of outstanding advances.

Finding 6 - Page 14, line 5

"Finally, the fiscal agent did not require any documentation to support the amount requested to replenish the confidential informant account. Instead the strike force's office assistant periodically requested a check from the fiscal agent for an arbitrary amount. The grant requires that grant funds only be used to reimburse the strike force for actual costs."

Comments

Confidential funds were issued by check to the strike force based on a signed memo requesting the funds by the Commander. The check amounts were generally for $10,000. The amount of cash on hand in the confidential funds at the end of every quarter was deducted from the amount requested for reimbursement from the State through the operating grant. Consequently, grant funds were only used to reimburse for actual costs.

Thank you for the opportunity to comment on the findings.

Trudi Winek

Trudi Winek
Accountant IV
Ramsey County Sheriff's Office

CC: David Poliseno, Audit Manager, Legislative Auditor's Office

MINNESOTA JUDICIAL BRANCH

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Date: May 12, 2009

To: James Nobles
Legislative Auditor, State of Minnesota

From: Ron Ryan
Former Commander, Metro Gang Strike Force

Subject: My Response to the Legislature Audit Report of the Metro Gang Strike Force Completed May 2009

BACKGROUND

The original Gang Strike Force was created during the 1997 Legislature. It was established to target gang members, for prosecution, who were involved in "criminal activity".

Our start was compared to starting up a moderate sized police department from scratch. We were a statewide multi-jurisdictional agency funded by state monies for our operating budget.

We created our own Policy and Procedural Manual by relying on several avenues of information. We brought forward our past practices from our respective law enforcement agencies; we asked the BCA for recommendations, that we put in place, for handling evidence money and intelligence information gathering; and we met extensively with lawyers from the MN Attorney General's Office who helped and later continued to monitor the policies we established.

During my eleven plus years as Commander for the Minnesota Gang Strike Force/Metro Gang Strike Force I had five different Assistant Commanders, throughout the years, and only one full-time Administrative Assistant who helped manage evidence and files at the Metro office.

PAST PERFORMANCE EVALUATIONS

Operational Program Review - November 1999

This independent audit was requested by the Oversight Council and was conducted by the Criminal Justice Services. They suggested we were operating in a more than adequate fashion.

Legislative Auditor Financial Audit - July 1, 1998 through June 30, 2001

This audit was requested by then Representative Rich Stanek. No findings of problems or irregularities.

Quality Assurance Audit/Assessment Report - March 2002

This independent audit was requested by the Oversight Council and was conducted by the Minneapolis Police Department Quality Assurance Unit. We were found to be operating in a very efficient and effective manner.

Administration Review of Local Grants - May 2002

This was conducted by staff from the Office of Drug Policy, MN Department of Public Safety.

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We received a report that we were, overall, well managed.

State Multi-Jurisdictional Task Forces Review - 2007
This was conducted by Bob Bushman, the Statewide Coordinator for the Gang/Drug Task Forces. We received an "excellent" rating with some recommendations for future improvements in two areas. We updated our Confidential Informant files per his recommendation and staff was continuing to work on record keeping for case file issues when I retired.

GENERAL COMMENTS BEFORE I ADDRESS SPECIFICS
Before I respond to several specifics about the auditors' findings I would like to preface my remarks with a few facts that may help in understanding my comments.

* For the record, in the first eleven plus years the Gang Strike Force existed I had been the Commander. I always reported to, at least, a 15-member Oversight Board. Over the years those members, my immediate supervisors, consisted of 39 different individuals who were Police Chiefs, County Sheriffs, Attorneys General, Superintendents, and State Commissioners. Each month I prepared a report for their information regarding our administrative activities and our investigative operations. These were then discussed at our monthly meetings.

* I left the Metro Gang Strike Force on October 10, 2009, when I retired. I obviously do not have any records or files. They remained at the office when I left several months ago. Therefore, I am the only person involved in this audit process who is hampered in being able to respond to these findings. I can only rely on my memory and my year-end reports for information.

When I left seven plus months ago I did prepare an exit memo, as I was requested to do, and sent it to the Chair of the Metro Gang Strike Force Oversight Committee, Chief Bud Shaver. I advised the Board that I would assist in anyway I could with the transfer of information or any other help I could provide with the transition to a new Commander.

I did not receive even a response that the Chair had received my memo which I knew he had. Since my retirement no one has asked me for any assistance with the transfer of information or with the two audits until I met with you and your audit staff on April 21st as you were completing your audit. Your auditors asked a few questions about not having located some files. I advised them I could not speak to why the current staff could not provide this information but could only suggest no one had ever asked for my input or direction during any of these processes.

* When I retired I left documents with the interim Commander indicating the total amounts of forfeiture dollars we had been responsible for that were legally taken from persons involved in criminal activities. From the year 2000 through 2008 I had deposited a total of **$2,253,203.00** with our fiscal agent. I also left a total of **$305,731.00** in cash that had not yet been cleared for deposit into our forfeiture accounts. This cash was evidence and was handled properly as such. The evidence was sealed separately with the corresponding case file numbers and documentation. The proper chain of evidence protocol was followed so the cash could be used

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as evidence in court or for final disposition as forfeited funds to be transferred to our fiscal agent.

* After several years of reducing our budget at the Legislature, the Gang Strike Force was dealt a crippling blow at the end of the 2003 Legislative Session. At 3:00 a.m. in the morning, at a strange conference committee meeting, then Representative Rich Stanek offered up some of our funding to Senator Jane Rannum for other purposes. She accepted, and the 2003 Legislature cut the **$3,000,000.00** left in our base budget, thereby eliminating all the money available to pay for police officers. Several departments were forced to withdraw from the Gang Strike Force. Those that stayed were reimbursed at a greatly reduced rate for the officers they contributed. The money we used from that point on to keep the Gang Strike Force in business came from the Metro Region forfeiture accounts.

* I have always felt it to be very important to keep the Oversight/Advisory Boards (my bosses) informed and up to date regarding the administration and operational aspects of how our organization was run. I prepared and detailed a report for discussion at our monthly meetings (the meetings became bi-monthly meetings in 2005). This was particularly important when we started using forfeiture funds for our operation. This was completely legal but we no longer could follow our established policy and procedures to the letter.

During this time frame, because of various positions they held, both now Commissioner Michael Campion and Sheriff Rich Stanek were members of our Advisory Boards. They received my reports and I cannot remember at any time that they considered our policy and procedures to be wrong or improper. At least they never informed me of any problems they had with the way we ran this organization.

MY RESPONSE TO A FEW SELECTED FINDINGS AND RECOMMENDATIONS
Note: Again, please remember I do not have access to files. These remarks are from memory or a few notes I may have taken.

Finding 1
(Page 7, Line 9) *"We were unable to substantiate the disposition of $18,126.00 of forfeited cash."*
I talked with you about this previously. I know the auditors missed a deposit of at least $2,960.00 from this total. We also would pay cash during exigent circumstances (but very rarely). I seem to recall just under $5,000.00 being paid to a state employee whose funding was lost. We paid her in order to keep her working with the Gang Net System until she could get her contract with either Ramsey County or the Saint Paul P.D.

I thought we placed cash into the buy/CI fund on more than one occasion during this time frame. Your auditors have identified the one transaction but not the other deposits. I would expect this would be part of these monies. We needed the money for operations immediately. These were exigent circumstances so I simply took the cash I received from Cindy and placed the monies in the buy fund. I did create a paper trail. (Normally I would deposit the cash with the fiscal agent,

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send a request for $10,000.00, take the check to the bank to cash, then we would bring the cash to the office and place the cash in the safe. This process could take up to a week. We needed the cash sooner.) There are a couple of other smaller amounts, I recall, that were needed immediately. One for use in obtaining information on a gang homicide. Money was needed on a weekend. A paper trail and receipts were in a file that apparently your auditors can no longer find.

As I said, we very rarely distributed these forfeitures in cash but on occasion we had done this in the past. I recall once paying for a training session for the Office of Justice Programs in cash. Their budget time frame had passed and this was the only vehicle we could find to pay the firm who put on the training and was long overdue their payment for services that amounted to approximately $3,000.00 plus. Again, we always created a paper trail of the transaction and receipts.

(Page 7, Lines 17 - 34) *"The Strike Force did not deposit receipts immediately with the fiscal agent...The delay in depositing this cash increased the risk of loss or theft."*
I have also previously addressed this issue. When I left, there was $305,731.00 in the safe. It was evidence and was sealed and followed the proper evidence protocol. I also advised your auditors that we were under orders from federal prosecutors that they needed the actual confiscated cash, for some of the cases involved. The court would not accept pictures of seized cash as evidence.

I'd like to address the auditors' comments, "The delay in depositing this cash increased the risk of loss or theft." To the best of my knowledge, with the procedures we had in place, never did we loose any of this cash evidence. The only real concern I now have is after reading an article in the Saint Paul Pioneer Press of April 10, 2009. It contained a quote made by the Media Spokesman for the Department of Public Safety. Following his comments suggesting there was something wrong or sinister by holding onto cash evidence, he stated "... the day Ryan retired and $300,000.00 in forfeitures was later found in the evidence room." This was a totally irresponsible public statement to make. By publicly identifying the location of this cash it certainly must have peaked the interest of many local burglars.

(Page 8, Line 22) *"The Strike Force Commander did not have someone review the deposit memos or verify the supporting currency log. Such a review could have detected these errors."*
The fiscal agent, in this case Trudi, obviously reviewed the memos when "she" counted the cash. If the memos and cash did not agree, she detected the problem and would notify me to rectify any discrepancies. This almost never happened.

Finding 2
(Page 9, Line 14) *"The Strike Force could not locate 13 of the 80 vehicles forfeited between August 2005 and October 2008."*
I called you on this finding. As I advised you, I know Officer John McManus filled out a report for Commander Omodt that was to be sent to your auditors with the dispositions for these vehicles, but your report still suggests no one can locate 13 vehicles.

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I cannot comment as to why the dispositions were not entered into the tracking report but it is my understanding the vehicles are all accounted for. I saw the list of vehicles and I know one went to the Saint Paul P.D. The vehicle is titled to them and is being used by one of their officers. At least three of the vehicles were involved in negotiations with lien holders when I left. We were trying to determine who would pay for storage costs before we would release the vehicles to them. There appear to be five or six vehicles listed that were released by the previous Assistant Commander when he cleared out a large number of vehicles from our contract lots. Again, I cannot speak to why their dispositions were not recorded.

Our Administrative Assistant, Cindy, receives a monthly updated record from the tow company. It lists what vehicles they are holding for us in their three lots. They also bill us for services and storage. These bills and reports have to reconcile before payment is sent to the tow company.

Finding 3
(Page 10, Lines 37 - 43) *"The Project Safe Neighborhood grant for $168,000.00 provided funding for technological equipment software and services. The Strike Force used some funds...However, because the Strike Force failed to submit a needs assessment, the Department of Public Safety cancelled $73,000.00 of the grant."*
This statement is very misleading. It is suggesting we should have used this money to improve the property room and we squandered the money.

We had several meetings with the U.S. Attorney's Office and worked on starting a collaboration with them on building intel on gang members. We developed a list of surveillance equipment that we needed to assist in our investigations and we made several purchases for computers and programs that has enhanced the work of our two Criminal Analysts. We also built a state of the art interview room at our office to help in our investigations. We also invited all law enforcement agencies to use our facility to assist in their work. All these purchases were made from our Project Safe Neighborhood grant.

As to the money that Public Safety suggested was canceled, I had been working with task forces in Greater Minnesota on assisting them with purchases using the money that was left over. The Office of Justice Programs suggested I stop working with them and they would take over caring for their needs.

Finding 4
(Page 11, Line 18) *"The Strike Force did not have sufficient administrative staff to conduct it's operations."*
That is an area we often struggled with. When we started we had two administrative people. After we started losing our funding, staffing suffered. We would employee part-time people from time to time but with the increasing workload that occurred the past few years, caused by the incredibly successful work of our investigators, it was apparent we needed to make changes. When I met with you and your auditors on April 21, 2009, you reported to me that at a meeting with the Advisory Board a month ago, you were advised I did not want more administrative help.

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This is simply not true. We identified approximately $30,000.00 that could be used to fill that position. I began working with Ramsey County to find an employee. We purchased a work station and had it installed next to Cindy's. However, in early 2008, at an Advisory Board meeting, it was decided to instead add an investigator from the North Saint Paul P.D. That was accomplished by using the money we had identified for the administrative position. Meanwhile, added administrative support was put on hold. I agree with your findings, there needs to be more administrative support.

Finding 6

(Page 13, Line 20) *"$279.00 advance to the former Commander in violation of the Oversight Council's guidelines, which prohibit a Strike Force Commander to disburse confidential informant funds to himself."*

An officer needed money for an investigation during a time that the office was closed. I gave him $279.00 out of my pocket. When he completed the required paperwork with Cindy she reimbursed me.

(Page 14, Line 5) *"Finally, the fiscal agent did not require any documentation to support the amount requested to replenish the confidential informant account... The grant agreement requires that grant funds only be used to reimburse the Strike Force for actual costs."*

There may be some misunderstanding of how this account works. It is a buy fund/CI payment account. It needs cash in the account so when officers need money for a buy or to pay informants they can get it right away. When they receive the money from Cindy they fill-out the paper documentation. I am the one who requested the checks and it was usually when the cash on hand went below $7,000.00. We tried to keep cash on hand between $7,000.00 and $10,000.00 for the buy fund.

Finding 8

(Page 15, Line 39) *"The Strike Force did not have documentation to show that it served seizure notices for 202 of 545 cash seizures we tested, totaling about $165,650.00."*

This is another statement I called you about. I do not know what files your auditors looked at or did not look at but it is another example of why someone should have contacted me while you were looking for information.

Simply stated, these results are absurd. I personally handled this seizure process. We had a forfeiture tracking report that was backed up by hard files for each suspect who was subjected to an administrative seizure notice. If for some reason I missed a seizure notice all I had to do was call Jim Early at the Attorney General's Office. The criminal got a copy, a copy went into the report file, I got a copy and the A.G.'s Office got a copy. In addition the final review for this process rests with the court. If we did not follow proper procedure the court would not allow the Strike Force to receive these forfeited funds. Proper procedure had to include serving the suspect with the seizure notice. During my tenure, the court never returned $165,650.00 of funds back to suspects because they did not receive their seizure notices.

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Finding 9

(Page 16, Line 34) *"The Strike Force's former Commander routinely directed the fiscal agent to retain forfeited amounts that should have been paid to the Attorney General's Office. Our review of forfeiture distributions made by the fiscal agent identified at least $229,000.00 retained by the Strike Force that should have been paid out to the Attorney General's Office."*
Former Minnesota Attorney General Mike Hatch was one of our original Gang Strike Force Advisory Board members. He was very committed and supportive of our mission. He assigned a full-time prosecutor, legal counsel, and a lawyer to handle our forfeitures.

When the 2003 Legislature cut the funding to pay law enforcement officers assigned to the Strike Force, A.G. Mike Hatch contributed $135,000.00 from his office's forfeiture funds. These dollars assisted us by providing operating funds to stay in business. He advised the Board at the time the $135,000.00 came from the Strike Force when we contributed the 20% to them for doing our forfeiture work. He suggested the process was counter productive and said we should stop sending them the 20% fee. This information can be found in the 2004 year end report and I am sure would also be contained in the Board minutes.

Finding 11

(Page 19, Lines 16 - 25) *"The Advisory Board did not ensure the Strike Force's former Commander implemented recommendations made by the Oversight Council's Statewide Coordinator following his evaluation of the Strike Force's 2007 operations...When the Statewide Coordinator reviewed the 2008 operations, he found the Strike Force continued to have deficiencies in these areas. The Advisory Board failed to ensure the Commander resolve these deficiencies."*
I would assume this finding followed an interview with Bob Bushman, the Statewide Coordinator. I would suggest his comments are a little disingenuous and he has not let the facts get in the way of his comments. I am sure if your auditors checked the Board minutes you will have found the Metro Gang Strike Force received an "excellent" on it's report from him in the year 2007. He also listed some issues we should work on for further improvement.

From my memory, it was Dakota County Chief Deputy Dave Bellows who asked how we would respond to a suggestion to improve the Confidential Informant files. There had been some files that did not contain a picture of the informant and some that did not have the informant's signature signing a document enclosed in each file. I had a former Assistant Commander and Cindy review each of the over 100 files and make the upgrades to the files when discrepancies were found. After they reviewed each file and completed the upgrades, I reported it to the next Advisory Board meeting per my instructions. The minutes should indicate this report. The update to investigators' reports was still ongoing when I left.

As to what new problems Mr. Bushman found that occurred in these locked CI files during the year 2008 I cannot speak to.

CONCLUSION

Were all of the records systematically setup to be viewed by the auditors? Obviously not. I still

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contend had I not been kept out of this process and been involved early on, I could have assisted in a more meaningful gathering of information. To wait until I am gone for over seven months with the files left behind, obviously being compromised, does not put me or my employees on a very level playing field for this process.

While I was the Commander was there anything sinister or underhanded taking place at the Strike Force? Absolutely not! Instead, we are a group of police officers whose main mission was to target gang members involved in criminal activity. Did we accomplish our goals and successfully serve the taxpayers of Minnesota? Absolutely yes, way above and beyond any expectations. We were arguably the best task force that the State of Minnesota has ever funded. The administration that has inherited this fine organization should never allow the accomplishments of our officers to be diminished.

The men and women who have contributed to the tremendous success of the Gang Strike Force are owed a huge debt of gratitude and not deserving of the attacks and innuendos implied by some law enforcement officials, political officials and certain members of the media.

I believe there should be an audit of the police work that has taken place at the Minnesota/Metro Gang Strike Force. The communities they serve should be allowed to see how they have attempted to make this a safer place in which to live. That is the real story that needs to be told.

Thank you for allowing me to submit this response to the legislative audit!

CC: Sheriff Rodney Bartsh, Chair
Minnesota Gang and Drug Oversight Council

Chief Bud Shaver, Chair
Metro Gang Strike Force Advisory Board

Sheriff Bob Fletcher
Fiscal Agent for Metro Gang Strike Force

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June 11, 2009

VIA FACSIMILE

Michael Campion, Commissioner
Department of Public Safety
Bremer Tower, Suite 1000
445 Minnesota Street
Saint Paul, MN 55101

Re: Metro Gang Strike Force Review Panel

Dear Commissioner Campion:

Late last month, you retained us to form a Metro Gang Strike Force Review Panel. The purpose of the panel was to provide you with certain advice related to the Metro Gang Strike Force. Specifically, you requested that we: (1) provide you with policies and procedures for the implementation of the Legislative Auditor's recommendations concerning the Strike Force; and (2) conduct an investigation to determine the factors and set of circumstances that gave rise to the issues addressed in the Legislative Auditor's report. You have requested that we make a report to the Metro Gang Strike Force Advisory Board on June 30, 2009 describing the steps we believe the Strike Force should take to implement the Auditor's recommendations. One purpose of this report was to assist the Advisory Board in re-opening the Strike Force as quickly as possible so that it may assist local law enforcement agencies combat and prevent gang violence this summer. Our investigation into the underlying causes of the problems identified by the Auditor is expected to continue past the June 30 date.

We are writing at this time to provide you with a preliminary report on our work to date, and to recommend changes to the above-described plan based on information that has come to our attention.

For the past few weeks, we have: (1) met with a number of Advisory Board members and their staffs; (2) interviewed individuals with knowledge of the Strike Force's operations; (3) reviewed documents relevant to the issues addressed by the Legislative Auditor; and (4) spoken with individuals who have described allegations regarding the Strike Force. As a result of this work, we make the following preliminary report:

- While there has been a great deal of discussion between Advisory Board members about the mission of the Strike Force, there is no clear consensus among the Board. Board Members we interviewed expressed a wide variety of views as to the best direction for the Strike Force, and disagree as to the mission of this law enforcement entity. Advisory Board members will be meeting in the coming

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weeks to try and reach consensus. The lack of agreement as to the mission of the Strike Force makes it difficult to draft policies and procedures for the entity.

- We have received information from a variety of sources raising allegations about the Strike Force dating back a number of years. In coordination with the FBI, we are investigating all allegations that are brought to our attention. At this point in time, we are not able to reach conclusions about these matters, but we take them seriously. As requested, to the extent our investigation demonstrates that the allegations are credible, we will bring these matters to the attention of the FBI. For a number of reasons, our investigation of these allegations will not be completed by June 30. We strongly recommend that the Department of Public Safety not re-open the Strike Force under its current structure until we can provide you with a report on these allegations.

- At the same time, we are well aware of the need for an entity to address and prevent gang violence. The leadership within local law enforcement agencies for the most part support and indeed request the existence of a gang-focused multi-agency law enforcement body while issues related to the Strike Force are under review. While we do not recommend that you re-open the Strike Force in its current configuration at this time, we do believe it advisable and in the public interest to formulate a short term solution that will meet the needs of the public and local law enforcement. We are available to discuss how to accomplish this task at your convenience.

We want to make clear that, while we are recommending that you delay re-opening the Strike Force, we have not reached a conclusion as to the allegations we have received. We are working diligently to determine the facts of the matters brought to our attention and will continue to do so. We expect to report to you on these matters later this summer.

Very truly yours,

Andrew M. Luger
Co-Chair
Metro Gang Strike Force Review Panel

John Patrick Egelhof
Co-Chair
Metro Gang Strike Force Review Panel

AML/am

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A05-15

STATE OF MINNESOTA

IN SUPREME COURT

State of Minnesota,

Respondent,

vs.

Philip Vance,

Appellant.

APPELLANT'S BRIEF

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A05-15

STATE OF MINNESOTA

IN SUPREME COURT

State of Minnesota,
Respondent,
v.

Philip Vance,
Appellant.

PROCEDURAL HISTORY

1. December 22, 2002	Date of charged offense.
2. February 13, 2004	Complaint filed in Dakota County District Court charging appellant with first-degree premeditated intentional murder, in violation of Minn. Stat. §§ 609.185(a)(1); 609.05; 609.11 (2002) (Count 1); first-degree felony murder (during an aggravated robbery), in violation of Minn. Stat. §§ 609.185(a)(3); 609.05; 609.11 (2002) (Count 2); and second-degree intentional murder, in violation of Minn. Stat. §§ 609.19, subd. 1(1); 609.05; 609.11 (2002) (Count 3).
3. March 11, 2004	Dakota County Grand Jury returned indictment charging appellant with first-degree premeditated intentional murder, in violation of Minn. Stat. § 609.185(a)(1) (2002) (Count 1); first-degree felony murder (during an aggravated robbery), in

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	violation of Minn. Stat. § 609.185(a)(3) (2002) (Count 2); and second-degree intentional murder, in violation of Minn. Stat. § 609.19, subd. 1(1) (2002) (Count 3).
4. April 9, 2004	Complaint dismissed.
5. Sept. 8, 2004	Court denied appellant's motion to dismiss indictment.
6. Sept. 20-Oct. 5, 2004	Jury trial held, the Honorable Rex Stacey presiding.
7. Sept. 24, 2004	Trial court issued order denying appellant's request to offer third-party perpetrator evidence against Jesse Magnuson and Lorenzo Eide and reverse-Spreigl evidence against Maynard Cross; court granted motion to allow admission of third-party perpetrator evidence related to Michael Smith.
8. October 5, 2004	Jury returned guilty verdicts on all three charged counts.
9. October 8, 2004	Court sentenced appellant to life imprisonment on Count 1. Pursuant to Minn. Stat. § 609.04 (2002), trial court did not sentence appellant on Counts 2 and 3.
10. December 30, 2004	Notice of Appeal filed with the Clerk of Appellate Courts.
11. March 21, 2005	Completed transcripts mailed to the Office of the State Public Defender.
12. May 26, 2005	Minnesota Supreme Court granted appellant's motion for an extension of time to file brief.
13. June 30, 2005	Appellant's brief filed and served.

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ISSUES PRESENTED

Issue 1:

A defendant has a constitutional right to present a defense. In a criminal trial, where the disputed issue is whether the defendant committed the crime, evidence tending to prove that another person—a third-party perpetrator—committed the crime is admissible. Did the trial court err when it denied appellant's motion to present evidence that a third-party perpetrator committed the charged offense?

Ruling Below:

The trial court denied appellant's motion to present third-party evidence related to Maynard Cross, Lorenzo Eide, and Jesse Magnuson.

Apposite Authority:

State v. Blom, 682 N.W.2d 578 (Minn. 2004)

State v. Jones, 678 N.W.2d 1(Minn. 2004)

State v. Hawkins, 260 N.W.2d 150 (Minn. 1977)

Issue 2:

The state and federal constitutions entitle a defendant to due process of law and a fair trial. Here,

1) without a limiting instruction, numerous witnesses testified about threats made against them or fears that they had because of their involvement in the case, and

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2) without a limiting instruction, numerous interviews of appellant by police were played for the jury where police questioned appellant's truthfulness or vouched for State witnesses.

Did the cumulative effect of these trial errors deny appellant his fundamental right to a fair trial and prejudicially impact the verdict?

Ruling Below:

The court overruled appellant's relevance objection related to witnesses statements about threats. The court was not asked to give cautionary or limiting instructions with this evidence.

Apposite Authority:

Bernhardt v. State, 684 N.W.2d 465 (Minn. 2004)

State v. Lindsey, 632 N.W.2d 652 (Minn. 2001)

State v. Erickson, 597 N.W.2d 897 (Minn. 1999)

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STATEMENT OF THE CASE

Appellant, Philip Vance, was indicted by a Dakota County Grand Jury and charged with first-degree premeditated intentional murder, first-degree felony murder, and second-degree intentional murder. The charges related to the December 22, 2002, shooting death of K[redacted] A[redacted] during a robbery of a convenience store in South St. Paul. After a jury trial, the Honorable Rex Stacey presiding, appellant was convicted of all three charged counts. The trial court sentenced appellant to a sentence of life in prison. Appellant, who is incarcerated at MCF-St. Cloud, appeals from the judgment to challenge his conviction.

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STATEMENT OF THE FACTS

The charges in this case stem from the shooting death of K[redacted] A[redacted] (B[redacted])[1] on December 22, 2002, in South St. Paul, Minnesota. The State alleged that appellant and a second man entered Sabreens—a small grocery store—to commit a robbery and that appellant shot B[redacted] twice during the robbery killing him. At trial, the State did not present any physical evidence linking appellant to the robbery or murder, and its case instead relied on the alleged actions of appellant shortly after the robbery/murder, inconsistencies in appellant's statements to police, and statements made by appellant to numerous persons purporting to admit that he had committed the crime.

A) Background

T[redacted] B[redacted] (T[redacted]) owns Sabreens Supermarket. It is located in South St. Paul, Minnesota. (Tr. at 44-49).[2] On December 22, 2002, T[redacted]'s brother B[redacted] came to the store to visit him and to help T[redacted]. (Tr. at 53). In the early evening, T[redacted] left for about two hours to run errands and he returned shortly after 9 p.m. T[redacted] and his wife got some groceries and left; they again returned no later than 9:30 p.m., to fax an item. (Tr. at 54-56). B[redacted] offered to close up the store at 10 p.m., and T[redacted] left again. (Tr. at 53, 56). The cash register tape showed the last sale as 9:22 p.m.; the tape also showed that the cash register was opened last at 9:35 p.m., for a "no sale." (Tr. at 66-67).

---

[1] Undersigned counsel is using the spelling of the deceased name as found in the Grand Jury indictment.

[2] "Tr." citations refer to the four-volume trial transcript. There are also two volumes containing voir dire. Other transcripts will be identified by the date of the hearing.

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At approximately 9:41 p.m., K[redacted] J[redacted] (K[redacted]) went to Sabreens to buy cigarettes. (Tr. at 96). She parked in front of the store. (Tr. at 97). As she entered the store, she saw a masked man removing money from the cash register till. The man made some kind of noise—perhaps in "a different language"— that sounded like he was alerting someone else. (Tr. at 98-100). In response to seeing the man, K[redacted] ran out of the store. As she was starting to drive away, she saw two men run out of the store. (Tr. at 99-101, 106). One man was taller than the other and both had slender builds. (Tr. at 101, 104). The person behind the register was wearing a blue hooded sweatshirt and the second man was wearing a red or maroon sweatshirt. Both had baggy pants. (Tr. at 101-02, 104). Both men had masks on covering their faces. (Tr. at 101-02). K[redacted] drove to a nearby friend's house and the friend called police. (Tr. at 96, 103).

Meanwhile, about the time K[redacted] was in the store, four teenagers were walking through the alley behind Sabreens on their way to buy snacks before the store closed at 10 p.m. (Tr. at 108, 117-18, 125, 127). Three of the four teenagers testified at trial; the three teenagers, M[redacted] R[redacted], S[redacted] R[redacted], and D[redacted] M[redacted], Jr., all saw a car in the alley and they all saw two men run from the direction of the front of Sabreens and get into the car. (Tr. at 110-11, 113, 119-20, 122, 127-28). M[redacted] thought the car was regular-sized darkish gray four-door and M[redacted] believed the men were wearing baggy clothes. (Tr. at 110-12). S[redacted] thought the car was a larger grayish-black car. S[redacted] believed the men were wearing dark-colored loose pants and sweatshirts. (Tr. at 119, 121-22). D[redacted] thought the car was darker colored. (Tr. at 127).

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The teenagers entered Sabreens and eventually discovered B[redacted] lying behind the counter. (Tr. at 113-15, 122, 128-30). They ran across the street and told M[redacted]'s father what they had found; D[redacted] called 911. (Tr. at 115, 122-23, 130-31).

Police responded to the 911 calls and found B[redacted] behind the counter. He was lying face down and had been shot in the head. He was not breathing and police did not attempt to move him. (Tr. at 89-90, 92-94).

Police secured the scene to allow the Minnesota Bureau of Criminal Apprehension (BCA) to process it for evidence. (Tr. at 138-39). Police found four .22 caliber casings inside the store behind the counter. Two of the casings had been manufactured by Winchester Western and two by CCI. All four casings had been fired from the same gun. (Tr. at 144, 157, 279, 281-82).[3] Two bullets were later retrieved from B[redacted]'s body by the medical examiner and a third bullet was found embedded in a flashlight behind the counter. (Tr. at 150-51, 153, 169, 279-80). The fourth bullet was not recovered. (Tr. at 151, 154). The BCA scientist opined that either the shooter or the gun was behind the counter when B[redacted] was shot. (Tr. at 156). The BCA processed fourteen foot/shoe impressions from inside the store and others from outside (139, 142, 159), collected a cigarette butt and empty soda can from outside the store (Tr. at 159), and located tire track impressions in the alley (Tr. at 143, 159). The store's videotape surveillance system did not record the robbery/shooting. (Tr. at 325-26).

[3] When a firearm is discharged the casing is ejected and the bullet exits through the barrel. (Tr. at 144, 280, 285).

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T[redacted] told officers that about $625-$650, lottery tickets, some cigarettes, white plastic bags, and a cordless phone were missing from the store after the robbery. (Tr. at 57-65, 78-81). Aside from the cash, an investigator testified that police did not release information to the media about items taken during the robbery. (Tr. at 362).

The medical examiner concluded that B[redacted] had been shot twice, once in the back of his neck and once in the back of his head. (Tr. at 166-67, 171-72). Either wound would have been fatal. (Tr. at 172). The medical examiner opined that B[redacted] probably was sitting or kneeling when he was shot but she could not say conclusively how B[redacted] was positioned. (Tr. at 175-76, 178).

Based on information received from people who spoke with appellant on the day of the murder and on statements allegedly made by appellant after the murder, police targeted appellant as a suspect. (Tr. at 297, 343-44). Police interviewed appellant several times over the course of early- to mid-2003. Appellant denied committing the offense. (Tr. at 333). In March 2004, a Dakota County Grand Jury indicted appellant charging him with the murder of B[redacted].

B) Trial

John Martin, a convicted burglar, testified that on December 22, 2002, he was at the Radisson bar in downtown St. Paul with appellant and Dominic Johnson (Johnson). He knew both men and considered them friends. (Tr. at 180-83).[4] Martin said he arrived

[4] At trial, appellant and Mr. Johnson are sometimes referred to by nicknames. Appellant's nickname is "Florida" and Johnson's nickname is "Stacks." (Aug. 20, 2004 Motion Hr'g Tr. at 9; Tr. at 200-01, 221, 290-91).

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between 7 and 8 p.m. (Tr. at 183). They sat together and discussed buying Christmas presents for their respective families and significant others. Appellant had money to buy presents. (Tr. at 183-84, 193-94).

Around 8:30 p.m., prior to leaving, Johnson used appellant's cell phone to call to two girls—Yvonne and Nicole. (Tr. at 185, 187). Martin testified that appellant and Johnson were going to South St. Paul. They invited Martin to come with them but he instead decided to go to his girlfriend's house. (Tr. at 184, 187-88, 195). No one ever discussed a robbery while at the Radisson bar. (Tr. at 184, 194). After leaving the bar, Martin saw appellant and Johnson standing at a bus stop; he also saw Yvonne and "Nicki" in a dark blue Corsica, but he did not see appellant and Johnson get into the Corsica. (Tr. at 188-91, 194).[5]

On December 22, M[redacted] S[redacted], a convicted check forger, was working as a bartender at the Radisson. (Tr. at 198-99). She testified that she knew Johnson and appellant (Tr. at 202, 209), and that appellant, Johnson, and a third man were in the bar on December 22, for about thirty minutes from around 7:15 or 7:30 to 7:45 or 8:00 p.m. (Tr. at 202-04, 210-12). S[redacted] did not think the men were as friendly as usual and, when leaving the bar, appellant told S[redacted] that they were "getting their plan on." (Tr. at 203-04). Before leaving, in response to a comment about tipping her, appellant allegedly told S[redacted] that they would have "plenty of money" when they got back. Appellant, however, did not return that night. (Tr. at 205, 212).

[5] In July 2003, police located a Blue Corsica at an impound lot; the vehicle had been owned by Nicole Rauschnot. (Tr. at 321-24).

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Meanwhile on December 22, Colleen McManus was working as a manager of the Buttery bar.[6] The Buttery is located in downtown St. Paul. (Tr. at 220). McManus worked until 8:15 p.m., and did not see appellant in the bar at that time. (Tr. at 222). When returning to the bar around 10:15 or 10:30 p.m., she saw appellant and Johnson getting out of a silver or light-green four-door car in front of the bar. (Tr. at 222-23). When entering the bar a few minutes later, she saw appellant and Johnson in the bar speaking to a group of men, including Maynard Cross. (Tr. at 224, 238). McManus testified that Johnson was wearing a "white Doorag hooded sweatshirt," light blue jacket, and dark jeans and that appellant was wearing a dark blue letterman-type jacket, dark pants and a dark hooded sweatshirt. (Tr. at 225).

She thought both appellant and Johnson seemed nervous. McManus had banned appellant from the bar because of a prior altercation, and McManus went to speak with appellant. (Tr. at 224-26). McManus thought appellant looked upset. McManus asked appellant what was wrong and he told her that he "'really fucked up this time.'" (Tr. at 226-27). The conversation was interrupted by Cross who yelled at appellant and told him to "'shut [his] mouth'" and to "'quit acting like a crazy motherfucker.'" (Tr. at 226-27, 234-35, 238). Later, McManus again spoke to appellant. At trial, McManus testified that appellant told her that "'it wasn't supposed to happen that way'" and that appellant made some type of motion with his hand that caused McManus to say to appellant that he had

[6] The Buttery and the Radisson bar are about a block apart; Sabreens is 5.4 miles from the Buttery and the trip can be driven in approximately 12 minutes. (Tr. at 359-60).

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"'shot somebody.'" (Tr. at 227-28, 234).[7] Appellant did not affirm or deny McManus' statement that he had shot someone. (Tr. at 228, 234).[8] McManus acknowledged at trial that appellant never mentioned Sabreens. (Tr. at 233).

Appellant and Johnson eventually left the bar and returned after midnight. (Tr. at 228-29, 235). Appellant smelled like he had been drinking and he told McManus that he was leaving town. (Tr. at 229).

McManus' brother is a St. Paul police officer and she called him and repeated what appellant had told her. (Tr. at 229-31, 235-36, 343). Sometime before December 31, appellant was in the Buttery and told McManus that he had bought his children $400 to $450 worth of Christmas presents. McManus did not believe that appellant had a job during this time period. (Tr. at 231, 243-44).

Also on December 23, S[redacted], who had been compensated for providing information to police in the past, called Officer McManus and told him about what she had observed at the Radisson bar the previous night. (Tr. at 205, 215, 343-44). Police then set up an undercover sting where they had S[redacted] contact appellant. (Tr. at 216-17, 245-46). Police had given her instructions to buy a gun from appellant, hoping that the gun could be connected to B[redacted]'s murder, and to attempt to elicit information from appellant about B[redacted]'s murder. (Tr. at 208, 217, 245-46, 252-54, 258). On January 3,

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[7] The record does not clearly indicate what type of physical motion McManus made on the witness stand to show what appellant did with his hand while speaking to her on December 22. (Tr. at 228, 233-34).

[8] Police could not find any record of other reported shootings or shooting deaths on December 22. (Tr. at 297-98).

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2003, S[redacted] met appellant and Johnson at the Buttery bar and appellant and S[redacted] later went to a different downtown bar. (Tr. at 205-07, 247-48, 259-60, 263, 267-68). Police monitored the conversation between appellant and S[redacted] but because of the loud background noise in the second bar they could not record the conversation. (Tr. at 206, 247, 249-51, 261, 268).

In response to S[redacted]' questioning, appellant allegedly told her that he had four guns. (Tr. at 207, 251, 260, 268, 345). S[redacted] asked if he had ever shot anyone, and appellant allegedly responded that he had "'shot a guy two weeks ago over south side five times in the back.'" Officers who monitored the conversation testified that they heard appellant also say "'Two weeks ago Winchester on the south side.'" (Tr. at 207, 215, 260, 264-65, 269, 345-46).

Later that night, police followed appellant and S[redacted] to a house on East Minnehaha in St. Paul. (Tr. at 261, 265, 290). Appellant dated a woman, Darlene Jones, who lived there. At trial, Jones' grandmother testified that, on January 3, appellant came to the house and retrieved something from a bedroom. Johnson then appeared a short time later and indicated that he was angry with appellant. Jones' grandmother testified that Johnson told her that appellant had "'played [him] wrong'" and that he just wanted his money. (Tr. at 290-95).

On January 7, S[redacted] bought an unloaded gun from appellant and gave it to police. Testing by BCA demonstrated that this firearm did not match the weapon used at the B[redacted] murder. (Tr. at 217, 254-55, 286, 289). On re-direct examination, S[redacted] testified that she had received about $1,500 for relocation expenses and that she had moved

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because she "felt fear, fear for myself, fear for my family." (Tr. at 217-18). She admitted that appellant had never threatened her. (Tr. at 219).

Eric Griffin, a two-time convicted felon, testified that on December 22, he arrived at the Buttery around 10 p.m. Griffin knew both appellant and Johnson and saw them arrive later. He testified that appellant was wearing a black hooded sweatshirt and loose fitting blue jeans; he admitted that this was what appellant usually wore. (Tr. at 390-92, 395). He alleged that appellant told him that he had robbed a guy in South St. Paul and had "fucked him up." Appellant did not tell him who he had robbed or where this had supposedly occurred. (Tr. at 392-93).

Griffin admitted that, in exchange for his testimony, police would recommend that a felony drug charge would be dismissed and that he only agreed to speak to police once they promised to help him get out of custody. (Tr. at 389-90, 395-96). Griffin also admitted that he did not think appellant was serious when he told him about the robbery and also that he had been drinking that night. (Tr. at 396-97). Over appellant's objection, on re-direct examination, Griffin testified that it was not easy for him to come forward, and that he had been threatened and consequently had had to leave town. (Tr. at 397-99). Griffin acknowledged that he had not been threatened by appellant. (Tr. at 399).

A few days before the Super Bowl, in late January or early February, appellant was at Jones' house on East Minnehaha. According to Jones' aunt appellant was drunk and was acting strange. (Tr. at 381-83, 386-87). At trial, she alleged that appellant told her that police were investigating him for a murder and that he and a friend had

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committed the murder. (Tr. at 381-82, 385, 388). He allegedly told her that the police would not be able to prove he committed the offense. (Tr. at 384-85, 387). Jones' aunt admitted that he gave her no details and it appeared to her that he was trying to be "hard"—that is, trying to impress her. (Tr. at 386-87).

Geronimo Estrada, a three-time convicted felon, was incarcerated in the Ramsey County Workhouse with appellant on February 9, 2003. (Tr. at 457, 469). Estrada alleged that appellant approached him and asked whether murder had a statute of limitations. Appellant later explained to him that he was being investigated for a murder and they would not catch him. (Tr. at 447). Appellant supposedly told Estrada that he had laid the victim down and "put one in him." (Tr. at 449-50). Estrada alleged that appellant had told him that while appellant grabbed money, "Stacks" grabbed cigarettes, lottery tickets, plastic bags, and a phone. Estrada claimed that appellant told him that he wore a black mask and dark clothes during the crime. (Tr. at 451-53, 457-58). Estrada received about $400 to cover collect calls he made from the Workhouse. (Tr. at 368, 370-71). Over appellant's objection, a police officer testified that Estrada had been assaulted and Estrada thought it was in connection with coming forward in this case. (Tr. at 371-72).

Isaac Hodge, a two-time convicted felon, met appellant while they were both in the Sherburne County jail in 2003. (Tr. at 400-01, 469). Hodge testified that appellant, after seeing a newspaper article about Maynard Cross, told him that Cross "'put [his] name in some bullshit.'" (Tr. at 402). Hodge alleged that appellant told him that he had been involved in a murder-robbery and that "it wasn't worth it." (Tr. at 402-03, 405-06).

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Hodge acknowledged that appellant did not tell him any details about the alleged incident. (Tr. at 403-04).

Troy Crawford, a two-time convicted felon, was also incarcerated with appellant at the Sherburne County jail in 2003. (Tr. at 407-09, 469). Crawford testified that appellant told him that he had shot a guy at a grocery store. (Tr. at 411). Crawford also testified that appellant, after seeing a newspaper article, was concerned that Maynard Cross would testify against him and that Cross had information about the case. (Tr. at 410, 412). Crawford explained to the jury that people in jail and prison often lie to look tougher. (Tr. at 413).

John Nunn, a convicted felon, was incarcerated with appellant at the Sherburne County jail and Sandstone federal prison. (Tr. at 414-16, 418-19, 469). Nunn is Isaac Hodge's uncle. (Tr. at 415). Nunn testified that appellant told him that he was concerned about police finding a gun that he had used in a robbery where someone was hurt or killed. (Tr. at 416-17). Nunn testified that appellant told him the gun was a "twenty-two." (Tr. at 417).

Dontay Reese, a four-time convicted felon, testified that he knew appellant and a man named "Stacks," and that he had been incarcerated in the Dakota County jail with appellant. (Tr. at 429-33, 469). Reese alleged that in spring 2004 appellant had told him, over the course of several conversations, that appellant, "Stacks," and John had been at the little bar by the Radisson. (Tr. at 433-36). They called a couple of girls—Yvonne and Nicki or Tiffany—to pick them up in a blue Corsica or Accord. (Tr. at 436, 438-39). Appellant was drunk. (Tr. at 435, 442). Appellant and Stacks went to "Hennessey's"

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house and met up with Troy. (Tr. at 437). Appellant, Stacks, and Troy then went to the "mom-and-pop store;" Stacks said appellant's name inside the store and appellant "gave the dude five to the back of the head." (Tr. at 434-35, 437-38, 442). Appellant and Stacks then had the girls drop them off back downtown at the "Butter." (Tr. at 435, 438). Appellant allegedly told him he used a "deuce deuce." (Tr. at 439, 442).

Reese admitted that when first approached by police he told them he had no information about the crime and that he only came forward after speaking with his parents and his lawyer. He stated that he did not know who Hennessey and Troy were and that appellant never told him the name of the store. (Tr. at 370, 439-40, 442-43). Reese also acknowledged that he was receiving a 36-month reduction (from 98 months) in the sentence on the case for which he was in custody. (Tr. at 430, 440).

In December 2002, Keitha McKinney lived down the block from Sabreens. (Tr. at 301-02; 360-62; Trial Exhibit 44). She dated Richard Robinson and his nickname was "Hennessey." (Tr. at 302). She did not know appellant or Johnson and did not see them on December 22. (Tr. at 302-04). At trial, she testified that she learned through police questioning that Johnson and Robinson are cousins. (Tr. at 304).

C) Police Interviews with appellant and the letter to Johnson

Police interviewed appellant at least seven times between January 15, 2003, and June 18, 2003. Six of these interviews are formal Mirandized interrogations: January 15, 2003; January 16, 2003; April 17, 2003; April 18, 2003, April 21, 2003, and June 18,

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2003. One is a phone call between appellant and police: January 23, 2003. These interviews, in a redacted form, were played for the jury.[9]

In the January 15 interview appellant denied committing the offense or being in South St. Paul. (Court Exhibit 36C (Jan. 15 Tr. at 3, 10-12, 15-16, 18, 20-21, 26, 35, 40-42, 51-52)). Appellant initially denied that he spoke to anyone about a shooting. After being pressed, he told police that he gets drunk and talks "shit." He then told police that he remembered telling McManus he shot someone and that he did so in an attempt to garner sympathy and to get her give him drinks at the bar. (Jan. 15 Tr. at 13, 18-19, 23-25, 32-34, 42, 50, 54). He told police that the substance of his statement to McManus was not true. (Jan. 15 Tr. at 33, 36, 43, 42, 54-56). Appellant denied having any guns. (Jan. 15 Tr. at 12-13, 15, 46). Throughout the interview, police told appellant they thought he was lying to them. For example,

Appellant:	I ain't did no shit like this. I promise you.
Officer:	That's bull shit.
Appellant:	I swear.

(Jan. 15 Tr. at 27).

Appellant:	I want to get this shit over with man. I want to, shit, I want to, man. I want my friends to know that I didn't do shit and believe me.
Officer:	Well we can't believe you because we know you're lying about some things and you can't be (inaudible).
Appellant:	(inaudible).
Officer:	No. That isn't how it goes because you know some of the things you lied to us about. That ain't how it goes. You tell us we give you information.

[9] Cites are to the transcripts of the interviews admitted as Court Exhibits. They are located both in the trial transcript and with the exhibits.

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Appellant:	Oh man.
Officer:	We know you're lying about some stuff.

(Jan. 15 Tr. at 41).

Officer:	And everything you've told me today is the truth.
Appellant:	And I've told you the honest God's truth.
Officer:	And there's no lies in it.
Appellant:	I have told you the honest to God truth.
Officer:	And you, and you swear on everything you said.
Appellant:	I swear to God on my life it's the truth.
Officer:	Okay. And how is that going to sit when we know some of what you told us is already false?

(Jan. 15 Tr. at 54).

In the January 16 interview, appellant again told police he did not commit the offense. (Court Exhibit 37C (Jan. 16 Tr. at 37-39, 41-42, 48, 50-51, 68, 73-74, 77, 82-83, 88, 98, 101, 127, 129,133, 136-37, 142, 161-62, 164-67, 178-82, 185, 188, 196-97)). In regards to his statement to McManus, he did not believe he made any hand gestures when speaking with her. The officer told appellant that "I'm going to have to believe [McManus] when she's telling me this stuff" and "Colleen isn't bullshitting. You know it." (Jan. 16 Tr. at 52-54, 181).

When appellant denied making any further statements to anyone, the officer told appellant "That's a lie" and "you're telling me a lie." (Jan. 16 Tr. at 63-67). When confronted with the officer's questions regarding "five times in the back south side with my Winchester," appellant denied making the statement. (Jan. 16 Tr. at 67, 78, 84, 97-98, 164). The officer responded with "what you're doing now is lying to me," "[t]hat's a lie. . . . [, and] [t]hat part is a fucking lie." (Jan. 16 Tr. at 66, 71). Appellant eventually told police he did not remember saying it. (Jan. 16 Tr. at 79-81, 84, 97-98, 178-79, 182-

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83, 186). Appellant later told police that S[redacted] had asked him if he ever shot anyone and he told her that he had shot a gun. (Jan. 16 Tr. at 103).

Appellant also indicated that on December 22, he thought he went to the Radisson bar with Johnson. Martin might have been at the Radisson bar with them. Appellant thought he left the bar early, around 6 p.m. After going to a girl's house, appellant and Johnson ended up at the Buttery. (Jan. 16 Tr. at 89-95, 107-19, 124-25, 174, 189-90). Officers told him that his timeline was not consistent with other evidence. (Jan. 16 Tr. at 129-30, 140, 143, 148, 174). Appellant thought he was with Johnson all night. (Jan. 16 Tr. at 123, 127, 129, 150-52, 159, 169). He also explained that he had lied to the police in the prior interview. (Jan. 16 Tr. at 126, 154, 163, 188).

Just as with the January 15 interview, police told appellant they thought he was lying to them. For example,

> Officer: [S]ome of the stuff that you've been telling the other officers that are in here really are—is bullshit.

(Jan. 16. Tr. at 106).

In the January 23 phone conversation, appellant told police that he had been with Johnson and Martin on December 22. Later that night appellant and Johnson went out with a couple of girls who were in a blue Corsica. After hanging out together, the girls dropped him and Johnson back downtown. (Court Exhibit 38B (Jan. 23. Tr. at 2-4)).

In the April 17 interview, appellant again denied committing the offense. (Court Exhibit 39B (April 17 Tr. at 13, 16, 26, 28, 34, 36,-38, 41-41, 45, 50-51, 54, 62, 65, 72, 79-80, 82, 84-85, 89)). Appellant acknowledged knowing Hennessey and Troy Crawford, but denied knowing Maynard Cross. (April 17 Tr. at 11-12, 20, 24). He

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denied that he told anyone in the Ramsey County Workhouse that he committed the offense. (April 17 Tr. at 39-40). Appellant denied making any comment about a shooting at someone on the south side with a Winchester. (April 17 Tr. at 25, 42).

Just as with the prior interviews, police told appellant they thought he was lying to them and vouched for the witnesses implicating appellant. For example,

> Officer: All I'm, all I'm asking is the truth.
> Appellant: I'm telling you the truth.
> Officer: You said before you're tired of living like this. Tell the truth and set yourself free. That's it.

(April 17 Tr. at 44).

> Officer: I want the truth. I want the truth.
> Appellant: I didn't do this. I don't know who did it. I don't know what I have to…
> Officer: Philip that's bullshit. I got all these other people telling me stuff, independently telling me stuff. . . . [A]m I lying? Am I making this stuff up? Tell me I'm lying. Tell me I made it up

(April 17 Tr. at 46).

> Officer 1: We got all these things that are pointing that say that you did [the crime].
> Officer 2: Come on Philip. Who is going to believe what? Are they going to believe everybody else here or are they going to believe you?

(April 17 Tr. at 54).

> Officer: All of this is going on. And you're –your response is he's lying, he's lying, the guys over in jail are lying, people with no reason in the world to lie.

(April 17 Tr. at 69).

> Officer: Philip you are so close to telling the truth. Why don't you just give it up and tell us the truth? Why? Why do you keep holding it in?
> Appellant: I'm telling you the truth.
> Officer: No you're not.
> Appellant: Yes I am.

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Officer: No you're not. You won't even look at me anymore. (April 17 Tr. at 76).

Officer: We believe that you did it or we wouldn't be here. (April 17 Tr. at 84).

Like in his prior statements, appellant acknowledged lying to the police in his first statement. (April 17 Tr. at 20, 32, 52).

In the April 18 interview, appellant reiterated that he was probably with Johnson and Martin at the Radisson bar and that he and Johnson had been picked up by girls driving a blue Corsica. He denied that he ever "had a Winchester" and again acknowledged that he knew Hennessey. (Court Exhibit 40B (April 18 Tr. at 3-5, 7, 13-14)). Again, police questioned appellant's veracity.

> Appellant: I'm telling you everything.
> Officer: We also told you that, you know, a lot of what you're telling us we know not to be true. And even in your statement last night you were telling me that you had, ah, told us some lies the first time you talked to us and, you know, I talked to you about, you know, who's going to know if you're lying again last, you know, this, last night. Well we know you were lying about some things last night because, you know, we were there.

(April 18 Tr. at 2).

In the April 21 interview, appellant explained that any reference that he might have made to "Winchester" may have been to the south side Chicago neighborhood of 45th and Winchester.[10] (Court Exhibit 42B (April 21 Tr. at 2-3)). In response to this explanation, the officer said "Okay. I am going to tell you that that's not true. That's not what you were talking about." (April 21 Tr. at 3). Appellant added that he may not have

[10] Police confirmed that Winchester and 45th intersect in south Chicago. (Tr. at 365).

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been with Johnson at the Radisson but instead only saw him later at the Buttery. Appellant thought that Johnson may have had his phone from December 21 until he saw him at the Buttery. (April 21 Tr. at 4-6, 9). Later, the officer asked "Okay. I got tell you again, you know, which statement are you not telling the truth? The first one? The second one?" and also stated to appellant "I'm hoping that some day you're going to tell me the truth. And tell me what happened." (April 21 Tr. at 9-10).

In the June 18 statement, appellant told police that he did not think that he and Johnson were picked up by the girls in the blue Corsica on December 22. (Court Exhibit 43B (June 18 Tr. at 4, 36)). He denied making a statement about "five shots south side Winchester" and he equivocated on whether he was at the Radisson on December 22. (June 18 Tr. at 12, 22, 36, 67). Also, he thought that he might not have been with Johnson until he saw him at the Buttery. (June 18 Tr. at 41, 68). He again denied committing the offense. (June 18 Tr. at 7, 30, 56).

At trial, appellant cross-examined Officer Kreager about the interrogations and whether some specific techniques were used to try to elicit a confession. (Tr. at 327-37). On re-direct, the State asked whether, as part of his training, Officer Kreager observes a suspect's body language when the suspect answers a question to determine whether the suspect is being deceptive. (Tr. at 338-39). The State then followed with this question:

> Q: So in applying your training in the Reid technique, what type of signals was [appellant] sending you during the course of these interviews.
> A: They were not consistent with open honesty.

(Tr. at 339-40).

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Last, the State introduced a letter from appellant to Johnson, where appellant wrote that "I'm a let you know NEVER EVER discuss the past. I got so much to tell you, but I'll just wait till I can talk to you verbally." (Tr. at 423-24, 426-28; Trial Exhibit 46) (emphasis in original).

D) Third-Party Perpetrator Evidence

Appellant submitted the following proffers to support his third-party perpetrator claim:

Proffer Maynard Cross

1. Murder in the First degree conviction dated September 10, 2003, in the death of E[redacted] P[redacted] at the Stop 'N Go at [redacted] Minneapolis, MN.
2. Police report Detective Vujovich, spoke with [redacted] T[redacted], date of birth 7/28/1965. Mr. T[redacted], told the detective that he was reading the St. Paul Pioneer Press, where he saw a picture of Maynard Cross who was involved in a robber/homicide in Minneapolis. Mr. T[redacted], told the detective that he observed Maynard Cross in Sabreen about two or three days before the robber/homicide at Sabreens.
3. T[redacted] A[redacted], on the February 21, 2003 also spoke with Detective Vujovich and stated that he too recognized Mr. Cross, but wasn't sure whether it was from his South St. Paul store or St. Paul store.
4. Detective Vujovich, spoke with Mary Kay Bitney, at Sabreen's on February 22, 2003. She also told the detective that she saw a picture of Maynard Cross in the St. Paul Pioneer Press and knows him by the street name "Q". She stated that although she did not have any specific information regarding the robbery at Sabreen's, she knows of Mr. Cross and his frequent visits to South St. Paul and his knowledge of Sabreens.
5. Sergeant Pyka and Officer Kennedy met with Maynard Cross on April 16, 2003 at the Hennepin County Jail. At that meeting Maynard Cross admitted to being at the Buttery Bar with the alleged perpetrators on the night of the incident.
6. Colleen McManus identified Maynard Cross as an individual she knows by the street name "Q." She also told officers that he was at the Buttery Bar on December 22, 2002. Ms. McManus also told officers that she left the bar for several hours and came back after 10:00 p.m.
7. Maynard Cross, fits the physical description of the individuals that were described by K[redacted] J[redacted] the only eyewitness to the actual robbery itself. She stated the individuals were around 5' 7 and 5' 9, Mr. Cross being 5' 8 and around 137 pounds fits that description.
8. Maynard Cross professes to have information about the robbery/homicide, but claims he has this knowledge by statements of the defendants. It is our contention that he

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has this knowledge because he was at Sabreens on December 22, 2002 and committed the robbery/homicide of K[redacted] A[redacted].

(Appendix A1).

And,

Proffer for Lorenzo Eide, Jesse Magnuson, and Michael Smith

1. Michael Lamont Smith called Mary Rose Martinez on December 23, 2002, the day after the robbery/homicide at Sabreens and told her he, Jesse and Lorenzo shot the guy. Mary Martinez then told this information to her mother Sheila McDonough. Mary Martinez is the mother of Jesse Magnuson's child and is scared of all three individuals.
2. Samantha O'Reilly, told officers that she was with Lorenzo Eide, on December 23, 2002 and he had a gun with him in her car. She also told officers that Lorenzo was able to come up with a couple of hundred dollars worth of drugs the very next night after the shooting. She also told the officers that he threatened her on New Years Eve 2002; he told her that he would do to her what he did to the guy at Sabreens. She stated that he gets very upset when people bring up Sabreens to him.
3. All three individuals are long time residents of South St. Paul and have been involved in various criminal activities. Lorenzo Eide and Jesse Magnuson have both been convicted of controlled substance violations. Jesse Magnuson has also been convicted of domestic assault in the past.
4. Michael Guy Balsimo, stated that some of his employee's have heard rumors that Lorenzo Eide has been threatening Samantha O'Reilly about his involvement with the Sabreens robbery.
5. Lorenzo Eide's alibi is that he was home with Jesse Magnuson on December 22, 2002 they stayed home and watched television. He told officers that they were at home until 11:30 p.m. when he left to go to a party, and Jesse stayed home.

(Appendix A2).

Appellant's trial counsel added orally that the car driven by Jesse Magnuson matched the description of the car from the crime scene—a police officer saw Magnuson driving a newer gray Crown Victoria. (Voir Dire Tr. at 608). Also, appellant's trial counsel added that O'Reilly feared the three men so much she had moved to St. Cloud. (Voir Dire Tr. at 610).

The trial court ruled that appellant had not provided a sufficient connection between the offense and Cross, or between the offense and Magnuson and Eide to allow

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the introduction of third-party perpetrator evidence. The court also ruled that appellant could present third-party perpetrator evidence related to Smith. (Appendix B).

E) Verdict and Sentencing

The jury returned verdicts of guilty on all three charged counts. (Tr. at 561; Verdicts in D. Ct. file). The trial court sentenced appellant on Count 1 to life imprisonment. (Sent. Tr. at 9-10).[11] This appeal follows.

[11] "Sent. Tr." citations refer to the transcript of the October 8, 2004 "Sentencing."

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ARGUMENTS

I.

THE TRIAL COURT ERRED WHEN IT DENIED APPELLANT'S MOTION TO ADMIT REVERSE-SPREIGL EVIDENCE RELATED TO MAYNARD CROSS AND ALTERNATIVE PERPETRATOR EVIDENCE RELATED TO LORENZO EDIE AND JESSE MAGNUSON.

Prior to trial, appellant filed a motion requesting permission to admit evidence showing that other parties were responsible for the murder of K[redacted] A[redacted]. (Aug. 16, 2004 Motion in Limine at ¶ 21; Sept. 10, 2004 Memorandum (Appendix C)). The court denied appellant's request as it related to Maynard Cross, Lorenzo Eide, and Jesse Magnuson, and granted the request as it related to Michael Smith. The court's erroneous decision excluding the evidence denied appellant his constitutional right to present a defense. This error was not harmless and appellant's convictions must be reversed.

A) Standard of Review

Although trial courts are afforded discretion on evidentiary issues, reviewing courts will overturn evidentiary decisions when that discretion is abused. State v. Kelly, 435 N.W.2d 807, 813 (Minn. 1989). A trial court's discretion is limited by a criminal defendant's right to fundamental fairness, including a "'meaningful opportunity to present a complete defense.'" State v. Richards, 495 N.W.2d 187, 191 (Minn. 1992) (quoting California v. Trombetta, 467 U.S. 479, 484-85 (1984)). To determine whether the erroneous exclusion of evidence warrants reversal, the reviewing court must

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determine whether the error was "harmless beyond a reasonable doubt." State v. Post, 512 N.W.2d 99, 102 (Minn. 1994).

B) A criminal defendant has the right to defend himself against the State's accusation.

The fair opportunity to defend against criminal charges is a right secured by due process of law. State v. Jones, 678 N.W.2d 1, 15-16 (Minn. 2004). "The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations." Chambers v. Mississippi, 410 U.S. 284, 294 (1973). As part of his defense, the accused may introduce evidence showing that a person other than the accused committed the charged offense. State v. Blom, 682 N.W.2d 578, 621 (Minn. 2004); Jones, 678 N.W.2d at 15-16; State v. Hawkins, 260 N.W.2d 150, 158-59 (Minn. 1977); see also United States v. Perkins, 937 F.2d 1397, 1400 (9th Cir. 1991) ("A defendant is entitled to introduce evidence which tends to prove someone else committed the crime."); United States v. Brannon, 616 F.2d 413, 418 (9th Cir. 1980) ("A defendant is entitled to prove his innocence by showing that someone else committed the crime.").

When seeking to admit evidence related to a third-party perpetrator, the defendant must comply with procedural and evidentiary rules and establish a proper foundation by providing "'evidence having an inherent tendency to connect such other person with the actual commission of the crime.'" Hawkins, 260 N.W.2d at 159 (quoted case omitted). "This requirement avoids the use of bare suspicion and safeguards the third person from indiscriminate use of past differences with the deceased." Hawkins, 260 N.W.2d at 159.

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"Once a proper foundation has been laid, the defendant may introduce other evidence tending to show that the alternative perpetrator committed the crime. . . . The state can offer rebuttal evidence." Blom, 682 N.W.2d at 621 (citing Hawkins).

In recent decisions, this Court has clarified its precedent related to the admission of third-party perpetrator evidence, drawing a distinction between evidence linking a third party to a crime through evidence of a confession or physical evidence—alternative-perpetrator evidence— and evidence that the third party has committed other crimes, wrongs, or bad acts admitted in order to cast reasonable doubt upon the identification of the defendant as the person who committed the charged crime—more commonly referred to as reverse-Spreigl evidence. State v. Gutierrez, 667 N.W.2d 426, 439 (Minn. 2003) (Hanson, J., concurring). In Jones, this Court further explained that

> [w]hile a proffer of proof concerning an alternative perpetrator may include reverse-Spreigl-type evidence, not all evidence concerning an alternative perpetrator is necessarily this type of evidence. Unfortunately, some of the discussion in our decisions has tended to classify all such alternative perpetrator evidence as reverse-Spreigl evidence. This classification has perhaps led to the erroneous implication that the heightened clear and convincing standard that is applicable to reverse-Spreigl evidence is likewise applicable to all alternative perpetrator evidence. It is not.

Jones, 678 N.W.2d at 17.

In Jones, this Court made clear that prior to utilizing either type of evidence—alternative perpetrator or reverse-Spreigl—the defendant must present evidence that has an inherent tendency to connect the third party to the actual commission of the crime. Jones, 678 N.W.2d at 16-17 & n.7 (rejecting trial court's application of clear and convincing standard when addressing admissibility of all of defendant's third-party

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perpetrator evidence). In the case of alternative perpetrator evidence, its purpose is to create reasonable doubt that the defendant committed the crime; it is not to prove the guilt of the alternative perpetrator. After a proper foundation has been laid, the defendant may introduce other evidence tending to show that the alternative perpetrator committed the crime. Blom, 682 N.W.2d at 621. Because the presentation of this type of evidence is part of a defendant's constitutional right to present a defense, the defendant only is required to present evidence having an inherent tendency of linking the alternative perpetrator to the offense. Id.

The purpose of reverse-Spreigl evidence also is to create reasonable doubt, and defendants must meet the threshold requirement of connecting the third-party to the offense. Jones, 678 N.W.2d at 16 (stating defendant "must first meet the threshold requirement of connecting the alternative perpetrator to the commission of the crime with which the defendant is charged."). After meeting this initial burden, the defendant must satisfy an additional prerequisite for admission. The defendant also must show (1) clear and convincing evidence that the alleged alternative perpetrator participated in the reverse-Spreigl incident; (2) that the reverse-Spreigl incident is relevant and material to defendant's case; and (3) that the probative value of the evidence outweighs its potential for unfair prejudice. Jones, 678 N.W.2d at 16-17.

In Blom, this Court considered the threshold standard that must be met when a defendant wants to introduce alternative-perpetrator evidence and held that the trial judge had improperly excluded the alternative perpetrator's confession based on the trial court's determination that the witness was not credible. This Court stated that all that was

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required was a determination of whether the inherent tendency connection had been made and it was "the jury's role to assess the credibility of the evidence and the state may present rebuttal evidence for the jury to consider in making its decision." Blom, 682 N.W.2d at 622.

This language from Blom about the jury's role is consistent with this Court's recent decision in State v. Dahlin, 695 N.W.2d 588 (Minn. 2005), dealing with the standard for instructing on lesser-included offenses, where this Court stated "that trial courts must consider only whether a rational basis exists in the evidence to acquit of the greater charge and convict of the lesser--without considering either the strength of the evidence or the credibility of the witnesses." Dahlin, 695 N.W.2d at 596 (emphasis added). Making credibility determinations and the weighing of evidence are tasks reserved to the jury. Id. This Court held that "in evaluating whether a rational basis exists in the evidence for a jury to acquit a defendant of a greater charge and convict of a lesser, trial courts must henceforth view the evidence in the light most favorable to the party requesting the instruction." Id. at 597.

Thus, after Blom and Dahlin, where the defense is requesting to present third-party perpetrator evidence, the trial court should not make credibility determinations, weigh the strength of the evidence, or balance the State's response to appellant's evidence. Rather, it merely should examine appellant's proffer in the light most favorable to appellant's claim to determine whether the facts provide "some proof of complicity" between the third-party and the charged offense. Hawkins, 260 N.W.2d at 159 (citing Dubose v. State, 10 Tex. App. 230 (1881)).

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C) When viewed under the proper standard, appellant's proffered evidence provided an inherent tendency to connect to the third-party perpetrators to the charged offense.

Appellant provided written proffers on two sets of possible third-party perpetrators and also argued additional facts orally prior to the State's case-in-chief. (Appendix A; Voir Dire Tr. at 608, 610). The first proffer involved evidence pointing to the involvement of Maynard Cross (Appendix A1), and the second proffer and oral proffer involved evidence pointing to the involvement of three men from South St. Paul—Michael Smith, Lorenzo Eide, and Jesse Magnuson. (Appendix A2; Voir Dire Tr. at 608, 610).

The trial court ruled that appellant had not met the threshold requirement of connecting Cross, Magnuson, or Eide to charged crime, but that appellant had met the requirement to connect Smith. (Appendix B).

1) Reverse-Spreigl evidence related to Maynard Cross

Appellant's proffer provided evidence having an inherent tendency to connect Cross to the robbery and murder of E[redacted]. In September 2003, Cross pleaded guilty to killing a store clerk during a February 2003 robbery in Minneapolis. (Appendix A1 (Cross Proffer at ¶ 1)). Cross had knowledge of South St. Paul and knew the location of Sabreens. (Cross Proffer at ¶¶ 2, 4). Cross is the same height as the people seen running from the store during the robbery. (Cross Proffer at ¶ 7). Cross was at the Buttery bar in St. Paul after the shooting. (Cross Proffer at ¶ 6). Cross had knowledge of the offense; information he alleged came from appellant. (Cross Proffer at ¶ 8). Last, according to

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I[redacted] T[redacted], Cross was in Sabreens in South St. Paul two or three days prior to the robbery. (Cross Proffer at ¶ 2).

Taken together, this evidence provides more than a "bare suspicion" and this evidence has an inherent tendency to connect Cross to the murder. Hawkins, 260 N.W.2d at 159 (requiring that evidence have inherent tendency to connect other person with actual commission of crime avoids use of bare suspicion). The State used evidence similar to this to connect appellant to the charged offense and, if this type of evidence had a tendency to connect appellant to the murder, it is proper to conclude the same type of evidence connected Cross. The State presented evidence of appellant's height (Tr. at 344-45), and argued in closing that appellant was the same height as the person seen leaving the scene—so is Cross. (Tr. at 515-16; Cross Proffer at ¶ 7).[12] The State also introduced evidence showing the distance from Sabreens to the Buttery Bar in St. Paul (Tr. at 359-60), and argued in its closing that appellant could have driven from downtown St. Paul to South St. Paul to commit the crime and arrived back at the Buttery when Colleen McManus said he did. (Tr. at 500, 508). If appellant could make it back from South St. Paul to the Buttery, so could Cross. McManus left the Buttery at 8 p.m. and returned about the same time as appellant and Johnson apparently arrived—around 10:15 or 10:30 p.m. (Tr. at 222-24, 238). The evidence shows Cross was in the bar before McManus returned but it does not show how long Cross had been in the bar. (Tr. at 238).

[12] Contrary to the State's closing argument, K[redacted] J[redacted] did not testify at trial about the height of the two men that she saw running from Sabreens. See State v. Porter, 526 N.W.2d 359, 363-64 (Minn. 1995) (stating that State's closing argument must be based on the evidence produced at trial, or the reasonable inferences from that evidence).

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Furthermore, the State introduced evidence that Johnson's cousin was Richard Robinson or "Hennessey" and that Robinson lived a few blocks from Sabreens. (Tr. at 301-04, 360-62; Trial Exhibit 44). The State argued that this evidence was consistent with testimony from Reese and tied appellant to the neighborhood around Sabreens. (Tr. at 499-500). Again, the evidence against Cross also showed he had been to South St. Paul in the past and knew the location of Sabreens. (Cross Proffer at ¶¶ 2, 4).

The evidence from I[redacted] T[redacted] that Cross was in Sabreens two or three days before the offense was evidence that Cross was "casing" the store prior to the robbery. As case law acknowledges, targeted business are often "cased"—a person is sent in to check the layout and where staff are normally positioned—and then a date and time is selected to commit the robbery. See, e.g., Terry v. Ohio, 392 U.S. 1, 6 (1968) (describing officer's reason for stopping suspects as "he suspected the two men of 'casing a job, a stick-up'"); Moore v. Johnson, 194 F.3d 586, 597 (5th Cir. 1999) (explaining that accomplice "testified that he cased the store before the robbery by going in to see who was working and whether the robbery was feasible. [Accomplice's] testimony was corroborated by the testimony of store employees who testified that they observed [accomplice] in the store earlier in the day."); State v. Redding, 422 N.W.2d 260, 262 (Minn. 1988) ("Other prosecution witnesses included Waddell, the woman who 'cased' the store before the robbery"); State v. Hathaway, 379 N.W.2d 498, 500 (Minn. 1985) (explaining that witness "had 'cased'" hospital prior to robbery before later deciding not to participate in the robbery); Commonwealth v. Delong, 799 N.E.2d 1267, 1280 (Mass. Ct. App. 2003) ("The Suffolk County prosecutor introduced the surveillance film at the

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defendant's trial in Suffolk County for the purpose of showing that the defendant 'cased' that store three days before he robbed it."). Certainly, if appellant had been in Sabreens anytime in the two or three days before the robbery, the State would have presented this evidence to the jury and argued that appellant was "casing" Sabreens.

In rejecting appellant's claim, the court stated that "[redacted] failed to pick Cross out of a photo lineup." (Appendix B3). The court, however, failed to acknowledge that [redacted] had identified Cross from a photograph in the newspaper as being in the store two or three days before the robbery. Moreover, in their report, police admitted that the picture of Cross in the lineup was "somewhat different" from the photograph of Cross in the newspaper. (Sept. 20, 2004 State's Memorandum of Law at Exhibit B). In any event, the court should not choose between two pieces of evidence in order to deny this type of claim.

Last, appellant also proffered that Cross had knowledge related to the crime. His purported knowledge of the facts surrounding the offense coupled with this other evidence provides a sufficient link between Cross and the crime; that is, like the eye-witness who testified against the defendant in Hawkins and had a motive to implicate Hawkins to spare himself, Cross had a motive to shift blame to appellant and away from himself. That Cross claimed his information came from appellant is a question of witness credibility and for the jury to determine. Blom, 682 N.W.2d at 622.

On a whole, this evidence meets the minimal threshold to establish an inherent tendency to connect Cross to the offense and the trial court erred in finding otherwise.

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Cross was casing Sabreens, matched the physical description of the robbers, and had knowledge about the offense.

Because appellant provided evidence connecting Cross to the murder, he should have been allowed to introduce evidence of Cross' prior murder of a Minneapolis store clerk during an armed robbery. Jones, 678 N.W.2d at 16 ("Once the defendant meets that threshold requirement, the district court should then evaluate the admissibility of the reverse-Spreigl evidence").[13] Cross pleaded guilty to the Minneapolis murder and his plea and conviction provided clear and convincing evidence that Cross participated in the reverse-Spreigl incident. State v. Moorman, 505 N.W.2d 593, 602 (Minn. 1993) ("plea is sufficient by itself to meet the clear and convincing standard for . . . Spreigl offense.").

Second, the reverse-Spreigl incident is relevant and material to appellant's case because the identity of the person who shot B[redacted] was in dispute at trial and this evidence was relevant "to identify the party as the perpetrator." Gutierrez, 667 N.W.2d at 439 (Hanson, J., concurring); see also State v. Lewis, 547 N.W.2d 360, 362-64 (Minn. 1996) (affirming admissibility of prior robberies under Rule of Evidence 404(b) to help prove identity of defendant in case where defendant was charged with committing murder during robbery). Last, the probative value of the evidence outweighed its potential for unfair prejudice because it was important evidence supporting reasonable doubt and the prejudice was minimal as the evidence was not being introduced against a criminal defendant. See State v. Williams, 593 N.W.2d 227, 233 (Minn. 1999) (stating that, when

[13] Because the trial court found that appellant had not connected Cross to the offense, it did not address the three-part Spreigl test. (Appendix B).

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applying reverse-Spreigl standard, "since the . . . evidence was being offered by the defense, there was little concern about it being unfairly prejudicial.").

2) Alternative perpetrator evidence related to Michael Smith, Jesse Magnuson, and Lorenzo Eide.

Like appellant's proffer related to Cross, appellant's second proffer provided evidence having an inherent tendency to connect the three men to the robbery and murder of K[redacted] B[redacted].

The day after the shooting Smith called Mary Martinez and told her that he, Magnuson, and Eide "shot the guy." (Appendix A2 (Smith, Edie, Magnuson Proffer ¶ 1)). Samantha O'Reilly was with Eide on December 23, 2002, and Eide had a gun in his car at that time. Also, on December 23, Eide had "a couple of hundred dollars worth of drugs." O'Reilly told police that on December 31, 2002, Eide told her "that he would do to her what he did to the guy at Sabreens" and also that Eide would get upset when people brought up the Sabreens' topic. (Smith, Edie, Magnuson Proffer ¶ 2). Smith, Eide, and Magnuson are all longtime residents of South St. Paul. (Smith, Edie, Magnuson Proffer ¶ 3). Last, Magnuson's car matched the one seen by the teenagers behind Sabreens during the time of the shooting. (Voir Dire Tr. at 610).

In Blom, this Court held that the third-party perpetrator's admission to a cellmate that he committed the offense was sufficient to provide an inherent tendency to connect the third party to the crime. Blom, 682 N.W.2d at 622-23 ("the cellmate's statement is evidence connecting [third-party] to the crime and therefore Blom should have been allowed to present the cellmate's testimony to the jury."). Here, Smith's admission to

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Martinez provided such a connection and the trial court correctly found that Smith's admission provided a sufficient link to the murder. (Appendix B1). The court erred, however, in finding that the proffered evidence failed to link Magnuson and Eide to the offense. Eide's statement to O'Reilly "that he would do to her what he did to the guy at Sabreens" is a confession to committing the offense; that is, it is the equivalent of saying, "I will do to you what I did to K[redacted] B[redacted]—shoot and kill you." This admission is similar to the third-party perpetrators admission in Blom and the trial court erred in excluding this evidence. As Blom makes plain, the court should not engage in credibility determinations; those determinations are for the jury. The State can chose to introduce evidence to undercut O'Reilly's credibility and it could also introduce whatever evidence it might have to show Smith and Eide had an alibi on December 22-23. That is, the State can rebut the defense evidence with its own evidence. See Blom, 682 N.W.2d at 621-22.

With regard to Magnuson, Smith's statement implicating himself, Eide, and Magnuson in the shooting is sufficient evidence to meet the minimal threshold of connecting the third-party to the offense. Essentially, Smith could testify that Magnuson was present and participated in the offense. Furthermore, the description of Magnuson's car provides another link in the chain to connect Magnuson to the offense.

The trial court's ruling denying admission of the evidence rests on the assumption that the perpetrator must be at the crime scene during the offense. This Court has noted the absence of direct evidence placing the alleged third party perpetrator at the scene of the charged crime when upholding a trial court's exclusion of third-party perpetrator evidence, see, e.g., State v. Harris, 560 N.W.2d 672, 679 (Minn. 1997), but the Court has

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never held that such a showing is essential. Indeed, this Court's early decisions required merely "some proof of complicity" in the charged crime. Hawkins, 260 N.W.2d at 159 (citing Dubose v. State, 10 Tex. App. 230 (1881)).

There, in fact, is no compelling reason for requiring a criminal defendant to present direct evidence of the alleged third-party perpetrator's presence at the crime scene during the crime. The State is not required to present direct proof of a defendant's presence to prove that the defendant committed a crime. See State v. Taylor, 650 N.W.2d 190, 206-07 (Minn. 2002) (upholding defendant's murder conviction which was based solely on circumstantial evidence). The State does not even have to prove that a defendant was present at the scene of a crime to establish criminal liability. See Minn. Stat. § 609.05 (making person who aids and abets commission of crime liable as principle). No rational justification exists for imposing a greater burden on a defendant seeking to prove that a third party was involved in the crime in order to raise reasonable doubt about his guilt.

Like the evidence related to Cross, the trial court erred in excluding evidence that Edie and Magnuson committed the charged offense.

D) The trial court's erroneous ruling excluding the evidence was not harmless beyond a reasonable doubt.

Harmless error analysis applies to the erroneous exclusion of evidence that violates a defendant's right to present evidence. Blom, 682 N.W.2d at 622. The error here involves the exclusion of evidence and is properly governed by the standard announced in Delaware v. Van Arsdall. See Van Arsdall, 475 U.S. 673, 684 (1986)

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("The correct inquiry is whether, assuming that the damaging potential of the [evidence] were fully realized, a reviewing court might nonetheless say that the error was harmless beyond a reasonable doubt.") (emphasis added); Blom, 682 N.W. 2d at 622-23. In order to determine that an error is harmless,

> the reviewing court must be satisfied beyond a reasonable doubt that if the evidence had been admitted and the damaging potential of the evidence fully realized, an average jury (*i.e.*, a reasonable jury) would have reached the same verdict. Only then can it be said that the erroneous exclusion of the evidence was harmless. If, on the other hand, there is a reasonable possibility that the verdict might have been different if the evidence had been admitted, then the erroneous exclusion of the evidence is prejudicial.

Post, 512 N.W.2d at 102.

This Court has explained that when applying the harmless error test, the reviewing court must look to the basis on which the jury rested its verdict and determines what effect the error had on the actual verdict. If the verdict was surely unattributable to the error, the error is harmless beyond a reasonable doubt. State v. Juarez, 572 N.W.2d 286, 291-92 (Minn. 1997) (clarifying harmless error standard); see also State v. Keeton, 589 N.W.2d 85, 91 (Minn. 1998). "[T]he court must be able to declare a belief that [constitutional error] was harmless beyond a reasonable doubt." Chapman v. California, 386 U.S. 18, 24 (1967); see also United States v. Dominguez Benitez, 124 S. Ct. 2333, 2339 n.7 (2004) ("When the Government has the burden of addressing prejudice, as in excusing preserved error as harmless on direct review of the criminal conviction, it is not enough to negate an effect on the outcome of the case.").

In Blom, this Court held that erroneous exclusion of alternative perpetrator evidence was harmless, in part, because female human remains were found on Blom's

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property, and an eyewitness placed him at the scene and identified his vehicle and partial license plate. As is clear from the record, and as the State candidly acknowledged in its closing argument, (Tr. at 508), no physical evidence linked appellant to this offense. That is, the State did not recover appellant's fingerprints, shoeprints, or DNA from the crime scene and there was no usable surveillance videotape. Moreover, the State never matched the bullets and shell casings from the scene to a firearm possessed by appellant. Additionally, the eyewitnesses to the events surrounding the offense—Ms. J[redacted] and the teenagers in the alley—did not identify appellant as either man seen running from Sabreens. Last, the teenagers' description of the car in the alley is not consistent with the blue Corsica the State agued in closing was the get-away car. (Tr. at 499-500).

In addition, in Blom, this Court found the trial court's error harmless because Blom resembled the person seen abducting the victim on the surveillance videotape and Blom admitted in a formal statement to police that he had kidnapped and killed the victim. In this case, the State introduced evidence that appellant had admitted to different people over the course of several months shooting a clerk at a store and that the store was in South St. Paul. However, appellant consistently denied his involvement when formally questioned numerous times by police. Additionally, appellant challenged the veracity of several of the State's witnesses that came forward because many were convicted felons and several were receiving benefits from testifying, including a reduced sentence and the dismissal of charges. See People v. Williams, 357 N.E.2d 525, 529-30 (Ill. 1976) (recognizing that issue was one of weight not admissibility but viewing with skepticism testimony of persons receiving benefit for testifying at criminal trial); Minn.

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R. Evid. 609 (2004). Additionally, the defense was able blunt the effect of many of the admissions because, as one witness acknowledged, people in prison or jail often lie to make themselves look tougher. (Tr. at 413).

This Court in Blom also found it important that the defendant was able to present some of the alternative perpetrator evidence to the jury. Blom, Here, although testimony indicated that Cross was at the Buttery on December 22, and perhaps spoke to appellant and later yelled at him to be quiet, (Tr. at 226-27, 234-35, 238), no evidence linking him to South St. Paul was introduced and his Hennepin County murder conviction was not admitted. Moreover, the trial court sustained the prosecutor's objections when appellant's attorneys approached the subject of an alternative perpetrator. (Tr. at 332-33, 378, 537).

Last, appellant's excluded third-party perpetrator evidence goes to the heart of the disputed issue in this case: the identity of the shooter. Van Arsdall, 475 U.S. at 684 ("assuming that the damaging potential of the [evidence] were fully realized, a reviewing court might nonetheless say that the error was harmless beyond a reasonable doubt."). Appellant's jury was not instructed that appellant could be convicted for aiding and advising the shooting. (See generally Tr. at 478-89 (instructions)). Appellant was charged with being the shooter. Appellant's evidence that points to a different person as the shooter goes directly to the disputed portion of the State's case. As was argued above, the State's theory of the case is similar to that which would have been presented by appellant: with Cross appellant would have shown that Cross knew where Sabreens was located; Cross had been there "casing" the place before the murder; Cross had

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knowledge of the offense; Cross, like appellant, is the same size as one person identified running from the crime scene; and Cross, like appellant, was located at the Buttery a short time after the murder. Appellant also would have shown that Cross had committed a similar murder of a convenience store clerk in Minneapolis.

With regard to Smith, Eide, and Magnuson, appellant would have shown that these young men were familiar with the neighborhood; Eide and Smith had made incriminating statements about their involvement; Smith with his statement to Martinez put himself, Eide, and Magnuson at the scene; Eide possessed a gun and money to buy drugs the day after the murder; and Magnuson drives a car similar to that described by the teenagers as the "get-away" car.

Taken as a whole, the error in excluding this evidence, when its damaging potential is realized, cannot be harmless beyond a reasonable doubt.

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II.

THE CUMULATIVE PREJUDICIAL EFFECT OF THE ADMISSION OF EVIDENCE THAT WITNESSES WERE THREATENED, FELT THREATENED OR WERE FEARFUL, ALONG WITH STATEMENTS BY POLICE DURING THE TAPED INTERVIEWS AND AT TRIAL THAT APPELLANT WAS NOT TRUTHFUL, DENIED APPELLANT HIS CONSTITUTIONALLY GUARANTEED RIGHT TO A FAIR TRIAL.

Even when no single error standing alone or arising under different factual circumstances would be sufficient to require reversal, this Court has found that the cumulative effect of numerous errors may deprive a defendant of a fair trial. See State v. Erickson, 597 N.W.2d 897, 904 (Minn. 1999) (discussing when cumulative effect of errors deprives defendant of fair trial); State v. Ware, 498 N.W.2d 454, 459 (Minn. 1993) (stating synergy of errors warrants, in interests of justice, new trial); State v. Underwood, 281 N.W.2d 337, 344 (Minn. 1979). Because the errors related to the admission of threats against witnesses and police officer comments on appellant's credibility were not harmless beyond a reasonable doubt, appellant is entitled to a new trial.

1) Multiple State witnesses testified that they had been threatened, were assaulted, or were fearful.

A) Standard of Review

Trial courts are afforded discretion on evidentiary issues, and reviewing courts will overturn evidentiary decisions when that discretion is abused. Kelly, 435 N.W.2d at

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813. In cases where evidence is admitted that the defendant threatened a witness or that the witness was fearful, the trial court must provide cautionary instructions to assure the evidence is not misused. State v. Harris, 521 N.W.2d 348, 352-53 (1994).

B) Discussion

The State introduced evidence that S[redacted] had moved away from Minnesota because of her fears, that Griffin had moved because of threats against him related to appellant's case, and that Estrada was assaulted in the jail after speaking with police about appellant's case. (Tr. at 217-19, 371-72, 397-99). Also at trial, a police officer stated that he had searched Johnson's prison cell looking for written evidence of threats by appellant against Darlene Jones' grandmother's fiancé (Tr. at 380-81, 426-27), and, in closing argument, the State argued that McManus did not get anything in exchange for her testimony and that she had to "quit her job." (Tr. at 512).[14]

Evidence of threats to witnesses may be relevant in showing consciousness of guilt. United States v. Guerrero-Cortez, 110 F.3d 647, 652 (8th Cir. 1997) ("An effort to intimidate a witness tends to show consciousness of guilt."); United States v. Gonzalez, 703 F.2d 1222, 1223 (11th Cir. 1983) (per curiam). Here, however, there is no evidence linking appellant to any threat against S[redacted], Griffin, Estrada, or Jones' grandmother's fiancée. (Tr. at 219, 399, 427). Nor was any evidence presented at trial that appellant caused McManus to quit or leave her job. Because the threats or fears these people felt could not be linked to appellant, the trial court erred in overruling appellant's relevance

[14] McManus did not testify that she had quit her job or, if she did quit, why. Porter, 526 N.W.2d at 363-64.

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objections regarding the fears of S[redacted], the threats against Griffin, and the assault on Estrada. (Tr. at 218, 371, 398). This Court has held that evidence of a prior threat is not admissible if it is characterized as tending to show defendant's propensity or disposition to commit the crime charged. State v. Harris, 521 N.W.2d at 353 (citing State v. Thieman, 439 N.W.2d 1, 6 (Minn. 1989)). In this case, the inference naturally drawn by the jury was that appellant must be violent and guilty of the offense, or these people would not feel scared or would not have been threatened or assaulted.

Even where evidence of direct threats by a defendant are admissible, "the trial court must still provide safeguards including cautionary instructions to prevent the evidence from being misused." Harris, 521 N.W.2d at 353. In Harris this Court held that "[b]ecause there was direct evidence Harris threatened [three witnesses], we find the evidence properly admitted as showing Harris' consciousness of guilt. The trial court erred, however, by failing to give the jury cautionary instructions." Id. Here, even assuming the evidence could be admitted for to show consciousness of guilt, the trial court plainly erred in not providing a cautionary instruction ensuring that the jury did not misuse the evidence.

Looking at the State's closing argument, it attempted to use the fact that S[redacted] and Griffin had to leave the State and that McManus lost her job to rebut a possible defense argument that the witnesses were less credible because they had received money or other inducements from the State. (Tr. at 520-21). This Court has said, in the context of admitting evidence of a witnesses' participation in a witness protection program, that "[t]o bolster the witness' credibility, the prosecution may also want to introduce evidence

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that the decision to testify has resulted in negative consequences to the witness." Harris, 521 N.W.2d at 352. This Court has also recognized this evidence, while probative and therefore relevant, may also be highly prejudicial in that the jury may infer the defendant is connected to the negative consequences suffered by the witness. Id. Thus, if "admitted, the trial court must give the jury explicit instructions as to the use of the evidence." Id. Assuming that this evidence was properly admitted on the issue of witness bias or credibility, the court plainly erred in not instructing the jury on how it was supposed to utilize this evidence.

2) The court erred in not giving a limiting instruction when the taped interviews of appellant by police were played to the jury and police improperly commented on whether they believed appellant was truthful.

In a pre-trial motion in limine, appellant requested an

> Order prohibiting testimony from any police officer, police investigator, or other agent of the State of Minnesota regarding his or her opinion of the credibility and/or reliability of any statements made by the defendant.
>
> ***
>
> an Order prohibiting testimony from any police officer, police investigator or other agent of the State of Minnesota regarding his or her opinion of the credibility, reliability and/or truthfulness of any statement made by any witness during the investigation of this case.
>
> ***
>
> an Order prohibiting the State of Minnesota from eliciting "vouching" testimony from witnesses for the State regarding the purported truthfulness of statements made by any witnesses for the State.
>
> ***
>
> [and]
>
> an Order prohibiting testimony from any lay witnesses regarding their opinion of the credibility and/or reliability of any statements made to them by [appellant].

(Aug. 16, 2004 Motion in Limine at ¶¶ 7(a), 8, 11, & 12).

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When addressing appellant's motion in limine, the trial court stated that "nobody's going to elicit opinion evidence from police or other witnesses regarding credibility or reliability of any statements made by anyone. . . . I don't need to do a specific order on that. These are rules that the attorneys have all learned to live by." (Aug. 20, 2004 Tr. at 6).

This Court has long recognized that a police officer's questions and statements made to a defendant during interrogation may be inadmissible because they are irrelevant and prejudicial. This Court has stated:

> The mere fact that a "defendant waives his right and agrees to talk with the police does not mean that everything that is asked by the officers or said by the defendant in response is necessarily admissible." State v. Hjerstrom, 287 N.W.2d 625, 627 (Minn. 1979). We further stated in Hjerstrom that "[t]he only tenable rule is that, assuming a proper objection, immaterial and irrelevant portions of an extrajudicial interrogation of a defendant should generally not be received in evidence." 287 N.W.2d at 627.

State v. Lindsey, 632 N.W.2d 652, 663 (Minn. 2001).

Questions and statements made by law enforcement officers during interrogation may also constitute inadmissible hearsay if put before the jury as supporting the truth of the matters asserted. Bernhardt v. State, 684 N.W.2d 465, 476 (Minn. 2004) (stating that officer's representation that third parties implicated defendant in crime were before the jury supporting the truth of matters asserted); Minn. R. Evid. 801(c). Such comments may not be hearsay if they are not admitted for the truth of the matters asserted, State v. Tovar, 605 N.W.2d 717, 726 (Minn. 2000), or if they are admitted only to provide the context for the defendant's answers. Id.; see United States v. Abrahamson, 568 F.2d 604,

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606 (8th Cir. 1978) (holding that portions of the recordings containing federal agents' statements were admissible "to provide a context for [coconspirator's] end of the conversation").

In order to avoid jury confusion and possible prejudicial misuse of the comments made by law enforcement during an interrogation, a cautionary or limiting jury instruction should be given. Bernhardt, 684 N.W.2d at 476; State v. Ferguson, 581 N.W.2d 824, 835 (Minn. 1998) (explaining that, after procedure for reading interrogations' questions and answers explained to jury, trial court instructed jury "that [the officer's] questions were not evidence, and the jury should not consider them in reaching a verdict. Only [the defendant's] answers constituted evidence."). Generally, without a proper limiting instruction, the dangers of prejudice and improper use abound.

During the interviews of appellant by police, the officers commented multiple times that appellant was not telling them the truth or that they knew he was lying. The officers also stated that the witnesses who gave information incriminating appellant were credible. Moreover, at trial Officer Kreager commented that during the interviews appellant's body language "was not consistent with open honesty." (Tr. at 339-40).

It is axiomatic that "the credibility of a witness is for the jury to decide." Ferguson, 581 N.W.2d at 835. Therefore, one witness cannot vouch for or against the credibility of another witness. Id. Opinion testimony about the credibility of a witness, or "vouching testimony," invades the exclusive province of the jury to determine the weight and credibility of the evidence. United States v. Azure, 801 F.2d 336, 340-41 (8th Cir. 1986). When vouching testimony invades the jury's credibility determinations to

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such an extent that it deprives a defendant of due process of law, reversal of the convictions is required. Maurer v. Minn. Dept. of Corrections, 32 F.3d 1286, 1289 (8th Cir. 1994). In Maurer, the United States Court of Appeals for the Eighth Circuit found reversible error where witnesses testified that the complainant was "sincere" in her complaint.

This Court has been especially wary of such testimony when it comes from law enforcement. Ferguson, 581 N.W.2d at 835. For example, in State v. Koskela, 536 N.W.2d 625 (Minn. 1995), this Court stated that it was troubling for a police officer to state "I had no doubt whatsoever that I was taking a truthful statement." Koskela, 536 N.W.2d at 630; see State v. Ellert, 301 N.W.2d 320, 323 (Minn. 1981) (holding that it was error to admit police testimony that defendant was lying when she made her statement to police).

In Ferguson, this Court recognized that if

> Sgt. Jackson had testified that Ferguson was lying and the Wheatley family members were testifying truthfully, such evidence would be inadmissible.

Ferguson, 581 N.W.2d at 835. The Court explained, however, that this was not problematic precisely because the trial court gave a detailed jury instruction explaining that officer's questions were not evidence and were only to be used to put the defendant's answers in context. Id.

Contrary to Ferguson, in this case, the jury was not given any instruction limiting the use of the police statements and questions made during the interrogations. This was error. This Court does not allow a police officer at trial to give his opinion about whether

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the defendant's statements were truthful. Through the use of the taped interviews, however, that is precisely what happened here. The State should not be able to backdoor evidence through the use of the Scales tapes that plainly would be inadmissible in any other form.

This is error and the failure to give a limiting instruction to the jury, together with the trial court's failure to give a cautionary instruction related to threat evidence denied appellant his right to a fair trial.

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CONCLUSION

For the reasons stated herein, appellant respectfully requests that his convictions be reversed.

Dated: June 30, 2005

Respectfully submitted,

OFFICE OF THE MINNESOTA
STATE PUBLIC DEFENDER

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CERTIFICATE OF COMPLIANCE

This brief contains 13, 365 words (exclusive of the table of contents and table of authorities), as computed by the word processing program used to prepare this brief, Microsoft Word 2000, and it complies with the type face provisions of the Rule of Civil Appellate Procedure 132.01, subd. 3.

Roy G. Spurback
Assistant State Public Defender

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NewsRoom

12/24/02 St. Paul Pioneer Press (Minn.) B1
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December 24, 2002

Section: Local

SHOOTING DEATH LEAVES QUESTIONS THE CLERK SLAIN IN AN APPARENT ROBBERY AT A NEIGHBORHOOD GROCERY LEFT THE MIDDLE EAST TWO YEARS AGO. AUTHORITIES CALL THE CRIME UNUSUAL FOR DAKOTA COUNTY.

BRIAN BONNER, Pioneer Press

SOUTH ST. PAUL

Khalid Bakkri arrived in America two years ago to study accounting. Instead, while helping in his younger brother's **South St. Paul** grocery, the 25-year-old Palestinian was shot to death by an unknown assailant Sunday night during an apparent robbery.

The victim's brother, Tariq Bakkri, 23, said Monday that he checked on his brother and left **Sabreen's** Supermarket, 345 Fourth Ave. S., only minutes before the shooting. Authorities, alerted by a 911 call at 9:42 p.m., believe that Khalid was shot less than 30 minutes before the store was supposed to close at 10 p.m.

"My brother was shot in the back of the head," said Tariq, adding that the store contained cash from several days of sales.

Police Chief Michael Messerich said authorities were looking for a hooded gunman and at least two accomplices.

Investigators were continuing to question a store customer and at least two other eyewitnesses. The two robbers fled from the store into an alley where an accomplice had been waiting in a dark four-door sedan. Authorities gathered evidence from the store, located in a residential neighborhood, for much of the day on Monday.

Messerich said that cash was taken, but he wouldn't say how much. He also said that police were working under the assumption that robbery was the only motive, although they haven't eliminated other possibilities.

"We don't have anything that makes us believe it was anything other than a robbery gone bad," Messerich said.

Messerich said that Khalid was shot in the head, but couldn't confirm whether it was in the back of the head. Autopsy results from the Dakota County medical examiner were not available Monday.

Tariq and family friends gathered Monday in his Inver Grove Heights town home. They agreed that robbery may have been the motive for the murder. But they also wondered whether Khalid was executed because he was Palestinian, making him the victim of a hate crime.

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Tariq married an American citizen and moved to the state in 1997. Two years ago, he leased the store -- a neighborhood institution for more than 50 years -- and fell in love with the friendly suburban community. He said older brother Khalid arrived two years ago on a student visa.

Unfortunately, Tariq said, after Sept. 11 he noticed a change in attitudes toward him. While there was nothing overt, business began to drop off. He tried to dismiss the decline as part of the national recession.

But, in light of his brother's death, Tariq and his friends are not so sure. "It did something. After 9/11, people looked at us differently," Tariq said. "It just changed a lot of stuff."

Tariq said he and his brother were very open about being Palestinian and even put up photos of the West Bank city of Hebron, where the family lived. He said they wanted to educate his American customers that Hebron was not all "tents and camels," but a real modern city. The city is also the scene of fierce conflicts between Israeli troops and Palestinian residents.

Tariq said he and his brother, whom customers often think are twins, never got into arguments with anyone. "We grew up not to hate people -- to love people," Tariq said. "It is really sad."

For the most part, Tariq said, neighborhood residents and customers treated the brothers warmly. He admits that he has no reason to label his brother's murder a hate crime, other than his own private feeling.

Even the police chief patronized the store, usually on Saturday mornings to drink coffee, buy a few scratch-off lottery tickets and chat with whoever showed up. "Khalid and Tariq are just friendly guys, always smiling, handsome and nice guys," Messerich said. "I don't think anybody had any problem with them."

Hate crime or not, the murder is extremely unusual. Dakota County Attorney James Backstrom said he cannot recall a murder during the course of a robbery in the last 25 years in the entire county.

Messerich said Khalid is the first homicide victim in the city of 20,000 residents in as many as five years. **Sabreen's** Supermarket was robbed three years ago, Messerich said, but that crime was solved. He said that small, out-of-the-way, not particularly well-lit stores such as **Sabreen's** are inviting targets for some robbers.

Family and friends will discuss with Messerich today whether to set up a reward to help solve the crime.

Tariq said his parents live in United Arab Emirates. He also has two brothers and two sisters.

A wake was held for Khalid at Masjid Al-Huda mosque in northeast Minneapolis. The funeral is scheduled for 2:30 p.m. today at a mosque in Columbia Heights, followed by burial in an Islamic cemetery in Roseville, a family friend said.

Tariq said his brother wanted to be buried in Hebron, but Islamic tradition calls for burial to take place as quickly as possible.

Brian Bonner can be reached at bbonner@pioneerpress.com or (651) 228-2173. Staff writer Amy Sherman contributed to this story.

4 Photos
1-3) Photos by Craig Borck, Pioneer Press
1) A photo of Khalid Bakkri is taped to the door of his brother Tariq Bakkri's home with a message that directs friends and family to the mosque.

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2) South St. Paul police officer Cory Kochendorfer waits outside Sabreen's Supermarket on Monday while state crime investigators go over the scene of Sunday night's shooting. Clerk Khalid Bakkri, 25, was killed in an apparent robbery.
3) Store proprietor Tariq Bakkri, left, said he checked on his brother Khalid just minutes before the shooting. Police investigators were continuing to question a store customer and at least two other eyewitnesses. Family friend Nihad Rizeq is at right.
4) PHOTO COURTESY OF BAKKRI FAMILY
The funeral for Khalid Bakkri is scheduled for 2:30 p.m. today at a mosque in Columbia Heights.

---- Index References ----

News Subject: (Violent Crime (1VI27); Crime (1CR87); Hate Crimes (1HA65); Social Issues (1SO05))

Region: (Middle East (1MI23); Palestine (1PA37); Arab States (1AR46))

Language: EN

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12/22/2002	21:40	0:00:17	21:40	0:00	651-387-6929	Outgoing	Keitha McKinney	Cell
12/22/2002	21:41	0:01:45	21:42	0:01	651-769-0181	Outgoing	Yvonne White	St. Paul
12/22/2002	21:44	0:00:11	21:44	0:00	651-769-0181	Incoming	Yvonne White	Incoming
12/22/2002	21:45	0:00:15	21:45	0:00	651-769-0181	Incoming	Yvonne White	Incoming
12/22/2002	21:45	0:00:18	21:45	0:00	651-387-6929	Outgoing	Keitha McKinney	Cell
12/22/2002	21:46	0:06:23	21:52	0:05	651-387-6929	Outgoing	Keitha McKinney	Cell
12/22/2002	21:58	0:01:12	21:59	0:08	651-340-5824	Outgoing	Rochelle Perez	
12/22/2002	22:08	0:00:34	22:08	0:07	651-340-4929	Outgoing	N.J.	
12/22/2002	22:16	0:03:27	22:19	0:23	651-340-8154	Outgoing	S.V.	
12/22/2002	22:43	0:01:15	22:44	0:18	651-340-5772	Incoming	D.M.	Incoming
12/22/2002	23:03	0:00:24	23:03	0:00	651-493-4847	Outgoing	D.B.	
12/22/2002	23:04	0:00:18	23:04	0:00	651-493-9358	Outgoing	Unknown	
12/22/2002	23:04	0:00:16	23:04	0:00	651-493-9348	Outgoing	Unknown	
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12/22/2002	23:08	0:09:47	23:17	0:00	651-387-6929	Outgoing	Keitha McKinney	Cell
12/22/2002	23:18	0:00:55	23:18	0:00	651-398-5888	Outgoing	Voicemail	
12/22/2002	23:19	0:00:39	23:19	0:13	651-776-5263	Outgoing	S.J.	
12/22/2002	23:33	0:00:58	23:33	0:00	651-769-0181	Outgoing	Yvonne White	
12/23/2002	0:05	0:00:11	0:05	0:03	651-476-4241	Outgoing	Unknown	
12/23/2002	0:09	0:00:54	0:09	0:00	651-587-1823	Outgoing	Kentrell Anthony	Cell
12/23/2002	0:10	0:00:07	0:10	0:00	651-587-1823	Outgoing	Kentrell Anthony	Cell
12/23/2002	0:11	0:00:55	0:11	0:00	651-227-1179	Incoming	Economy Inn	
12/23/2002	0:12	0:01:36	0:13	0:00	651-769-0181	Incoming	Yvonne White	
12/23/2002	0:12	0:05:32	0:17	0:12	651-227-1204	Incoming	Economy Inn	
12/23/2002	0:30	0:00:19	0:30	0:27	651-769-0181	Incoming	Yvonne White	
12/23/2002	0:58	0:00:29	0:58	0:00	651-776-4241	Outgoing	956 Minnehaha	Landline

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12/23/2002	0:59	0:00:42	0:59	0:00	651-587-1823	Outgoing	Kentrell Anthony	Cell
12/23/2002	1:00	0:02:41	1:02	0:04	651-769-0181	Incoming	Yvonne White	
12/23/2002	1:07	0:03:54	1:10	0:00	651-340-8154	Outgoing	S.V.	
12/23/2002	1:10	0:10:14	1:20	0:00	651-769-0181	Incoming	Yvonne White	
12/23/2002	1:21	0:00:30	1:21	0:00	651-776-4241	Outgoing	956 Minnehaha	Landline
12/23/2002	1:22	0:00:05	1:22	0:00	651-398-5888	Outgoing	Voicemail	
12/23/2002	1:22	0:03:12	1:25	0:00	651-340-8154	Outgoing	S.V.	
12/23/2002	1:25	0:00:07	1:25	0:00	651-476-4241	Outgoing	Unknown	
12/23/2002	1:25	0:00:28	1:25	0:00	651-476-4241	Outgoing	Unknown	
12/23/2002	1:26	0:00:27	1:26	0:00	651-476-4241	Outgoing	Unknown	
12/23/2002	1:27	0:02:08	1:29	0:02	651-340-5774	Outgoing	Unknown	
12/23/2002	1:32	0:00:28	1:32	0:00	651-476-4241	Outgoing	Unknown	
12/23/2002	1:32	0:02:01	1:34	0:02	651-340-5774	Outgoing	Unknown	
12/23/2002	1:37	0:00:31	1:37	0:00	651-776-4241	Outgoing	956 Minnehaha	Lindline
12/23/2002	1:38	0:05:37	1:43	0:00	651-493-4847	Incoming	D.B.	
12/23/2002	1:42	0:01:33	1:43	0:01	651-769-0181	Incoming	Yvonne White	
12/23/2002	1:45	0:08:07	1:53	0:01	651-493-4847	Incoming	D.B.	
12/23/2002	1:55	0:01:32	1:56	0:04	651-493-4847	Incoming	D.B.	
12/23/2002	2:01	0:00:29	2:01	0:00	651-776-4241	Outgoing	956 Minnehaha	Landline
12/23/2002	2:01	0:08:07	2:09	0:00	651-493-4847	Incoming	D.B.	
12/23/2002	2:10	0:08:20	2:18	0:00	651-493-4847	Incoming	D.B.	
12/23/2002	2:18	0:00:27	2:18	0:10	651-222-4433	Outgoing	Yellow Cab	
12/23/2002	2:29	0:00:02	2:29	0:00	651-493-4847	Outgoing	D.B.	
12/23/2002	2:29	0:01:16	2:30	0:01	651-769-0181	Outgoing	Yvonne White	
12/23/2002	2:32	0:00:09	2:32	0:00	651-769-0181	Outgoing	Yvonne White	
12/23/2002	2:32	0:00:33	2:32	0:00	651-222-4433	Outgoing	Yellow Cab	
12/23/2002	2:33	0:04:34	2:37	0:00	651-493-4847	Incoming	D.B.	
12/23/2002	2:37	0:00:34	2:37	0:00	651-493-4847	Incoming	D.B.	
12/23/2002	2:38	0:03:32	2:41	0:42	651-493-4847	Incoming	D.B.	
12/23/2002	3:24	0:01:32	3:25	0:01	651-340-5774	Incoming	Unknown	
12/23/2002	3:27	0:00:42	3:27	1:27	651-398-5888	Outgoing	Voicemail	
12/23/2002	4:55	0:01:12	4:56	4:39	651-493-4847	Incoming	D.B.	
12/23/2002	9:36	0:01:06	9:37	0:41	763-300-2569	Incoming	Unknown CHI	Chicago
12/23/2002	10:19	0:00:28	10:19	0:16	651-398-5888	Outgoing	Voicemail	
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12/23/2002	11:22	0:00:29	11:22	0:00	651-398-5888	Outgoing	Voicemail	
12/23/2002	11:23	0:00:51	11:23	0:02	651-398-5888	Outgoing	Voicemail	
12/23/2002	11:26	0:01:29	11:27	0:30	651-340-3686	Incoming	Takiya Simmons	
12/23/2002	11:58	0:02:36	12:00	0:16	651-340-8154	Incoming	S.V.	
12/23/2002	12:17	0:01:32	12:18	0:27	651-340-5774	Incoming	D.M.	
12/23/2002	12:46	0:00:23	12:46	0:17	651-776-4241	Incoming	956 Minnehaha	Landline
12/23/2002	13:04	0:01:57	13:05	0:04	651-340-3686	Incoming	Takiya Simmons	
12/23/2002	13:10	0:00:23	13:10	0:01	651-387-6929	Outgoing	Keitha McKinney	Cell
12/23/2002	13:12	0:05:31	13:17	1:03	651-251-1201	Incoming	Unknown	

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12/23/2002	14:21	0:01:51	14:22	0:55	651-340-3686	Incoming	Takiya Simmons	
12/23/2002	15:18	0:00:22	15:18	0:34	651-776-4241	Incoming	956 Minnehaha	Landline
12/23/2002	15:53	0:02:55	15:55	0:47	651-748-0367	Incoming	P.C.	
12/23/2002	16:43	0:00:17	16:43	0:00	651-587-1823	Outgoing	Kentrell Anthony	Cell
12/23/2002	16:43	0:00:13	16:43	0:00	651-587-1823	Outgoing	Kentrell Anthony	Cell
12/23/2002	16:44	0:01:01	16:45	0:20	651-340-3686	Incoming	Takiya Simmons	
12/23/2002	17:06	0:03:24	17:09	0:05	651-340-8154	Incoming	S.V.	
12/23/2002	17:15	0:02:34	17:17	0:00	612-373-3333	Outgoing	Metro Transit	
12/23/2002	17:18	0:01:27	17:19	0:12	651-769-0181	Incoming	Yvonne White	
12/23/2002	17:32	0:01:50	17:33	0:04	651-340-8154	Outgoing	S.V.	
12/23/2002	17:38	0:02:37	17:40	0:01	651-340-3686	Incoming	Takiya Simmons	
12/23/2002	17:42	0:00:33	17:42	0:09	651-776-4241	Outgoing	956 Minnehaha	
12/23/2002	17:52	0:00:29	17:52	0:00	651-340-5824	Outgoing	Unknown	
12/23/2002	17:53	0:01:29	17:54	0:12	651-222-5861	Incoming	Buttery Bar	
12/23/2002	18:07	0:00:16	18:07	0:00	651-340-3686	Outgoing	Takiya Simmons	
12/23/2002	2:18		2:18	0:14			To Yellow Cab	
12/23/2002	2:32		2:32	8:54			To Yellow Cab	
12/23/2002	11:26		11:26	5:17			From Takiya	
12/23/2002	16:43		16:43	0:32			Kentrell Anthony	Cell
12/23/2002	17:15		17:15	0:38			To Metro Transit	
12/23/2002	17:53		17:53	1:26			From Colleen McManus?	
12/23/2002	19:19		19:19				Kentrell Anthony	Cell

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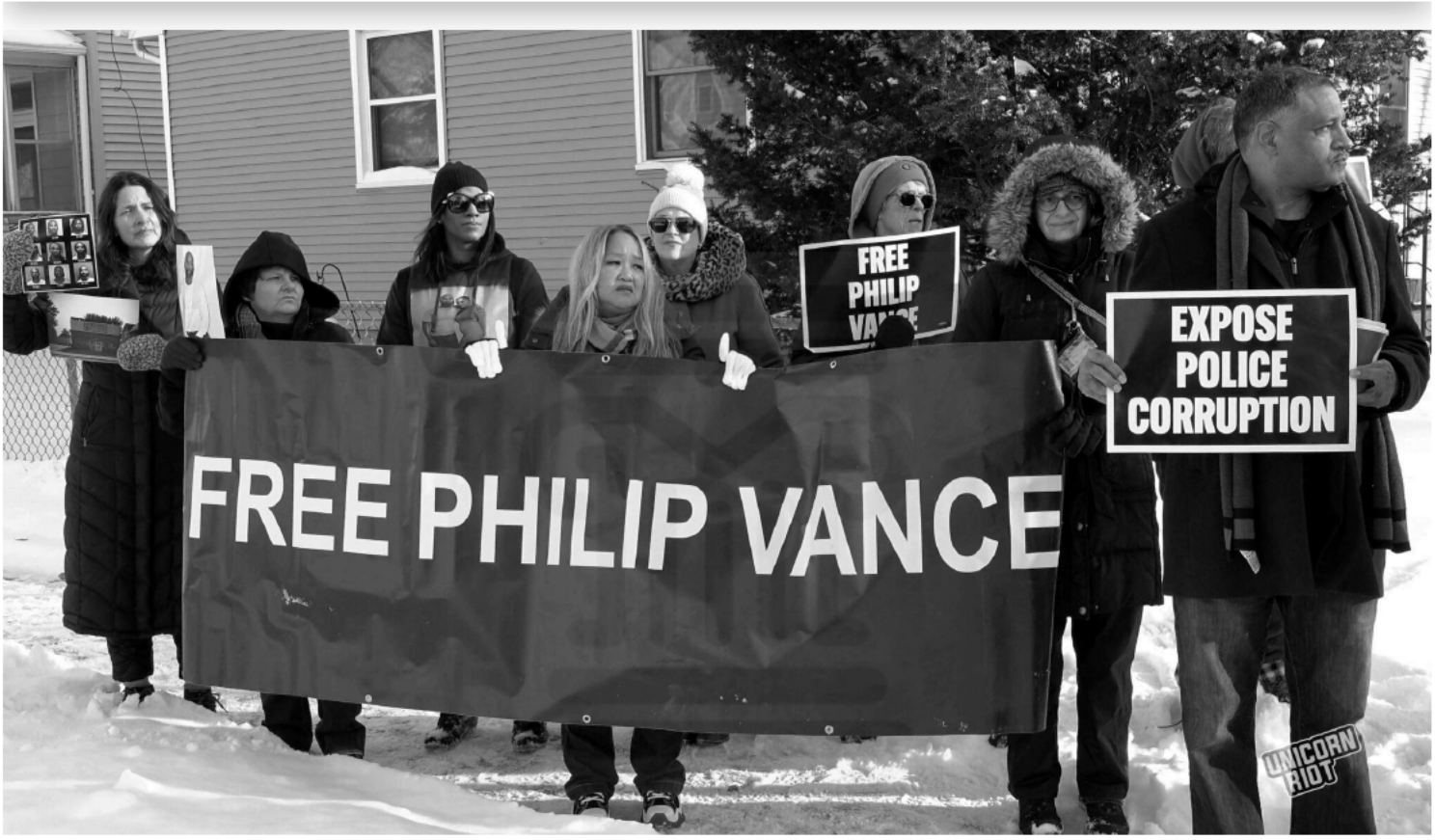

PRISON

Done Waiting on CRU, Philip Vance Readies to File Legal Petition for Wrongful Conviction

By Niko Georgiades, Unicorn Riot ▸ February 26, 2025

MCF-Rush City, MN — Serving a life sentence for a deadly robbery in South St. Paul in 2002, Philip Vance <https://unicornriot.ninja/2025/community-demands-exoneration-for-philip-vance-on-22nd-anniversary-of-murder/> has always insisted he is innocent. Since his conviction, he's been exhausting all legal options to get another chance in court to prove he's been wrongfully convicted. After waiting years for Minnesota's Conviction Review Unit (CRU) to finalize their investigation on his case, Vance's legal team is now preparing to bypass the CRU and

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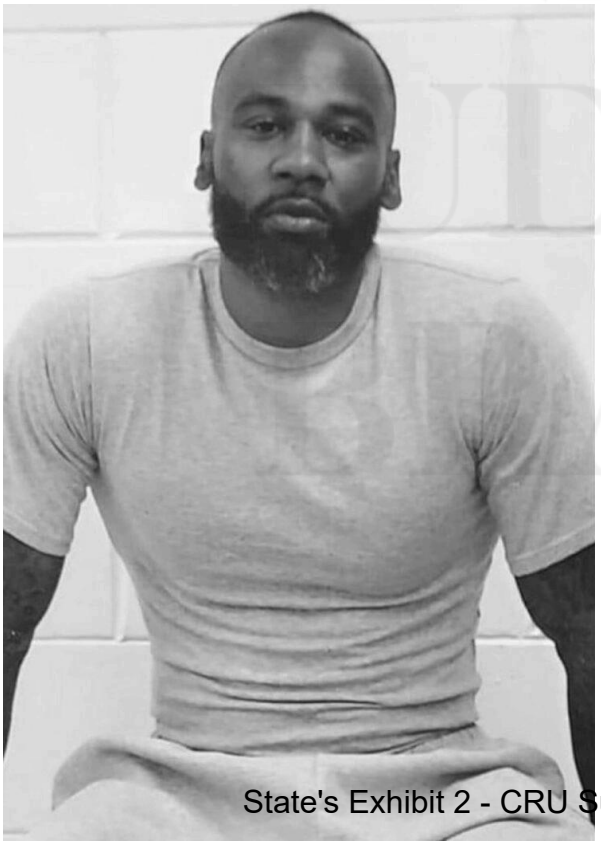
file a new petition for postconviction relief with newly acquired evidence proving his innocence on Thursday.

The upcoming filing will include more than 10 affidavits of recanted testimony in Vance's case and new details on Gang Strike Force officers paying witnesses and jailhouse informants. An online event <https://www.eventbrite.com/e/justice-reawakened-22-year-fight-for-freedom-will-reach-the-courtroom-tickets-1259139533239> is occurring on Friday, Feb. 28 at 12:30 p.m. that will feature Philip Vance from prison.

> **"My whole case was set, built and convicted on police corruption."**
>
> *Philip Vance*



Vance's case was investigated by officers in the Metro Gang Strike Force <https://www.startribune.com/metro-gang-strike-force-minnesota-officers-corruption-punishment/601191648> (MGSF), which was disbanded in 2009 after a federal investigation found the force routinely engaged in criminal activities. The prosecution was led by Attorney Kathy Keena (now the Dakota County Attorney) and relied on paid informants and coerced testimonies from jailhouse witnesses, over 10 of whom have since recanted, to secure a conviction against Vance.

Casting further doubt on the perception of Vance's conviction, an anonymous source recently told Unicorn Riot that they know the real killer in Vance's case <https://unicornriot.ninja/2025/source-claims-philip-vance-is-wrongfully-convicted-knows-the-real-killer/> and that an alleged accomplice is already serving two life sentences

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for a 2004 murder while the person who fired the shots is still free.

Vance is in prison for life over the fatal shooting of Khaled Al-Bakri, a twenty-five-year-old store clerk at Sabreen's Supermarket on December 22, 2002. Vance was convicted despite no physical or ballistics evidence linking him to the shooting.

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Sections: Appeals, Petitions, and Exonerations // Minnesota's Conviction Review Unit (CRU) // 'The CRU is a joke,' Applying to the CRU // The Disbanded Metro Gang Strike Force — 'My whole case was set, built and convicted on police corruption' // Citing Lack of Exonerations and Lengthy Time Spent on Applications, CRU's Advisory Board Calls for Unit Review // New Filing Expected This Week // Vance's Letter to MN Governor Tim Walz

Feb. 12, 2025: Source Claims Philip Vance is Wrongfully Convicted, Knows the Real Killer

<https://unicornriot.ninja/2025/source-claims-philip-vance-is-wrongfully-convicted-knows-the-real-killer/>

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Appeals, Petitions, and Exonerations

After his conviction, Vance filed appeals which rose as high as Minnesota's Supreme Court. Several post-conviction relief petitions and legal filings, such as attempting to retrieve his phone records to show his location during the time of the murder using cell towers, were all denied.

Vance said he felt his trial was unfair. He was shifted between three public defenders, the most recent of which had never defended a murder case. An assistant working with her did nothing, he said — even in court they gave no rebuttals to the state. **"He did no investigation. He interviewed none of my witnesses and he presented no defense. He called no witnesses in my defense,"** Vance said to Unicorn Riot from a prison phone.

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The mechanisms to get freed after wrongful convictions in Minnesota are limited and getting the judicial system to acknowledge a mistake is an uphill battle. Under Minnesota law, after a felony conviction the defendant can either appeal within 90 days or file a postconviction relief petition. Generally, petitions must be filed within two years if no appeal was filed, though there is an exception for newly found evidence, in which case the petitioner has two years to file upon receiving the new evidence.

Since 1989, only four people in Minnesota have been exonerated from their murder charges <https://www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx>. However, a handful of recent exonerations, commutations, and vacated convictions have occurred in the state over the last five years, inspiring hope for the thousand-plus Minnesota inmates who claim they're wrongfully convicted.

Four people have been freed from their life sentences for murder since 2020 in the state of Minnesota; Myon Burrell <https://unicornriot.ninja/2020/myon-burrell-to-be-released-following-18-years-in-jail/> (commutation); Thomas Rhodes <https://www.greatnorthinnocenceproject.org/thomas-rhodes> (conviction vacated); Marvin Haynes <https://unicornriot.ninja/marvin-haynes-series/> (exonerated); and Edgar Barrientos-Quintana <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=6904> (exonerated).

The Great North Innocence Project <https://www.greatnorthinnocenceproject.org/> (GN-IP) had a hand in helping the latter three. Marvin Haynes got exonerated <https://unicornriot.ninja/2024/marvin-haynes-exonerated-and-released-from-prison-after-19-years/> after Hennepin County Attorney Mary Moriarty waived the two-year time allotment and his case was heard in front a judge. Haynes — like Barrientos-Quintana, Myon Burrell and also Philip Vance — was convicted based on police investigators coercing and incentivizing jailhouse informants to lie against the young men.

See our investigative series <https://unicornriot.ninja/marvin-haynes-series/> and film <https://vimeo.com/808622717> on Marvin Haynes wrongful conviction.

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Minnesota's Conviction Review Unit (CRU)

GN-IP teamed up with Minnesota Attorney General Keith Ellison in 2020 to establish the Minnesota Conviction Review Unit <https://www.ag.state.mn.us/Office/CRU/>. Directed by Assistant Attorney General Carrie

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Sperling and staffed by two full-time attorneys, an investigator, paralegal and legal secretary, the unit's mission is to **"identify, remedy, and prevent wrongful convictions."**

To do this, the CRU accepts **"applications from incarcerated people who are claiming that they were wrongly convicted of a crime they did not commit"** and investigates the claims made in the application. While the CRU has no legal power, the investigative reports the unit produces have been successful in getting court hearings.

The need for CRUs and Conviction Integrity Units (CIU) are part of newer phenomenon that grew from decades of racialized mass incarceration across the country in which thousands of men, primarily Black men, were wrongfully convicted and/or over-sentenced. There are 11 statewide units and over 100 other similar units across the country — the first unit in the country was the Dallas County Attorney's CIU, created in 2007 and the first statewide unit was in New Jersey in 2019.

Minnesota's CRU began operations in April 2021 and started taking applications in August 2021. At least 1,151 applications have been sent to the CRU to review — a total of nearly 14% <https://mn.gov/doc/assets/AdultPrisonPopulationSummary07012024_tcm1089-640707.pdf> of Minnesota's adult inmate population. At least 966 applications have been closed out due to lack of available evidence, 13 are in active investigation and five investigations have been completed.

In total, at least 203 applications of wrongful conviction have come in to the CRU with verifiable reasons to believe the applicants are innocent, according to the unit.

Read our 2023 report on the CRU: Limited Funds Stunt Minnesota's Conviction Review Unit — Families Want Expediency ***<https://unicornriot.ninja/2023/limited-funds-stunt-minnesotas-conviction-review-unit-families-want-expediency/>***

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Applying to the CRU — "The CRU is a joke"

Philip Vance submitted an application to CRU in 2021 when they began accepting them and is likely one of the 13 cases listed as an active investigation. Director Sperling interviewed Vance in prison in March 2024 for what he was told would be the final phase of the CRU's investigation.

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"What they said, it sounded good. Man, I've been waiting for three years now. No decision, no nothing," Philip Vance said last year. **"The CRU is a joke. I believed in them at one point. They've held my case for three years and have no real movement and have discovered nothing significant."**

Reluctant in the first place to apply to the CRU in hopes of having direct court hearings from a postconviction relief petition, Vance said applicants are made to sign an agreement that they won't file documents in courts, won't post to social media and won't do media interviews until the CRU investigation is completed.

> **"I had to sign something saying I would do no social media posts. I would do no media interviews or none of that. I will file nothing in court. So they've held me silent for three years."**
>
> *Philip Vance*

"They got a thousand people in Minnesota that's signed up with them," said Vance, **"they stopped a thousand people from putting in legal filings. They're taking a thousand cases of people who are saying that they're innocent and they're stalling it for years."** The CRU has held those thousand people **"silent"** said Vance.

Vance feels the process of prosecutors working together with the CRU is assisting the courts and the state rather than the inmates claiming they're wrongfully convicted. **"The CRU wasn't created to help the wrongfully convicted,"** Vance quipped. **"I think it was created to help the state from further ridicule of all of these bogus wrongful convictions"** during a time when past county attorneys and prosecutorial culture was beginning to be examined, he said.

Vance said that while working on his case, a CRU investigator attempted to intimidate the people he was interviewing. The investigator reportedly went **"super hard"** on a witness that came forward saying the police coerced them to lie by **"trying to make it look like what she's saying isn't right."** Vance noted the same happened with his alibi witness — saying the investigator framed it **"like she don't know what she's talking about, like she's lying."**

"They're not doing what they say they're trying to do. All my evidence that points to my innocence, they're trying to make it seem like it's not true." Furthermore, Vance said investigators never once

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said anything **"about the police part. Everybody I talk to is trying to avoid the police corruption part. Nobody wants to talk about that… My whole case was set, built and convicted on police corruption**."

Community Demands Exoneration for Philip Vance on 22nd Anniversary of Murder

<https://unicornriot.ninja/2025/community-demands-exoneration-for-philip-vance-on-22nd-anniversary-of-murder/>

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The Disbanded Metro Gang Strike Force — "My whole case was set, built and convicted on police corruption"

Following a surge of violent crime in the 1990s in the Twin Cities (Minneapolis and St. Paul), the late 90s and 2000s were rife with criminal police officers <https://www.mprnews.org/story/2009/08/20/strikeforce-report> and racist prosecutors locking up large numbers of Black youth following nationwide fear campaigns that amplified racial stereotypes. As a result, by the year 2000 Black men represented 28% of Minnesota's prison population <https://www.prisonpolicy.org/graphs/MN_Black.html> despite only being 3% of the total population.

Law enforcement agencies, including Minnesota's newly established Metro Gang Strike Force, employed often unethical tactics in their investigations, placing a higher value on securing convictions than uncovering the truth. The Metro Gang Strike Force (formerly Minnesota Gang Strike Force) — disbanded in 2009 <https://www.startribune.com/metro-gang-strike-force-minnesota-officers-corruption-punishment/601191648> following FBI investigations that revealed widespread corruption, violence, and misconduct — was instrumental in Philip Vance's wrongful conviction.

While Hennepin County, which contains the Minneapolis metro area, bore the brunt of wrongful convictions during this period, Vance's case took place in Dakota County, a suburb of St. Paul, which demonstrates how the pressure to convict, fueled by systemic bias and a culture of impunity, extended beyond the core Twin Cities area.

No officers faced any consequences for years of committing violent acts on community members, including rape <https://www.insightnews.com/opinion/editorials/rape-alleged-torture-at-the-hands-of-minneapolis-police/article_c3a75c4a-0cb3-550b-8c88-4ed57648c643.html> /sodomy <https://www.aljazeera.com/opinions/2020/6/11/the-minneapolis-police-department-has-a-long-history-of-brutality> , assaults <https://www.twincities.com/2010/09/08/with-lack-of-evidence-probe-of-metro-gang-strike-force-hits-dead-end/>

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, theft <https://www.twincities.com/2010/12/28/more-than-100-file-extortion-claims-against-metro-gang-strike-force/> and routinely targeting immigrants <https://www.courthousenews.com/cop-strike-force-called-a-gang-itself/> . Officer Jason Anderson, who fatally shot Fong Lee in Minneapolis in 2006, was the only Strike Force officer ever indicted on any charges, and he was acquitted of violating the civil rights of a Black teen by kicking him in the head.

For Vance, it was the MGSF that violated his civil rights <https://freephilipvance.com/mgsf-abuse-details> by reducing sentences and giving money to jailhouse informants in exchange for their testimony against him.

The CRU doesn't want to **"have to accept the fact that the police is corrupt. I think they're trying to find any other way to give me some play other than what the police did but everything continues to come back to the police,"** said Vance.

> **"I just want the public to know that police corruption is real. Injustice is real. It's not just in the movies."**
>
> *Philip Vance*

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Citing Lack of Exonerations and Lengthy Time Spent on Applications, CRU's Advisory Board Calls for Unit Review

An Advisory Board of over a dozen members in the legal field, including the likes of Ramsey County Attorney John Choi, Hennepin County Attorney Mary Moriarty, and Winona County Attorney Karin Sonneman, helped create CRU's charter and provides ongoing recommendations.

Concerned with the **"lack of exonerations and the lengthy amount of time the unit was spending on case review and investigations,"** the Advisory Board expressed a need for an audit of the CRU. The Quattrone Center for the Fair Administration of Justice <https://www.law.upenn.edu/institutes/quattronecenter/> , which helped formulate the CRU with individualized support, paid for an external review that started in April 2024.

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Patricia Cummings, Research Scholar for the Peter L. Zimroth Center on the Administration of Criminal Law at NYU School of Law and a consultant for CIUs across the country, released the audit's findings along with recommendations on February 19, 2025. View the 41-page report here <https://unicornriot.ninja/wp-content/uploads/2025/02/CRU_ExternalReview_2025.pdf> (pdf).

The review found that despite the low number of innocent inmates freed from incarceration, Minnesota's CRU outpaced the rest of the country in numbers. According to data from the Quattrone Center, there were a total of 1,736 applications submitted to CRUs and Conviction Integrity Units (CIU) across the nation excluding Minnesota, with only six completed investigations, compared to Minnesota's five completions from 1,151 applications.

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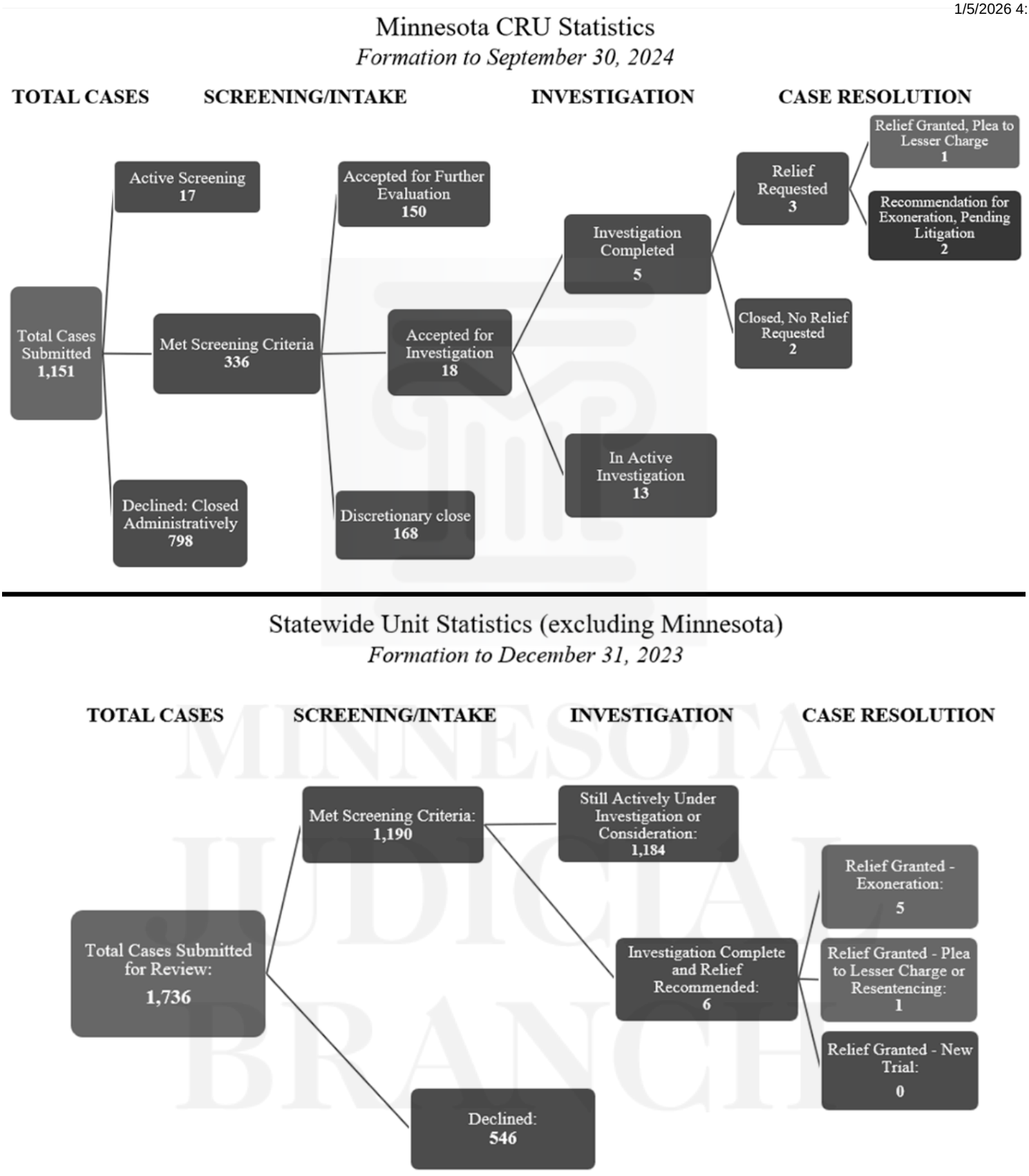

<https://unicornriot.ninja/wp-content/uploads/2025/02/CRU_ExternalReview_2025.pdf>

A graphic included in the CRU Audit showing total numbers of applications and investigations in Minnesota from its formation until Sept. 30, 2024 and the statewide stats, excluding Minnesota, from their formations until Dec. 31, 2023.

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From 2023 into 2024, the Advisory Board would hold video meetings with links accessible to the public via their website <https://www.ag.state.mn.us/Office/CRU/AdvisoryBoard.asp>. This practice has ceased as of last year with their upcoming meetings section noting, as of February 26, 2025, that the next meeting **"will be in Fall 2024"** with a date of **"TBD."**

The review <https://unicornriot.ninja/wp-content/uploads/2025/02/CRU_ExternalReview_2025.pdf> noted that **"little progress appears to have been made"** in the Advisory Board and suggested a reason could be that the meetings are **"virtual and open to the public. While admirable from a transparency perspective, open and public meetings may limit frank discussion on pressing topics."** Unicorn Riot asked the CRU if the meetings will become publicly accessible again, but CRU's Press Secretary declined to comment. **[UPDATE / Feb. 27, 2025: CRU's press secretary responded: "The next CRU Advisory Board meeting will indeed be public, and it will be published on our website when the meeting date is finalized."]**

The review came with four near-term (within 6 to 12 months) recommendations and four long-term (within 12 to 24 months) recommendations:

Increase Resources for the Unit's Operations

Formulate and Adopt Amended Policies and Procedures for the Advisory Board

Engage in Legislative Advocacy to Advance Conviction Integrity Principles

Conduct Systemic Reviews of Cases Involving Known Bad Actors

Conduct Interoffice and Statewide Professional Trainings on Wrongful Convictions

The Minnesota CRU Should Explore Sentencing Relief Options

The Minnesota CRU Should Produce an Annual Public Report

The CRU Should Establish a Fellowship for Law Students

Of special note in Vance's case is the fourth near-term recommendation to conduct systemic reviews of cases involving known bad actors. Bad actors are described in the report as **"prosecutors, police officers, experts, or informants—whose conduct in a case or cases was so egregious it raised significant questions to whether that individual engaged in similar conduct in other cases."**

Formerly incarcerated abolitionist and Free Philip Vance team member Jason Sole said Vance's case doesn't only show that he's **"innocent, it shows a bunch of people lied … they know his case should**

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open up a lot of other cases because I think he's a drop in the bucket for what they've been doing out here."

The review notes how difficult it is for their unit, backed by the power of the state's top law enforcement officer, the Attorney General, to change the outcome of a closed court case. Those difficulties are accentuated for powerless inmates languishing behind prison walls.

> **"At its most basic level, this means the CRU must convince the locally elected county attorney that a conviction its prosecutors likely fought hard to win may be flawed—not an easy task because sometimes prosecutors who played a role in a conviction may be affected by various forms of cognitive bias."**
>
> *EXTERNAL REVIEW OF MINNESOTA ATTORNEY GENERAL'S CONVICTION INTEGRITY UNIT*

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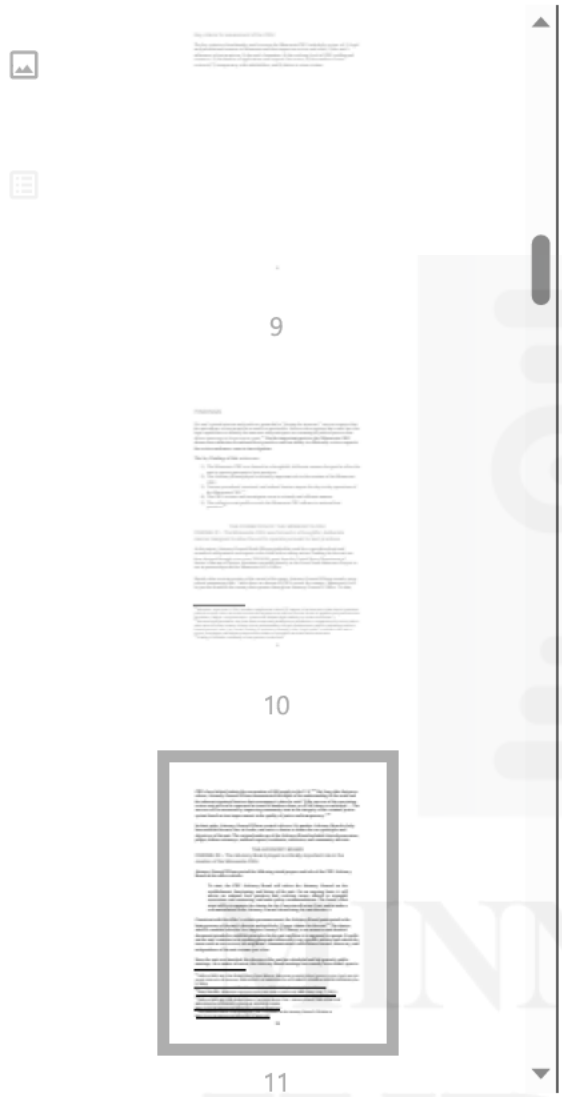

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New Filing Expected This Week

Vance's new legal team is expected to file a new petition for postconviction relief on Thursday, February 27.

"Now, I have ten times the newly discovered evidence that I didn't have access to at the time, or that I found through due diligence, that I can present now that would have had a significant effect on my conviction," said Vance.

The filing is expected to include at least 10 affidavits of witnesses recanting testimony along with new details proving the Gang Strike Force paid and induced witnesses and jailhouse informants in Vance's case. **"The State of Minnesota is foul, man, especially the police. This is real. Ain't nothing made up,"** expressed Vance.

> **"Me personally, I don't feel that a judge can look at the evidence I have of police corruption and all these witnesses and their testimony statements about being either coerced, threatened or bribed into false testimony against me. I don't think a judge can look past that (unless he's corrupt too)."**
>
> *Philip Vance*

The court petition will likely be reviewed by Dakota County Attorney Kathy Keena, who had previously denied Vance's filings. A fundraiser to support legal costs for Vance <https://www.gofundme.com/f/please-support-philip-vance> has raised over 86% of the $50,000 goal as of Feb. 26, 2025.

On Friday, Feb. 28, Vance's team is holding an online event <https://www.eventbrite.com/e/justice-reawakened-22-year-fight-for-freedom-will-reach-the-courtroom-tickets-1259139533239> starting at 12:30 p.m. CST inviting supporters, advocates for justice and media. The conference is set to share **"key findings, details of the legal petition/memo, [and] anticipated next steps in the judicial process."**

"Justice and liberty shouldn't be a luxury for people of color or people who don't have the funds to acquire it," said Vance, who's story has thus far reflected a justice system prioritizing convictions over truth.

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[UPDATE: Philip Vance's Postconviction Filing Kicked Back by Prosecutors to Wait For CRU Report <https://unicornriot.ninja/2025/philip-vances-postconviction-filing-kicked-back-by-prosecutors-to-wait-for-cru-report/> – March 2025]

On Dec. 22, 2024, twenty two years after the fatal shooting, the Free Philip Vance team held a press conference in South Saint Paul near the site of where Sabreen's Supermarket used to be located. **"I just want the world to know that I am innocent,"** Vance said while calling in to the presser. While speaking remotely, Vance held 22 seconds of silence for Khaled Al-Bakri, spoke about his case and took questions. Read Unicorn Riot's multi-media report here <https://unicornriot.ninja/2025/community-demands-exoneration-for-philip-vance-on-22nd-anniversary-of-murder/> and see the video below.

Demands to Free Philip Vance From 'Wrongful Conviction' on 22nd Anniversary of Murder

Unicorn Riot

05:18

Vance's Letter to MN Governor Tim Walz

The Free Philip Vance team shared a letter <https://unicornriot.ninja/wp-content/uploads/2025/02/PhilipVance_LtrToWalz_Feb-4-2025.pdf> Vance wrote from prison to Minnesota Governor Tim Walz in which he asks Walz to **"look into the details that surround my conviction, then look into the truths that have appeared after my wrongful conviction."**

Read the letter in full below.

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1

2

February 4, 2025

Governor Tim Walz
130 State Capitol
St Paul MN

Cc: LT. Governor Peggy Flanagan

From: PHILLIP VANCE
2/04/2025 06:35 AM

Governor Walz
I would first like to congratulate you on your amazing run for the Vice Presidenc
My name is Philip Vance (no relation to your opponent). In 2004 I was wrongf
Dakota County jury for the 2002 murder/robbery of a South St. Paul store cler
I became the suspect to Khaled's murder because of statements a bar maic
Paul police brother that I allegedly made to her. I was charged w/ 1st D
convicted from the testimony of officers from the Metro Gang Strike Force an
was sentenced to life in prison.

No evidence tied or linked me to the crime scene or Khaled's untimely
incarcerated wrongfully now 21 years. I have exhausted all appeal options ar
denied by courts.

Ironically 5 years after my wrongful conviction, the group of police officers th
as well as testified on the case I was wrongfully convicted of (M.G.S.F) were f
of "rouge" officers and corrupt. These facts/details were investigated/discover
Attorney General Andrew Luger. After being reinterviewed, most witness
testified against me at trial admitted that their testimonies (Grand Jury/trial)
derived from promises of time reductions in cases they were facing. Pron
charges, and financial incentives for testimony favorable to my conviction.

Witnesses even admitted that the details they testified to was given to them b
of the M.G.S.F.

In 2020 I was encouraged to allow the Conviction Review Unit (C.R.U)
facts/details of my case, possibly using their influence to ask Dakota County
was interviewed by assistant Attorney General Carrie Sperling and her inves
2024. I was told this interview would be the final phase of the C.R.U's invest
passed since that interview, and it is going on 5 years that the C.R.U has

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> "Governor Walz,
>
> I would first like to congratulate you on your amazing run for the Vice Presidency this past election. My name is Philip Vance (no relation to your opponent). In 2004 I was wrongfully convicted by a Dakota County jury for the 2002 murder/robbery of a South St. Paul store clerk, Khaled Al-Bakri. I became the suspect to Khaled's murder because of statements a bar maid relayed to her St. Paul Police brother that I allegedly made to her. I was charged w/ 1st Degree murder and convicted from the testimony of officers from the Metro Gang Strike Force and their informants. I was sentenced to life in prison.

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No evidence tied or linked me to the crime scene or Khaled's untimely death. I've been incarcerated wrongfully now 21 years. I have exhausted all appeal options and consistently was denied by courts.

Ironically 5 years after my wrongful conviction, the group of police officers that investigated me, as well as testified on the case I was wrongfully convicted of (M.G.S.F) were found to be a group of "rouge" officers and corrupt. These facts/details were investigated/discovered by now Federal Attorney General Andrew Luger. After being reinterviewed, most witnesses/informants who testified against me at trial admitted that their testimonies (Grand Jury/trial) were coerced and derived from promises of time reductions in cases they were facing. Promises of dismissed charges, and financial incentives for testimony favorable to my conviction.

Witnesses even admitted that the details they testified to was given to them by police, members of the M.G.S.F.

In 2020 I was encouraged to allow the Conviction Review Unit (CRU) to investigate the facts/details of my case, possibly using their influence to ask Dakota County to exonerate me. I was interviewed by assistant Attorney General Carrie Sperling and her investigator in March of 2024. I was told this interview would be the final phase of the CRU's investigation. 1 year has passed since that interview, and it is going on 5 years that the CRU has been holding their decision about my case.

It is obvious that my incarceration came at the hands of people the state of Minnesota holds to high standards. It is also obvious that the powers that be are afraid to express what has been revealed/discovered about some Minnesota police officers. Hundreds of people the CRU investigated were denied and told no evidence was discovered/found that they felt required exoneration. They have held my case for almost 5 years now. Why haven't I been denied if no evidence was discovered/found that I did not meet their threshold for exoneration?

I believe the truth about the MGSF and their actions is not a good look for the state of Minnesota. I also think agreeing that the actions of these officers was wrong creates mistrust for the police of this state. Which creates even bigger issues for officer's of the law. Not to mention possibly hundreds of cases that would need to be reopened and reviewed.

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> Governor, I've been incarcerated almost 22 years for a crime I had NO KNOWLEDGE OF, nor participated in. Thru due diligence, my legal team, and supporters have discovered, collected, and gathered a plethora of evidence that shows/prove that I was blamed, lied on, and wrongfully convicted of a heinous murder I played no part in, or knew nothing about.
>
> I ask you Governor Walz to look into the details that surround my conviction, then look into the truths that have appeared after my wrongful conviction. I should not have to continuously suffer because people of power/influence of Minnesota are afraid of what holding other people of power/influence in Minnesota accountable for their actions will look like to the people of Minnesota. And even America. I thought holding people accountable for their actions was what America was about? If that is not the definition of justice, I do not know what is???
>
> Thank you for your time. Hopefully my inconvenience/suffering peeks your interest.
>
> Sincerely, Philip Vance #215517"
>
> *Letter from Philip Vance to Minnesota Governor Tim Walz on Feb. 4, 2025*

[UPDATE: Responding to previous questions posed from Unicorn Riot, CRU's Press Secretary Brian Evans said on Feb. 27 that applicants to CRU are not made to forego court filings.]

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Article *in* Learning & memory (Cold Spring Harbor, N.Y.) · July 2005

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Review

Planting misinformation in the human mind: A 30-year investigation of the malleability of memory

Elizabeth F. Loftus

Department of Psychology and Social Behavior, University of California–Irvine, Irvine, California 92697-7085, USA

The misinformation effect refers to the impairment in memory for the past that arises after exposure to misleading information. The phenomenon has been investigated for at least 30 years, as investigators have addressed a number of issues. These include the conditions under which people are especially susceptible to the negative impact of misinformation, and conversely when are they resistant. Warnings about the potential for misinformation sometimes work to inhibit its damaging effects, but only under limited circumstances. The misinformation effect has been observed in a variety of human and nonhuman species. And some groups of individuals are more susceptible than others. At a more theoretical level, investigators have explored the fate of the original memory traces after exposure to misinformation appears to have made them inaccessible. This review of the field ends with a brief discussion of the newer work involving misinformation that has explored the processes by which people come to believe falsely that they experienced rich complex events that never, in fact, occurred.

In 2005 the journal *Learning & Memory* published the first experimental work using neuroimaging to reveal the underlying mechanisms of the "misinformation effect," a phenomenon that had captured the interest of memory researchers for over a quarter century (Okado and Stark 2005). These new investigators used a variation of the standard three-stage procedure typical in studies of misinformation. Their subjects first saw several complex events, for example one involving a man stealing a girl's wallet. Next some of the subjects got misinformation about the event, such as the fact that the girl's arm was hurt in the process (rather than her neck). Finally the subjects were asked to remember what they saw in the original event. Many claimed that they saw the misinformation details in the original event. For example, they remembered seeing the arm being hurt, not the neck. Overall, the misinformation was remembered as being part of the original event about 47% of the time. So, expectedly, a robust impairment of memory was produced by exposure to misinformation—the misinformation effect. But the researchers' new work had a twist: They went on to show that the neural activity that occurred while the subjects processed the events and later the misinformation predicted whether a misinformation effect would occur.

In an essay that accompanied the Okado and Stark findings, I placed their results within the context of 30 years of research on behavioral aspects of the misinformation effect (Loftus 2005). Their work received much publicity, and boosted public interest in the misinformation effect as a scientific phenomenon. For example, WebMD (Hitti 2005) touted the new findings showing that brain scans can predict whether the memories would be accurate or would be infected with misinformation. And the Canadian press applauded the study as being the first to investigate how the brain encodes misinformation (Toronto Star 2005).

So what do we know about the misinformation effect after 30 years? The degree of distortion in memory observed in the Okado and Stark neuroimaging study has been found in hundreds of studies involving a wide variety of materials. People have recalled nonexistent objects such as broken glass. They have been misled into remembering a yield sign as a stop sign, hammers as screwdrivers, and even something large, like a barn, that was not part of the bucolic landscape by which an automobile happened to be driving. Details have been planted into memory for simulated events that were witnessed (e.g. a filmed accident), but also into memory for real-world events such as the planting of wounded animals (that were not seen) into memory for the scene of a tragic terrorist bombing that actually had occurred in Russia a few years earlier (Nourkova et al. 2004). The misinformation effect is the name given to the change (usually for the worse) in reporting that arises after receipt of misleading information. Over its now substantial history, many questions about the misinformation effect have been addressed, and findings bearing on a few key ones are summarized here.

1. Under what conditions are people particularly susceptible to the negative impact of misinformation? (The When Question)
2. Can people be warned about misinformation, and successfully resist its damaging influence?
3. Are some types of people particularly susceptible? (The Who Question)
4. When misinformation has been embraced by individuals, what happens to their original memory?
5. What is the nature of misinformation memories?
6. How far can you go with people in terms of the misinformation you can plant in memory?

The When Question

Long ago, researchers showed that certain experimental conditions are associated with greater susceptibility to misinformation. So, for example, people are particularly prone to having their memories be affected by misinformation when it is introduced after the passage of time has allowed the original event memory to fade (Loftus et al. 1978). One reason this may be true is that with the passage of time, the event memory is weakened, and thus, there is less likelihood that a discrepancy is noticed while the misinformation is being processed. In the extreme, with super-long time intervals between an event and subsequent misinformation, the event memory might be so weak that it is as if it

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had not been presented at all. No discrepancy between the misinformation and original memory would be detected, and the subject might readily embrace the misinformation. These ideas led to the proposal of a fundamental principle for determining when changes in recollection after misinformation would occur: the Discrepancy Detection principle (Tousignant et al. 1986). It essentially states that recollections are more likely to change if a person does not immediately detect discrepancies between misinformation and memory for the original event. Of course, it should be kept in mind that false memories can still occur even if a discrepancy is noticed. The rememberer sometimes thinks, "Gee, I thought I saw a stop sign, but the new information mentions a yield sign, I guess I must be wrong and it was a yield sign." (Loftus and Hoffman 1989).

The other important time interval is the period between the misinformation and the test. One study asked subjects to say whether a key item was part of the event only, part of the misinformation, in both parts, or in neither. Misinformation effects occur when subjects say that the item is part of the event only, or that the item was in both parts. Overall, subjects were slightly more likely to say "both" (22%) than "event only" (17%). But the timing of the test affected these ratios. With a short interval between the misinformation and the test, subjects are less likely to claim that the misinformation item was in the event only (Higham 1998). This makes sense. If subjects have recently read the misinformation they might well remember doing so when tested and at the same time might also incorrectly believe that they also saw the misinformation detail during an original event.

Temporarily changing someone's state can increase misinformation effects. So for example, if people are led to believe that they have drunk alcohol, they are more susceptible (Assefi and Garry 2002), and when people are hypnotized, they are more susceptible (Scoboria et al. 2002). These temporary states may have the effect of disrupting the ability of subjects to detect discrepancies between the misinformation and what remains of their original memory.

Warnings

Long ago, researchers showed that warning people about the fact that they might in the future be exposed to misinformation sometimes helps them resist the misinformation. However, a warning given after the misinformation had been processed did not improve the ability to resist its damaging effects (Greene et al. 1982). The lack of effectiveness of post-misinformation warnings presumably occurred because the misinformation had already been incorporated into the memory and an altered memory now existed in the mind of the individual. The research on warnings fits well with the Discrepancy Detection principle. If people are warned prior to reading post-event information that the information might be misleading, they can better resist its influence, perhaps by increasing the likelihood that the person scrutinizes the post-event information for discrepancies.

More recent work suggests that warning people that they may have in the past been exposed to misinformation (post-misinformation warnings) may have some success, but only in limited circumstances. In one study, an immediate post-misinformation warning helped subjects resist the misinformation, but only when the misinformation was in a relatively low state of accessibility. With highly accessible misinformation, the immediate post-misinformation warnings didn't work at all. (The accessibility of misinformation can be enhanced by presenting it multiple times versus a single time). Moreover, it didn't seem to matter whether the warning was quite general or item-specific (Eakin et al. 2003). The general warning informed subjects that the narrative they had read referred to some objects and events from the slides in an inaccurate way. The specific warning explicitly mentioned the misleading details (e.g., they would be told the misinformation was about the tool). Eakin et al. explained these results with several hypotheses. They favored a suppression hypothesis, which states that when people get a warning, they suppress the misinformation and it has less ability to interfere with answering on the final test. Moreover they suggested that the entire context of the misinformation might be suppressed by the warning. Suppression might have more trouble working when misinformation is too accessible. Also, highly accessible misinformation might distract the subject from thinking to scrutinize the misinformation for discrepancies from some presumably overwhelmed original event memory.

The Who Question

Misinformation affects some people more than others. For one thing, age matters. In general young children are more susceptible to misinformation than are older children and adults (see Ceci and Bruck 1993). Moreover, the elderly are more susceptible than are younger adults (Karpel et al. 2001; Davis and Loftus 2005). These age effects may be telling us something about the role of cognitive resources, since we also know that misinformation effects are stronger when attentional resources are limited. In thinking about these age effects, it should probably be emphasized that suggestion-induced distortion in memory is a phenomenon that occurs with people of all ages, even if it is more pronounced with certain age groups.

In terms of personality variables, several have been shown to be associated with greater susceptibility to misinformation such as empathy, absorption, and self-monitoring. The more one has self-reported lapses in memory and attention, the more susceptible one is to misinformation effects. So, for example, Wright and Livingston-Raper (2002) showed that about 10% of the variance in susceptibility to misinformation is accounted for by dissociation scores that measure the frequency of such experiences as how often a person can't remember whether he did something or just thought about doing that thing (see Davis and Loftus 2005 for a review of these personality variables).

Interestingly, misinformation effects have also been obtained with some unusual subject samples, including three-month-old infants (Rovee-Collier et al. 1993), gorillas (Schwartz et al. 2004), and even with pigeons and rats (Harper and Garry 2000; M. Garry and D.N. Harper, in prep.). One challenging aspect of these studies is finding ways to determine that misinformation had taken hold in species that are unable to explicitly say so. Take pigeons, for example. They have an amazing ability to remember pictures that they were shown as long as two years earlier (Vaughan and Greene 1983, 1984). But their otherwise good memory can be disrupted by misinformation. In two different studies, Harper and Garry examined misinformation effects in pigeons by using an entirely visual paradigm (see also M. Garry and D.N. Harper, in prep.). First, the pigeons saw a light (let's say a red light). They had been trained over many many trials to peck the light to show that they had paid attention to it. After they pecked the light, it turned off. After a delay, the pigeons were exposed to post-event information, where they saw either the same colored light or a different colored light. They had to peck this light, too. Then came the test: The pigeons saw the original light and a novel colored light. If they pecked the originally correct color, they got food. If they pecked the novel color, they got no food. The pigeons were more accurate when the post-event experience did not mislead them. Moreover, like humans, pigeons are more susceptible to the misinformation if it occurs later in the original–final test interval than if it occurs early in that interval. M. Garry and D.N. Harper (in prep.) make

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the point that knowing that pigeons and humans respond the same way to misleading information provides more evidence that the misinformation effect is not just a simple matter of retrograde interference. Retrograde interference is a mere disruption in performance, not a biasing effect. That is, it typically makes memory worse, but does not pull for any particular wrong answer. But for pigeons, like humans, who use the misinformation differentially depending on when they are exposed to it, the misinformation appears to have a specific biasing effect too. The observation of a misinformation effect in nonverbal creatures also suggests that the misinformation effects are not a product of mere demand characteristics. That is, they are not produced by "people" who give a response just to please the experimenter, even when it is not the response they think they should give.

The fate of the original memory?

One of the most fundamental questions one can ask about memory is the question about the permanence of our long-term memories. If information makes it way into our long-term memories, does it stay there permanently even when we can't retrieve it on demand? Or do memory traces once stored become susceptible to decay or damage or alteration? In this context, we can pose the more specific question: When misinformation is accepted and incorporated into a person's recollection, what happens to their original memory? Does the misinformation impair the original memory, perhaps by altering the once-formed traces? Or does the misinformation cause retrieval impairment, possibly by making the original memory less accessible?

A lively debate developed in the 1980s when several investigators rejected the notion that misinformation causes any type of impairment of memory (McCloskey and Zaragoza 1985). Instead, they explicitly and boldly pressed the idea that misinformation had no effect on the original event memory. Misinformation, according to this view, merely influences the reports of subjects who never encoded (or for other reasons can't recall) the original event. Instead of guessing at what they saw, these subjects would be lured into producing the misinformation response. Alternatively, the investigators argued that misinformation effects could be arising because subjects remember both sources of information but select the misleading information because, after deliberation, they conclude it must be correct.

To support their position, McCloskey and Zaragoza (1985) devised a new type of test. Suppose the subjects saw a burglar pick up a hammer and received the misinformation that it was a screwdriver. The standard test would allow subjects to select between a hammer and a screwdriver. On the standard test, control subjects who had not received the misinformation would tend to select the hammer. Many subjects exposed to misinformation (called misled subjects) would, of course, select the screwdriver, producing the usual misinformation test. In the new test, called the "Modified Test," the misinformation option is excluded as a response alternative. That is, the subjects have to choose between a hammer and a totally novel item, wrench. With the modified test, subjects were very good at selecting the original event item (hammer, in this example), leading McCloskey and Zaragoza to argue that it was not necessary to assume any memory impairment at all—neither impairment of traces nor impairment of access to traces. Yet later analyses of a collection of studies using the modified test showed that small misinformation effects were obtained even when these unusual types of tests were employed (Ayers and Reder 1998), and even when nonverbal species were the subjects of the experiments.

While space is too limited to present the myriad paradigms that were devised by investigators wishing to explore the fate of the original memory (e.g., Wagenaar and Boer 1987; Belli 1989; Tversky and Tuchin 1989), suffice it to say that the entire debate heightened appreciation for the different ways by which people come to report a misinformation item as their memory. Sometimes this occurs because they have no original memory (it was never stored or it has faded). Sometimes this occurs because of deliberation. And sometimes it appears as if the original event memories have been impaired in the process of contemplating misinformation. Moreover, the idea that you can plant an item into someone's memory (apart from whether you have impaired any previous traces) was downright interesting in its own right.

The nature of misinformation memories

Subjectively, what are misinformation memories like? One attempt to explore this issue compared the memories of a yield sign that had actually been seen in a simulated traffic accident, to the memories of other subjects who had not seen the sign but had it suggested to them (Schooler et al. 1986). The verbal descriptions of the "unreal" memories were longer, contained more verbal hedges (I think I saw . . .), more references to cognitive operations (After seeing the sign the answer I gave was more of an immediate impression . . .), and fewer sensory details. Thus statistically a group of real memories might be different from a group of unreal ones. Of course, many of the unreal memory descriptions contained verbal hedges and sensory detail, making it extremely difficult to take a single memory report and reliably classify it as real or unreal. (Much later, neurophysiological work would attempt to distinguish real from unreal memories, a point we return to later).

A different approach to the nature of misinformation memories came from the work of Zaragoza and Lane (1994) who asked this question: Do people confuse the misleading suggestions for their "real memories" of the witnessed event? They asked this question because of the real possibility that subjects could be reporting misinformation because they believed it was true, even if they had no specific memory of seeing it. After numerous experiments in which subject were asked very specific questions about their memory for the source of suggested items that they were embracing, the investigators concluded that misled subjects definitely do sometimes come to remember seeing things that were merely suggested to them. They referred to the phenomenon as the "source misattribution effect." But they also noted that the size of the effect can vary, and emphasized that source misattributions are not inevitable after exposure to suggestive misinformation.

How much misinformation can you plant in one mind?: Rich false memories

It is one thing to change a stop sign into a yield sign, to make a person believe that a crime victim was hurt in the arm instead of the neck, or to add a detail to an otherwise intact memory. But it is quite another thing to plant an entire memory for an event that never happened. Researchers in the mid-1990s devised a number of techniques for planting whole events, or what have been called "rich false memories." One study used scenarios made up by relatives of subjects, and planted false memories of being lost for an extended time in a shopping mall at age 6 and rescued by an elderly person (Loftus 1993; Loftus and Pickrell 1995). Other studies used similar methods to plant a false memory that as a child the subject had had an accident at a family wedding (Hyman Jr. et al. 1995), had been a victim of a vicious animal attack (Porter et al. 1999), or that he or she had nearly drowned and had to be rescued by a lifeguard (Heaps and Nash 2001).

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Sometimes subjects will start with very little memory, but after several suggestive interviews filled with misinformation they will recall the false events in quite a bit of detail. In one study, a subject received the suggestion that he or she went to the hospital at age 4 and was diagnosed as having low blood sugar (Ost et al. 2005). At first the subject remembered very little: ". . . I can't remember anything about the hospital or the place. It was the X general hospital where my mum used to work? She used to work in the baby ward there . . . but I can't . . . no. I know if I was put under hypnosis or something I'd be able to remember it better, but I honestly can't remember." Yet in the final interview in week 3, the subject developed a more detailed memory and even incorporated thoughts at the time into the recollection: " . . . I don't remember much about the hospital except I know it was a massive, huge place. I was 5 years old at the time and I was like 'oh my God I don't really want to go into this place, you know it's awful' . . . but I had no choice. They did a blood test on me and found out that I had a low blood sugar . . ."

Taken together these studies show the power of this strong form of suggestion. It has led many subjects to believe or even remember in detail events that did not happen, that were completely manufactured with the help of family members, and that would have been traumatic had they actually happened.

Some investigators have called this strong form of suggestion the "familial informant false narrative procedure" (Lindsay et al. 2004); others find the term awfully cumbersome, and prefer to simply call the procedure the "lost-in-the-mall" technique, after the first study that used the procedure. Across many studies that have now utilized the "lost-in-the-mall" procedure, an average of ~30% of subjects have gone on to produce either partial or complete false memory (Lindsay et al. 2004). Other techniques, such as those involving guided imagination (see Libby 2003 for an example), suggestive dream interpretation, or exposure to doctored photographs, have also led subjects to believe falsely that they experienced events in their distant and even in their recent past (for review, see Loftus 2003).

A concern about the recent work showing the creation of very rich false beliefs and memories is that these might reflect true experiences that have been resurrected from memory by the suggestive misinformation. To counter that concern, some investigators have tried to plant implausible or impossible false memories. In several studies subjects were led to believe that they met Bugs Bunny at a Disney Resort after exposure to fake ads for Disney that featured Bugs Bunny. An example of an ad containing the false Bugs Bunny information is shown in Figure 1; subjects simply evaluate the ad on a variety of characteristics. In one study, the single fake ad led 16% of subjects to later claim that they had met him (Braun et al. 2002), which could not have occurred because Bugs Bunny is a Warner Brothers character and would not be seen at a Disney resort. Later studies showed even higher rates of false belief, and that the ads that contained a picture of Bugs produced more false memories than ads that contained only a verbal mention (Braun-LaTour et al. 2004.) While obviously less complex, these studies dovetail nicely with real-world examples in which individuals have come to develop false beliefs or memories for experiences that are implausible or impossible (e.g., alien abduction memories, as studied by McNally and colleagues 2004).

Figure 1. Fake advertisements showing Bugs Bunny at a Disney resort, used to plant false beliefs in Braun et al. (2002) and Braun-LaTour et al. (2004).

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Concluding remarks

Misinformation can cause people to falsely believe that they saw details that were only suggested to them. Misinformation can even lead people to have very rich false memories. Once embraced, people can express these false memories with confidence and detail. There is a growing body of work using neuroimaging techniques to assist in locating parts of the brain that might be associated with true and false memories, and these reveal the similarities and differences in the neural signatures (e.g., Curran et al. 2001; Fabiani et al. 2000). Those with strong interests in neuroscience will find interesting the recent neuroimaging and electrophysiological studies suggesting that sensory activity is greater for true recognition than false recognition (Schacter and Slotnick 2004). These studies suggest, more explicitly, that the hippocampus and a few other cortical regions come into play when people claim to have seen things that they didn't see. But, keep in mind that for the most part these studies are done with relatively pallid sorts of true and false memories (e.g., large collections of words or simple pictures). With the Okado and Stark (2005) neuroimaging investigation of misinformation we are one step closer to developing some techniques that might enable us to use neural activity to tell whether a report about a complex event is probably based on a true experience or whether it is based on misinformation. We are still, however, a long way from a reliable assessment when all we have is a single memory report to judge.

In the real world, misinformation comes in many forms. When witnesses to an event talk with one another, when they are interrogated with leading questions or suggestive techniques, when they see media coverage about an event, misinformation can enter consciousness and can cause contamination of memory. These are not, of course, the only source of distortion in memory. As we retrieve and reconstruct memories, distortions can creep in without explicit external influence, and these can become pieces of misinformation. This might be a result of inference-based processes, or some automatic process, and can perhaps help us understand the distortions we see in the absence of explicit misinformation (e.g., Schmolck et al.'s [2000] distortions in recollections of the O.J. Simpson trial verdict).

An obvious question arises as to why we would have evolved to have a memory system that is so malleable in its absorption of misinformation. One observation is that the "updating" seen in the misinformation studies is the same kind of "updating" that allows for correction of incorrect memories. Correct information can supplement or distort previously stored error, and this, of course, is a good thing. Whatever the misinformation reveals about normal memory processes, one thing is clear: the practical implications are significant. The obvious relevance to legal disputes, and other real-world activities, makes it understandable why the public would want to understand more about the misinformation effect and what it tells us about our malleable memories.

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December 23, 2002

Section: LOCAL

POLICE INVESTIGATE APPARENT ROBBERY, HOMICIDE BODY FOUND AT MARKET; 2 SUSPECTS SOUGHT

ELLEN TOMSON, Pioneer Press

SOUTH ST. PAUL

South St. Paul police were looking for two suspects after an apparent robbery and homicide Sunday night at a family-owned supermarket on a residential street.

Police received a couple of 911 calls just before 10 p.m., said **South St. Paul** Police Chief Michael Messerich. When police arrived at **Sabreen's** Supermarket, between 3rd and 4th Street South on 4th Avenue South, they found a man dead on the floor. Police would not elaborate as to how the man died.

Police say they assume the man, who was found face-down, was a clerk at the store, but as of late Sunday they had not identified him and would not describe him.

Amjad Wadi, who arrived shortly before midnight and said he was a former owner of the building and operator of the market, said the victim was a 21-year-old man who came here a few years ago from the United Arab Emirates. Wadi said he sold the business to the victim's family four years ago. He would not give the man's name, but he said he was his best friend.

Wadi and three other men were visibly moved at the scene, crying and clutching each other in the street in front of the store. One man who said he was a relative of the victim said in frustration: "He came here from Palestine two years ago. He came here to get killed."

Officers were waiting for officials from the state Bureau of Criminal Apprehension to arrive before proceeding further with the investigation. BCA officers arrived at the scene about 11:45 p.m. and began their assessment.

Messerich said police are looking for two suspects in a relatively new model gray 4-door Cadillac. At least one person came into the store while the two suspects were there and saw what was going on, Messerich said, before turning around and leaving.

Messerich said that in his 25 years on the force, he can't recall a death associated with a robbery in **South St. Paul**.

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Lee Bauer, who has lived across the street from the market for eight years, said the store is normally open until 10 p.m. and has been in the neighborhood for decades. The market apparently was named after a daughter in the owner's family.

The market sits in the middle of a tree-lined block full of homes, mostly single-family.

Anyone with information about the case is asked to call **South St. Paul** police at (651) 554-3300.

Sabreen's was robbed twice in January 1999 as part of a series of burglaries and armed robberies of **South St. Paul** businesses, crimes apparently committed to get money for drugs, police said at the time.

The crimes scared many employees of the affected businesses. "Everyone was nervous and afraid. A lot of places closed up early," Capt. David Vujovich said at the time.

The string of burglaries and robberies was unusual for **South St. Paul**, a city that had six armed robberies in all of 1998.

Map: Pioneer Press
Sabreen's Supermarket
Photo: Chris Polydoroff, Pioneer Press
An unidentified **South St. Paul** police officer was one of several officers at the scene of an alleged robbery and homicide Sunday night at **Sabreen's** Supermarket.

---- Index References ----

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From: CRU Information
To: Nico Ratkowski; CRU Information
Subject: RE: Attorney Request - Phillip Vance (19-K6-04-000736)
Date: Tuesday, May 14, 2024 2:25:16 PM
Attachments: image001.png

Dear Mr. Ratkowski,

I write to inform you that I received your May 9, 2024, letter to the Conviction Review Unit and your emails to the CRUinfo email address. In your letter you request immediate notification of any decision reached by the CRU in relation to Mr. Vance's pending application.

As you may know, the CRU has been investigating Mr. Philip Vance's application since August 2021. We recently conducted an extensive interview with Mr. Vance on March 28, 2024. We have not yet issued a report or decision regarding his application.

If you have any questions, please contact me at 651-583-6638.

Sincerely,

Carrie Sperling (She/Her)
Assistant Attorney General
Conviction Review Unit
Direct: (651) 757-1422

From: Nico Ratkowski <nico@ratkowskilaw.com>
Sent: Tuesday, May 14, 2024 11:08 AM
To: CRU Information <CRUinfo@ag.state.mn.us>
Subject: Re: Attorney Request - Phillip Vance (19-K6-04-000736)

> You don't often get email from nico@ratkowskilaw.com. Learn why this is important

Following up on this

Nico Ratkowski
Ratkowski Law PLLC
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St. Paul, MN 55101
E: nico@ratkowskilaw.com
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On Thu, May 9, 2024 at 12:25 PM Nico Ratkowski <nico@ratkowskilaw.com> wrote:

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Please find proof of my representation attached.

Please confirm that no decision has yet been rendered.

Thank you,
Nico

On Wed, May 8, 2024 at 2:27 PM CRU Information <CRUinfo@ag.state.mn.us> wrote:

> Good afternoon,
>
> This email serves as notice of receipt of your email. Before we can provide any information about an individual applicant, we will need you to provide us with a copy of your retainer agreement as proof of your representation.
>
> Thank you,
>
> Conviction Review Unit
> Minnesota Attorney General's Office
> https://www.ag.state.mn.us/Office/CRU/default.asp
>
> ---
>
> **From:** Nico Ratkowski <nico@ratkowskilaw.com>
> **Sent:** Wednesday, May 8, 2024 11:45 AM
> **To:** CRU Information <CRUinfo@ag.state.mn.us>
> **Subject:** Attorney Request - Phillip Vance (19-K6-04-000736)
>
> > You don't often get email from nico@ratkowskilaw.com. Learn why this is important
>
> Hello,
>
> I am reaching out to notify the CRU that I now represent Mr. Phillip Vance in relation to case number: 19-K6-04-000736.
>
> I am requesting that I receive immediate notification of any decision reached by the CRU when one is entered, and for confirmation that a decision has not yet been rendered.
>
> Please confirm receipt of this email if at all possible.
>
> Thank you,
> Nico Ratkowski
>
> --
> Nico Ratkowski

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Ratkowski Law PLLC
332 Minnesota Street, Suite W1610
St. Paul, MN 55101
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https://www.ratkowskilaw.com/

STATEMENT OF CONFIDENTIALITY

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--

Nico Ratkowski
Ratkowski Law PLLC
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St. Paul, MN 55101
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https://www.ratkowskilaw.com/

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Filed in District Court
State of Minnesota
1/5/2026 4:14 PM

From: Anonymous
Subject: VANCE IS INNOCENT - Alt perp info
Date: Wednesday, March 5, 2025 6:29:43 AM

[Some people who received this message don't often get email from anonymous1.4truthh@gmail.com. Learn why this is important at https://aka.ms/LearnAboutSenderIdentification]

Why don't you release Philip Vance?! Haven't you held him wrongfully long enough?!

In this email, I have copied over 40 media sources, Keith Ellison's office, the CRU, Governor Walz, the prosecutors office, and the white girl fighting to free Mr. Vance. So everyone will know!

It's time for someone to listen!!

You have the wrong guy. THAT MAN IS INNOCENT

You need to investigate, Hilder Adolfo Mendoza!!

His brother has suggested he was an accomplice as well. And he's right under your nose in one of your prisons. At Stillwater - Michael Medal Mendoza

With all the jailhouse informants and witnesses, you had lie on Mr. Vance, I'm shocked you don't already have recordings of Michael telling people he knows his brother killed that kid!

The state of Minnesota needs to do their job!

MINNESOTA JUDICIAL BRANCH

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Singh, Nitu

From: Diltz, D.L.
Sent: Friday, August 13, 2004 7:39 AM
To: Singh, Nitu
Cc: Shands, Cean
Subject: Vance, Phillip/Monk, aka Maynard Cross

Upon interviewing Monk on Auust 11, 2004 at Oak Cliff Correctional, he responded with the following statements:

He was not pending any charges, nor appealing any charges.

The police came to him to interview about Phillip Vance
He did not go to the police.
He did not receive any money, reward, or otherwise
But the police did offer a reward in the four figures which he refused

The police also threatened him by stating, "we are going to charge you" with the crime, if he did not cooperate with the investigation and their questioning of him

He did not know Vance or Johnson as related in the reports
He has never met Johnson, and never talked to him in the Buttery

He never meet Vance prior to being incarcerated with him in St. Cloud
While in St Cloud, the police delayed transferring Vance so they could get Vance to "confess " to Monk
Police asked Monk to wear a wire
Monk refused that request

Police came to him practically everyday, telling him to give them something

Vance never confessed to anything

Monk stated the police "fed me the case"
Police presented a photo lineup to Monk and implied they were looking for a light-skinned black man.
Vance was the onkly light-skinned black in the photo-lineup, so he picked him out

Mary Fleming can substantiate that she and Monk were in Milwaukee at the time he is alleged to have had this conversation in the Buttery as the police reports allege

Monk realized he was double-crossed by the police when he was described in the news as the principal and star witness

He has never seen the complete police reports regarding his statements, nor the grand jury testimony.
Monk related that he is sure that if you look at his grand jury testimony he had to be prodded and refreshed with supposed statements he had made to police including the exact street terminology
Monk is convinced the police cut and used the tape where they wished to get the desired effect ("chopped it up", in his words)

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Monk knows nothing about a gun

Monk has no idea who the first, second , or third person were in the vehicle that night

There is no Tyrone Crawford.
Only a Tommy , Troy, and Trevor Crawford exist

At one of the last police questionings of him, as he was getting up to leave, the police said, "just give us a name of the third party"
The police were using the names of Tommy and Tyrone Crawford
Monk stated he blurted out a name, Troy Crawford
Monk knew that Troy was in jail at the time
So, in Monks's words he "juiced the case" against Troy, and gave him a pass

He is willing to speak with Vance's and Johnson's attorneys to relate this same information on tape after developing a relationship with this investigator

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From: Carrie Sperling
To: Leti Uzueta
Subject: FW: Philip Vance case -- an update, an insight, and a suggestion
Date: Wednesday, May 3, 2023 1:58:01 PM
Attachments: AFFIDAVIT OF DARLENE WALTON_76841954(1)-c.DOCX

Carrie Sperling (she/her)
Assistant Attorney General
Conviction Review Unit

From: Dorsey, James <jdorsey@fredlaw.com>
Sent: Monday, April 24, 2023 12:56 PM
To: Carrie Sperling <Carrie.Sperling@ag.state.mn.us>
Cc: Nadine Graves <ngraves@legalrightscenter.org>; Jason Sole <jason@jasonsole.com>; Carl M. Warren <warr1838@stthomas.edu>; port4988@stthomas.edu; Hanna C. Day <hanna.day@stthomas.edu>; Kate L. Byrne <byrn2985@stthomas.edu>; Nicholas Foster <nick@vetinvestigations.com>; Olivia Gulley <Olivia.Gulley@ag.state.mn.us>
Subject: Philip Vance case -- an update, an insight, and a suggestion

Carrie,

Set out below are an update, an insight, and a suggestion.

(1) The update. Despite emails, texts and voicemails from multiple members of our team to Darlene Walton (nee Jones), we have not heard from her recently. So all we have concerning her story are: (a) the attached draft affidavit that she has approved and said she would sign and return (but that has never arrived); (b) the notes of the interview she gave to Julie Jonas of the Innocence Project in 2017 (in which she stated that she remembers being with Philip Vance on the evening of 12/22/02 in part because he threw her only pair of shoes up onto the roof of the duplex on East Minnehaha Avenue); and (c) the cell phone records that show that she made a ten minute call to Chicago on Mr. Vance's cell phone at 7:44 that evening.

(2) The insight. Speaking of the cell phone records, when I first got involved with this case, I assumed that the cell phone records (which show that seven calls were made/received on Mr. Vance's cell phone during the time of the crime) had not been found until after the conviction. But no. People apparently believed that, right before, during, and then immediately following

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their commission of a robbery and a murder, Philip Vance, Dominick Johnson, and/or one of the South St. Paul girls (Yvonne White and Nicole Rauschnot) used the phone as follows:

(a) at 9:31 pm, the phone was used to call Dominick Johnson's cousin Richard "Hennessy" Robinson at his girl friend Keitha McKinney's apartment, about a block and a half from Sabreen's (why not just drop by) for 8 minutes and 7 seconds (even though the cash register was opened in response to the robbery at 9:35);

(b) immediately following that call, at 9:40, the phone was used to call 651.387.3727 (belonging to a Mark Davis, whoever he is) for 24 seconds;

(c) at 9:41, the phone was used to make a two minute call to the apartment where Yvonne White was living;

(d) at 9:44:41 and at 9:45:03, the phone received two incoming calls from that same apartment; and

(e) at 21:45:45 and 21:46:12, the phone was used to call Mr. Robinson at Ms. McKinney's apartment again (the second call lasted for 6 and a half minutes).

Somehow the police and the prosecutors believed that Philip Vance, Dominick Johnson, Yvonne White and Nicole Rauschnot, none of whom had ever committed a violent crime before (much less collaborated with each other in any sort of crime before), had used the phone repeatedly and at length throughout the commission of an armed robbery and murder. As anyone with actual armed robbery experience will tell you, when you are committing an armed robbery, the adrenaline is coursing through you — before, during, and after the robbery. You are not going to be on the phone talking to a cousin (Mr. Robinson*) or a roommate (Amy Drager, Yvonne White's roommate).

The police and the prosecutors have even contended that these alleged criminal neophytes made the calls specifically in order to create a cell phone record that would disprove they had committed such a crime (much as outlined above). In order to make that argument, however, the police and prosecutors

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had been drinking way too much Kreager Kool-Aid. Vance and company would not have thought up such a ruse, let alone pulled it off. Indeed, from any non-addled perspective, the cell phone records are dispositive evidence of their innocence.

(3) The suggestion. Speaking of the South St. Paul girls, interviewing Ms. Rauschnot and Ms. White would resolve a number of issues in the case (including those involving the phone calls). Your office should ask the Dakota County Attorney's office to grant them immunity in exchange for their agreeing to be interviewed under oath (and thus still be liable for any perjury) about where they were and what they were doing on the evening of 12/22/02.

Please let us know if you have any questions about any of the matters addressed above. And, as always, please let us know if we can assist you in any way.

Thanks.

Jim
James E. Dorsey
Senior of Counsel
Fredrikson & Byron, P.A.
612.492.7079 (o)
612.280.4989 (c)

* When questioned by the police about these calls, Mr. Robinson never mentioned hearing any anxiety or distress in Mr. Johnson's voice. Instead, he explained that Mr. Johnson called him several times that night about buying some liquor from him and that, if Mr. Johnson had been involved with a robbery, "Stacks would have told me." 4/17/03 interview transcript at p. 40.

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Carrie Sperling

From: Dorsey, James <jdorsey@fredlaw.com>
Sent: Friday, June 16, 2023 3:23 PM
To: Carrie Sperling
Cc: Nadine Graves
Subject: P. Vance case -- a summary

Follow Up Flag: Follow up
Flag Status: Flagged

Carrie,

In preparation for our meeting with you and Mr. Voight on June 21, Nadine and I wanted you to have the following summary of Philip Vance's case for exoneration through the CRU:

(1) No physical evidence connects Philip Vance to the crime. No fingerprints; no camera footage; no eyewitness identification; no voice identification (on the contrary, one eyewitness thought the perpetrators spoke Spanish).

Similarly, notwithstanding searches of all the locations where Mr. Vance was known stay and a search of Ms. Rauschnot's car, no tools of the crime (gun or face masks) or proceeds from the crime (cash, cigarettes, lottery tickets, cordless phone, plastic bags, etc.) were found.

(2) Not one of the four alleged perpetrators (Philip Vance, Dominick Johnson, Yvonne White and Nicole Rauschnot), notwithstanding prolonged and repeated interrogations, ever admitted to any involvement in any aspect of the crime.

Moreover, not one of them had any record of same or similar crimes.

Either the police interrogators were phenomenally inept (in failing to get at least one of them to break), or the four of them were innocent.

(3) Any time the police told Philip that they were about to get results of a DNA test (or get some other dispositive evidence) and advised Philip to take the deal they had offered (because the deal would be pulled once the evidence came in), Philip would not take the deal, because he knew that any such evidence could only exonerate him

Indeed, when in one of the first interviews in January 2003 the police told him that they were going to get cell tower records that would show his location, Philip made a point of urging them to get those records. Unfortunately (and inexplicably), Officer McManus did not sign the affidavit in support of the subpoena on Sprint until March 18, 2003, by which time more than 60 days had passed, and Sprint had destroyed the cell tower records.

(4) The investigation was conducted by the now discredited as corrupt (and incompetent — see previous paragraph) MGSF. That fact alone should raise suspicions about the validity of this conviction.

Police behavior throughout was heavy-handed and brutal as they kicked down doors and conducted no-knock searches. It is no surprise that the recantations in this case reveal a pattern of police threatening witnesses and/or their families if the witnesses did not give testimony as directed.

(5) Philip's trial counsel were of no help to him. They presented no witnesses, never mentioned an alibi . . . the less said about their performance, the better.

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(6) Kentrell Anthony and Darlene Jones have both confirmed that Philip and Dominick were at the duplex on Minnehaha Ave E at the time of the crime. These women, while cousins, are not close. And neither has anything to gain by giving such testimony in support of Philip.

(7) The third man with Philip and Dominick at the Radisson Bar in the late afternoon and early evening of 12/22/02 was Edward Townsend, not John Martin. See affidavits from both men. The cell phone records show that Mr. Townsend used Philip's phone to call his grandmother in Milwaukee at 17:09, 17:14, 17:15, 17:20, 17:29, and 18:46.

In Mr. Martin's 7/11/2003 interview with the MGSF, he stated that, on the evening during which he spent about 1.5 hours with Philip and Dominick at the Radisson Bar, he had used Philip's phone to call his girlfriend to let her know that he would be coming over. He said that his girlfriend's number was 651.793.4587. No such number was called on Philip's phone on 12/22/02.

Mr. Martin was speaking of, and eventually testified about, a different evening. He was describing an evening when Ms. Rauschnot and Ms. White had in fact picked up Philip and Dominick in downtown St. Paul. On that occasion, the four of them had gone looking for a liquor store, which means it could not have been on Sunday, 12/22/02, because liquor stores were not open in MInnesota on Sunday nights.

(8) The following narrative is consistent with the cell phone records:

While Philip and Dominick were at the Radisson Bar, during a phone call either to or from Darlene Jones, she asked Philip to bring her a pack of cigarettes when he came over to visit that day.

Sometime after 7 PM, Philip and Dominick left the Radisson Bar, stopped by the convenience store outside the bar to pick up a pack of Newports for Darlene, and took a bus to the duplex at 956 Minnehaha Ave. E.

When they entered the duplex, it was full of people – Jacqueline Ezell, Kentrell Anthony's mother, Kentrell, Darlene, their uncle Jesse, a female cousin (now deceased), as well as Eugene O'Connor (who always stayed in the back room and was never seen).

Shortly after Philip and Dominick arrived, Jaqueline Ezell and Kentrell's mother left to go play bingo. Kentrell and Dominick then went upstairs.

At 19:44, Darlene used Philip's phone to make a 10 minute call to her family in Chicago.

From 20:05 to 20:30, instead of "getting a plan on" or "acting more secretive than usual," Philip made 10 calls on his phone: 5 to his friend (not Dominick's friend) Troy Crawford (20:05:14, 20:05:56, 20:00, 20:18, and 20:26); 2 to 615.643.0575 (20:24, which was a one-number-off misdial, and 20:25); and 2 to the mother of one of his children, Taneka Simmons (20:09 and 20:27).

That second call to Ms. Simmons lasted 25 minutes. No other call earlier that day lasted nearly as long. Philip was no longer in a bar and chatting with friends. Rather, he was relaxing at the duplex, watching football, and talking with Taneka.

As soon as that call ended, he got an incoming call (from an as-yet unknown number) that lasted for 22 minutes. Again that length of a call is consistent with his being at the duplex, not at a bar.

Similarly, the lack of any calls to Richard Robinson or to or from Amy Drager's line for an hour and thirty-eight minutes, from 19:42 (when a call to Amy's line ends) to 21:20 (when Robinson's girl friend's apartment is called) is consistent with Dominick's being upstairs with Kentrell. (By contrast, a total of 20 calls had been made from or to Robinson or Amy during the rest of afternoon and evening of 12/22.)

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(9) With no direct evidence, the state's case was of necessity a house of cards. Given the recantations of Melissa Stites and John Martin, which are confirmed by Darlene Jones' call to Chicago from the duplex at 19:44, the case has collapsed several times over. The only pieces of evidence the state has are: (1) Philip's ambiguous statements and gestures to Colleen McManus on 12/22; and (2) Philip's bragging (but false) statements to Melissa Stites during the gun-sale sting. The former reflected Philip's worry that Colleen would kick him out of the bar, as she had done the last time he was there. The latter needs to be understood in the context of his also telling Melissa that he owned four guns (the subsequent police raids and searches proved that he did not) and that he used rail yards for target practice (no gang bangers engage in target shooting, ever).

(10) Even if none of the points raised above is compelling, the cell phone records, on their own, create a solid alibi. The cell phone records show that, immediately before, during and after the crime, Philip's phone was in use. From 21:31 to 21:53 (22 minutes), the phone was used for 7 calls (5 outgoing and 2 incoming) for a total of 22 billed minutes.

The longest interval of non-use was 89 seconds, from 21:43:12 to 21:44:41, which was probably after the crime was committed. The cash register was opened for the "no sale" robbery at 21:35.

Three of the calls were made to or from the apartment of Amy Drager, where Yvonne White was also staying. Amy's phone received calls from (and made calls to) Philip Vance's cell phone many times on 12/22/2002 and early 12/23/2002. Three of those calls were made at 21:41, 21:44 and 21:45, when the crime occurred or shortly thereafter. As explained in detail in our "the missing piece" email on May 22, Amy made it clear that: (a) Yvonne was with her at the apartment the whole evening; (b) Dominick was always on the other end of the line; and (c) Nicole had not been around the whole weekend.

Three of the other calls, made at 21:31, 21:45 and 21:46 (all outgoing and totaling 17 billed minutes), were to the apartment of Keitha McKinney, who was the girlfriend of Dominick's cousin, Richard Robinson (aka "Hennessey"). As set forth in the 4/17/03 police interview transcript, the police arrested Robinson during a drug-sale sting operation that they had put together solely in order to have leverage over Robinson to get him to talk about the calls he got from Philip's phone immediate before and during of the robbery-murder. While he admitted getting the calls from his cousin Dominick (about buying some liquor Robinson had), Robinson stated that Dominick never mentioned any robbery or shooting. "I know they didn't do it . . . . Stacks would have told me." Tr. at p. 40.

CONCLUSION

For the reasons set forth above, Philip Vance is innocent.

And the CRU should help exonerate him.

We look forward to our meeting with you on Wednesday. Thanks.

Jim

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Carrie Sperling

From: Dorsey, James <jdorsey@fredlaw.com>
Sent: Thursday, June 29, 2023 8:17 AM
To: Carrie Sperling
Cc: Nadine Graves; Carl M. Warren; port4988@stthomas.edu; Jason Sole; Joshua Sansom
Subject: P. Vance case — an update

Follow Up Flag: Follow up
Flag Status: Flagged

Carrie,

Today I am meeting with Philip Vance to discuss whether he will agree to be interviewed by you as part of your investigative process. I hope to inform you of his decision within a day or two.

But while I have you, let me address an issue that came up last week.

At the end of our meeting, you mentioned that you thought that the nine minute call from Phillip's cell phone to Keitha McKinney's apartment perfectly bookended the 9:35 time when the cash register was opened.

In your opinion, the timing of that call meant that Richard Robinson was on McKinney's phone and serving as a lookout for the crime.

Upon reflection, we find several problems with that theory.

First, Ms. McKinney had a landline, not a cell phone. So Mr. Robison was not standing outdoors keeping an eye on Sabreen's and surrounding streets in order to serve as a lookout.

Rather, he would have been inside her apartment at 141 Fourth Ave. So., nearly two blocks away from Sabreen's at 345 Fourth Ave. So.

As seen in the attached aerial photos, from inside the apartment over 1,000 feet (and two cross streets) away on a winter's night, Mr. Robinson would have had no useful line-of-sight to either the street in front of Sabreen's or the alley behind it.

The one photo is "3-D" and shows that views south towards Sabreen's from any upstairs windows in the apartment building at 141 Fourth Ave S would have been blocked by the building of equal height to the apartment building's immediate south.

The second photo (which is not 3-D) identifies the location of 345 Fourth Ave S. The building that housed Sabreen's has since been demolished and replaced. But the location is accurate.

Though the apartment building at 141 Fourth Ave S is not identified in the second photo, the building can be seen as the fourth building north of the intersection of Fourth Ave S and Southview Blvd.

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The best explanation for the call is that Dominick, having come down from the upstairs unit at the duplex on Minnehaha Ave after a lengthy intimate interlude with Kentrell, was calling his cousin to ask about buying some whiskey from him.

Please let me know if you have any questions or if you would like to discuss this issue. Thanks.

Jim

P.S. Yes, notwithstanding our meeting this week, I am still convinced of Mr. Vance's innocence.

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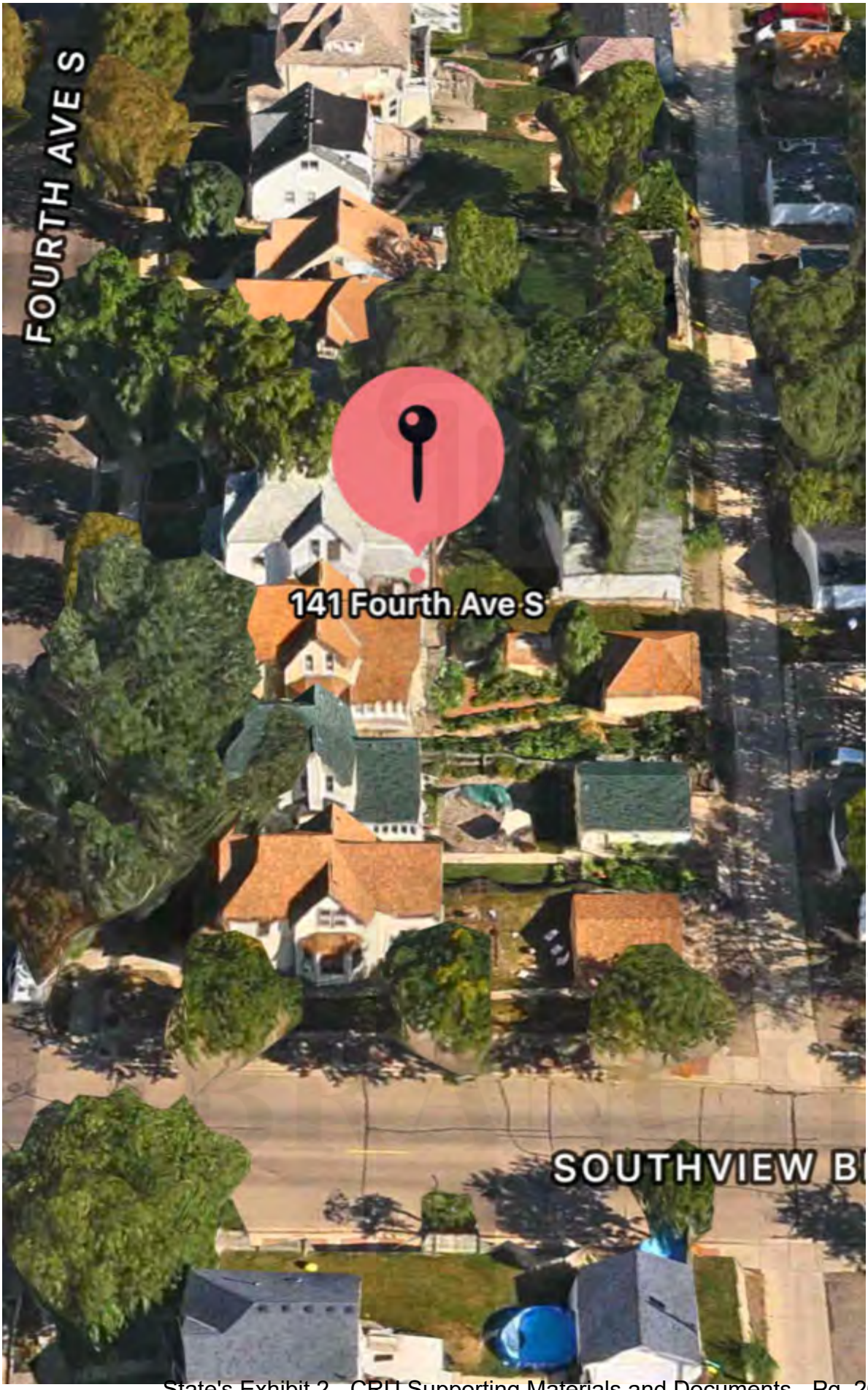

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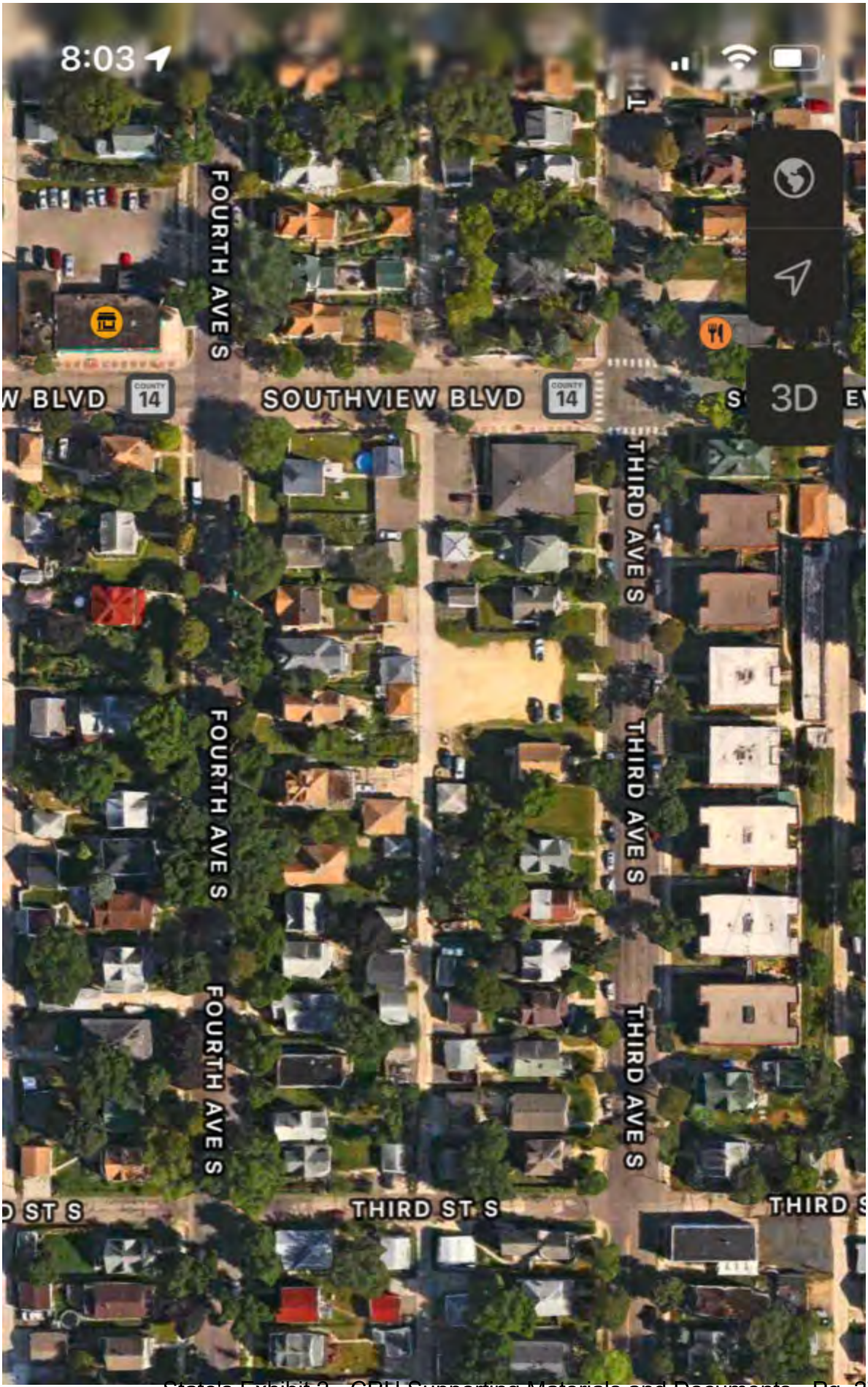

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Carrie Sperling

From: Dorsey, James <jdorsey@fredlaw.com>
Sent: Thursday, June 29, 2023 12:06 PM
To: Carrie Sperling
Cc: Nadine Graves; Carl M. Warren; port4988@stthomas.edu; Jason Sole; Joshua Sansom
Subject: Re: P. Vance case — an update

Carrie,

Two things:

(1) Yes, Philip Vance is willing to be interviewed by you as part of the CRU process. Please let us know when and where you would like that interview to take place.

(2) I may have been incorrect in stating that Keitha McKinney had a landline. Billing records indicate that she had wireless service. My apologies.

But the theory that Mr. Robinson was acting as a lookout still has problems.

Kathleen Johnson, though she saw both men and described their clothing and masks (and the voice of at least one of them), said nothing about either of them being on a phone. Nor did she report seeing a lookout in the area.

Similarly, none of the young witnesses who saw two men running from the store to the car reported seeing either of them holding, or listening to or talking on, a cell phone. Nor did any of them see someone acting as a lookout.

As to somebody in the car being on the phone with the lookout, that makes no sense — if the lookout reported a threat, the person on the phone in the car would not have been able to warn the men in the store in a timely fashion.

Again, the call to Mr. Robinson while he was at Ms. McKinney's apartment that evening was made by Dominick Johnson in an attempt to find some liquor on a Sunday night. Such were the priorities and interests of Messrs. Vance and Johnson.

Thanks. And again my apologies about mischaracterizing the cell phone.

Jim

On Jun 29, 2023, at 8:17 AM, Dorsey, James <jdorsey@fredlaw.com> wrote:

Carrie,

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Today I am meeting with Philip Vance to discuss whether he will agree to be interviewed by you as part of your investigative process. I hope to inform you of his decision within a day or two.

But while I have you, let me address an issue that came up last week.

At the end of our meeting, you mentioned that you thought that the nine minute call from Phillip's cell phone to Keitha McKinney's apartment perfectly bookended the 9:35 time when the cash register was opened.

In your opinion, the timing of that call meant that Richard Robinson was on McKinney's phone and serving as a lookout for the crime.

Upon reflection, we find several problems with that theory.

First, Ms. McKinney had a landline, not a cell phone. So Mr. Robison was not standing outdoors keeping an eye on Sabreen's and surrounding streets in order to serve as a lookout.

Rather, he would have been inside her apartment at 141 Fourth Ave. So., nearly two blocks away from Sabreen's at 345 Fourth Ave. So.

As seen in the attached aerial photos, from inside the apartment over 1,000 feet (and two cross streets) away on a winter's night, Mr. Robinson would have had no useful line-of-sight to either the street in front of Sabreen's or the alley behind it.

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Though the apartment building at 141 Fourth Ave S is not identified in the second photo, the building can be seen as the fourth building north of the intersection of Fourth Ave S and Southview Blvd.

The best explanation for the call is that Dominick, having come down from the upstairs unit at the duplex on Minnehaha Ave after a lengthy intimate interlude with Kentrell, was calling his cousin to ask about buying some whiskey from him.

Please let me know if you have any questions or if you would like to discuss this issue. Thanks.

Jim

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P.S. Yes, notwithstanding our meeting this week, I am still convinced of Mr. Vance's innocence.

<image0.png>

<image1.png>

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Carrie Sperling

From: Dorsey, James <jdorsey@fredlaw.com>
Sent: Friday, March 7, 2025 6:18 PM
To: Carrie Sperling; Nicholas Foster
Cc: Nico Ratkowski; Israel Wilson
Subject: Philip Vance case before the CRU

Follow Up Flag: Flag for follow up
Flag Status: Completed

Carrie and Nick,

Based on the email from "anonymous14truthh" set out below, I have scheduled a meeting with Michael Medal-Mendoza at MCF-Stillwater on Tuesday, March 11 at 8 am.

Nico Ratkowski's law clerk, Israel Wilson (cc'd above) will attend as well.

If either or both of you would like to attend, you are welcome to do so (subject to your compliance with MNDOC visitation rules).

In any event, I will give you a full report on what, if anything, we learn.

Thanks.

Jim
James E. Dorsey
Fredrikson & Byron, P.A.
60 So. Sixth St., #1500
Minneapolis, MN 55402
612.280.4989 (c)

Begin forwarded message:

> **From:** Anonymous <anonymous1.4truthh@gmail.com>
> **Date:** March 5, 2025 at 9:54:08 AM CST
> **Subject: VANCE IS INNOCENT - Alt perp info**
>
> CAUTION: EXTERNAL E-MAIL
>
> Why don't you release Philip Vance?! Haven't you held him wrongfully long enough?!
>
> In this email, I have copied over 40 media sources, Keith Ellison's office, the CRU, Governor Walz, the prosecutors office, and the white girl fighting to free Mr. Vance. So everyone will know!

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It’s time for someone to listen!!

You have the wrong guy. THAT MAN IS INNOCENT

You need to investigate, Hilder Adolfo Mendoza!!

His brother has suggested he was an accomplice as well. And he’s right under your nose in one of your prisons. At Stillwater - Michael Medal Mendoza

With all the jailhouse informants and witnesses, you had lie on Mr. Vance, I’m shocked you don’t already have recordings of Michael telling people he knows his brother killed that kid!

The state of Minnesota needs to do their job!

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From: Dorsey, James
To: Nicholas Foster
Cc: Carrie Sperling; Nadine Graves; Carl M. Warren; port4988@stthomas.edu; Jason Sole; Leti Uzueta; Hanna C. Day
Subject: P. Vance — address of J[redacted] R[redacted] in 2002
Date: Saturday, May 27, 2023 1:41:54 PM

Nick,

During our zoom session on Thursday, you explained how you had been able to find the name of J[redacted] R[redacted] as the owner of the number (773-783-3952) that was called on Mr. Vance's cell phone at 19:44 on 12/22/02.

We appreciated, and were impressed by, your finding that information.

In subsequent communications with Darlene, she explained that, yes, on occasions when mother's phone was off, she would call a neighbor of her mother.

At our request, Darlene asked her mother and her sister if they knew a J[redacted] R[redacted].

Today, Darlene reported that, about 20 years ago, J[redacted] R[redacted] was a neighbor of her sister. Ms. R[redacted] then lived at 1438 Emerald Ave. in Chicago Heights, IL.

Thanks again for continuing good work on this case.

Jim

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Carrie Sperling

From: Dorsey, James <jdorsey@fredlaw.com>
Sent: Monday, October 24, 2022 9:33 AM
To: Carrie Sperling
Cc: Nadine Graves; Carl M. Warren; Anthony T. Rauschendorfer
Subject: P. Vance case — recent research on, and analysis of, alibi investigation

Follow Up Flag: Follow up
Flag Status: Flagged

Carrie,

It has been a while since we have sent you a substantive email about Philip Vance's case. That apparent lapse was not caused by any lack of interest. Rather, we have been going through and re-reading all of the police interview and interrogation transcripts and notes, as well as the trial transcripts.

One focus of that work has been the police investigation of Mr. Vance's alibi — i.e., that at the time of the crime (about 9:40 pm on the evening of 12/22/2002), he and Dominick Johnson were at the duplex at 956 Minnehaha Ave E.

Our conclusion on that topic is that the police never investigated Philip Vance's alibi defense.

What follows is the basis for that conclusion.

During her closing argument, Kathy Keena dismissed Mr. Vance's alibi defense by stating: "When pressed about his whereabouts that evening, he [Mr. Vance] told investigators during the January 16th statement that he was at the home of Jackie Ezell where his girlfriend, Darlene Jones, lived. Well, that was refuted by Tom Kreager. You heard that. They went and checked it out. 'Nope, you weren't there.'" Trial transcript at p. 526, lines 19-25.

During his live testimony, however, Det. Kreager did not mention, much less refute, the alibi. Instead, while Det. Kreager was on the stand, Ms. Keena played tapes of his interview/interrogation sessions with Mr. Vance.

During the January 16 session, Mr. Vance stated (truthfully) that he was at the duplex on December 22. 1/16/2003 transcript at pp. 93-94.

Later in that same session, Det. Kreager told Mr. Vance that his police colleagues had checked out the alibi by talking with the residents of the duplex. Those residents allegedly told Det. Kreager's colleagues, who then told Det. Kreager, that Mr. Vance had not been at the duplex on December 22, the day of the crime. 1/16/2003 transcript at p. 158-59.

There are two problems with all that: one is legal; the other, factual.

First, as a matter of law, the transcript, if used to disprove the alibi (as Ms. Keena intended), was inadmissible double (and probably triple) hearsay — the jurors listened to a tape of Det. Kreager relaying what his colleagues told him they had heard from the residents (about whether Mr Vance had been at the duplex at the time of the murder).

Second, and more problematic, Det. Kreager's statement was untrue. The transcripts and notes of the police interviews of the duplex residents (Jackie Ezell, Lugene O'Connor, Darlene Jones, and Kentrell Anthony) reveal that, whenever the police interviewed them (both before and after January 16), the police never asked any of them whether Philip Vance had been at the duplex on December 22, the day of the crime.

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The police asked the duplex residents a lot of questions about the evening of January 3 (when Melissa Stites drove Mr. Vance to the duplex so that he could retrieve the pistol that he sold to her). But the police never told any of the residents that the crime had occurred on Sunday, Dec. 22 at around 9:40 pm, nor did the police ever ask any of them where they were or where Philip Vance was at that time.

As has been previously shown, this case was characterized by recurring unprofessionalism and/or misconduct by the police, the prosecutor and the public defenders.

In this instance, the police failed to investigate the defendant's alibi and then lied to him about their investigation.

In turn, the prosecutor relied on hearsay evidence that she had introduced without first explaining that she would use it to disprove the defendant's alibi.

To complete the trifecta of error and incompetence on the alibi issue, the public defenders let their client's alibi defense evaporate without objection or rebuttal. Indeed, in his closing argument, the public defender did not even mention his client's alibi defense.

In retrospect, the alibi, if it had been presented at trial, would have been rock-solid and un-refuted. Indeed, it also might have compelled Melissa Stites to admit then (instead of nearly 20 years later) that: (1) Mr. Vance was not "more secretive than usual" that night; (2) Mr. Vance never admitted to robbing or shooting anyone; and (3) Officer McManus pressured her into using a whole script of untruths.

In the near future, we will be sending you similar analyses of other aspects of the case (e.g., why Mr. Vance made such strange comments to Colleen McManus on the evening in question; why Mr. Johnson pleaded guilty but then refused to testify against Yvonne White or Nicolle Raushnot; how to interpret Mr. Vance's 12/22/2002 cell-phone call register; etc.).

In the meantime, please let us know if you have any questions about the alibi and/or its (non)investigation.

In addition, and as always, please let us know if we can assist you and your staff in any way. Thanks.

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Commentary

Punishing the Crime of Forgetting

Emily V. Shaw* and Elizabeth F. Loftus

University of California, Irvine, United States

Although many people think that forgetting is a problem in life, and it often is, they would do well to appreciate the benefits of forgetting. Fawcett and Hulbert (2020) have marshaled a powerful argument for the adaptive value of forgetting, highlighting the many ways that forgetting is both a common and essential feature of cognition. Their arguments have implications for memory as it plays out in real life, but here we focus on implications in the legal realm. We make two major points. First, within the legal system, forgetting on the part of criminal defendants can transcend mere embarrassment or inconvenience, and can actually implicate defendants in criminal acts. Second, forgetting in relation to trauma and victimhood can be complicated and controversial, with some victims preferring to retain their painful memories, even at a personal cost.

Defendant Alibis: When Forgetting is a Crime

Fawcett and Hulbert (2020) aptly rebuke the notion of forgetting as nothing more than a cognitive "sin," but the notion of forgetting as bad or blameworthy thrives in the legal system. The courts frequently rely on the sworn testimony of witnesses, who pledge to relay information accurately—"the truth, the whole truth, and nothing but the truth." In this domain, accurate memory can be the difference between compensation or liability, freedom or captivity, and even life or death.

One particularly challenging memory-related task within the legal system is providing an alibi. When people are considered potential suspects in a crime, they may be asked to account for their whereabouts at the time of the crime. For innocent suspects, this task may require them to recall mundane details from an earlier time—sometimes days, weeks, or months prior. Inaccuracies that are later discovered have been used against suspects, with suggestions that they were deliberately lying.

It is hard to overstate how challenging the task of providing a flawless alibi can be for the average person. Multiple research studies have examined memory in this setting and found that innocent people struggle to give accurate, consistent alibis. In one study, participants were asked to describe their location and activities during a specific afternoon three weeks prior (Strange, Dysart, & Loftus, 2015). Participants were then asked to come back a week later, repeat their "alibi," and provide supporting evidence for their account. Nearly half were inconsistent between their first and second account; many were completely unable to provide any supporting evidence at all. Another study of alibi accuracy found that, when given two days to check their own alibi, 36% of participants had to amend their initial accounts, changing factual details or adjusting the supporting evidence (Olson & Charman, 2012). These studies show that on-the-spot recollections about one's whereabouts at a specific time in the past—in other words, providing an accurate alibi—can be riddled with error.

But why is it hard for many people to provide accurate alibis the first time? Fawcett and Hulbert (2020) provide a helpful explanation through their discussion of the "Clarity" virtue of forgetting. The argument goes like this: When an activity is rather ordinary, like biking to work each day, it is not particularly useful to remember in detail. Unless something occurs to prompt memory retention, it may be most efficient for the memory to be effectively erased (Davis & Zhong, 2017, cited within Fawcett & Hulbert, 2020). In the context of alibi recollection, if the activity that a person is called to account for is ordinary, it may be more likely to be forgotten and subsequently misreported. Moreover, the task of alibi reporting is made even more difficult by the nature of the prompt that produces the alibi (e.g., Leins & Charman, 2016). Many memories are not stored in ways specific to a particular date or time, but this is often what investigators are seeking an account of when they request an alibi.

Author Note.

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Unfortunately, the tendency for people to incorrectly recount their own past activities, while harmless in ordinary life, can be disastrous for suspects who need to provide alibis. A famous example of the devastating impact of an inconsistent alibi comes is case of Ronald Cotton. In 1984, Mr. Cotton was accused of breaking into the home of Jennifer Thompson and raping her. When asked by investigators to provide an alibi, Mr. Cotton first claimed he had been with friends at the time of the crime, but later changed his story after realizing that he had mixed up his weekends and had actually been with his mother (Thompson-Cannino, Cotton, & Torneo, 2009). Investigators were suspicious of this inconsistency and ultimately charged Mr. Cotton with rape. He was convicted in 1985 and served 10 years in prison before he was exonerated through DNA evidence.

An inconsistent alibi is often a red flag to investigators, who are trained to see such inconsistencies as evidence of lying or guilt (see Inbau, Reid, Buckley, & Jayne, 2013). This perception of deception may lead to confirmation bias or "tunnel vision" in which investigators focus primarily on gathering incriminating evidence on one particular suspect and fail to adequately investigate or consider other disconfirming evidence (see Crozier, Strange, & Loftus, 2017), with the potential to lead to a criminal charge of an innocent defendant.

If defendants with inconsistent alibis plead not guilty, they face conviction from a jury, as jurors themselves are also likely to be suspicious of inconsistencies. Studies have found that people often (incorrectly) believe that motivation increases memory accuracy—such that a person in a high-stakes situation is less likely to forget important details (e.g., Kassam, Gilbert, Swencionis, & Wilson, 2009). People also tend to believe that accurate alibis are consistent over time (Burke, Turtle, & Olson, 2007) and are distrusting of alibis that change, even when the change includes details that would logically strengthen the alibi (Culhane & Hosch, 2012). Inconsistencies in an alibi can lead jurors to infer that the defendant is lying. For example, in one study, more than 88% of participants agreed that a defendant who changes his or her story following a police interview is "probably lying" (Culhane, Hosch, & Kehn, 2008). This distrust in inconsistent alibis, and tendency to see malicious intent rather than simple forgetting, can pose a risk to defendants who are unable to consistently account for their whereabouts at the time of a crime due to simple forgetting.

Obviously, there are times when a suspect who claims to have forgotten a detail is lying and times when an alibi is inconsistent because it was manufactured to cover a crime. However, when investigators and jurors presume that this is always or often the case, they underestimate the ease of forgetting and can put factually innocent defendants at risk.

Victim Accounts: Choosing (Not) to Forget

Another context within the legal system where memory is crucial is in the recollections of victims. Victims of crimes are often called to testify in cases that go to trial and asked to recount their memories of being harmed. In criminal cases, these memories can be traumatic and painful, both to remember and to present in public for cross-examination and judgment.

In some cases, victims may be healthier and happier if they were able to forget their trauma (as Fawcett & Hulbert, 2020, illustrate), especially if seeking justice is not at issue (i.e., already achieved or impossible to obtain). However, people can be resistant to the notion of forgetting traumatic memories. There are several ways in which people prioritize retrieving or preserving memories of traumatic events (real or imagined) over the suffering that having such memories may create.

Forgetting Versus Repression

Fawcett and Hulbert (2020) explains how one benefit of forgetting is the ability to recover from negative experiences. Forgetting can serve a "Guardian" role, mercifully allowing us distance from unpleasant memories of our past and providing relief from re-experiencing pain. The authors describe the case of Jill Price, a woman with exceptional autobiographical memory (Parker, Cahill, & McGaugh, 2006, cited by Fawcett & Hulbert, 2020) who is unable to forget her negative emotional experiences. Ms. Price is forever at the mercy of the retrieval cues in her environment, always living with the possibility that a passing cue will trigger a vivid memory she may wish to avoid.

What would become of people like Ms. Price if something horrific happened to them—if they were the victim of a violent crime as adults or children? Are there any processes in human memory—beyond ordinary forgetting—that can help one move past a traumatic event? This question goes to the heart of a decades-old debate in the field of memory research: Is it possible for memories of trauma to be "repressed" (i.e., stored without conscious awareness and unreachable through typical retrieval cues), but then effortfully retrieved at a later date?

Whether or not traumatic memories can genuinely be repressed and later recovered has been a hotly contested subject in the field of memory research, especially since the 1990s (Patihis, Ho, Tingen, Lilienfeld, & Loftus, 2014). Some clinicians in direct contact with patients have long insisted that repression of traumatic memories is possible (e.g., Blume, 1990), especially in cases of severe physical or sexual abuse experienced in childhood. In this understanding, "repression" goes beyond ordinary forgetting or distraction from a painful past experience. The repressed experience is stored in memory, but is challenging to access and resistant to obvious retrieval cues (e.g., "Were you ever physically harmed by a parent?" Answer: "No."). According to the repression notion, despite being inaccessible to the patient, the memory or the knowledge it reveals can poison the patient's daily life, and recovering this toxic memory is an option that may help the patient heal.

However, academic memory researchers argue that this concept of repression is devoid of credible scientific support. Clearly traumatic memories can be forgotten with time, and of course an adult reflecting on childhood memories may be able to recognize

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past experiences as abusive and wrong in a way they could not as a child. But academics argue that massive repression in the clinical sense is unsupported by empirical studies, and the collection of studies that claim to demonstrate repression (e.g., Briere & Conte, 1993; Herman & Schatzow, 1987; Scheflin & Brown, 1996) have serious errors or limitations (see Piper, 1997; Pope & Hudson, 1995).

Instead, many researchers say that the memories of trauma that are "recovered" through suggestive psychotherapy can be entirely new creations or fabrications. Evidence for this claim comes from a variety of research studies in which researchers were able to implant false memories in participants, even for stressful childhood events. In one of the most famous examples, researchers led participants to falsely believe that as a child, they were lost in a shopping mall (Loftus & Pickrell, 1995). Other upsetting false memories implanted by researchers include committing a crime as a young person (Shaw & Porter, 2015) or being attacked by a vicious animal (Porter, Yuille, & Lehman, 1999). These studies demonstrate the malleability of memory and show that even memories of untrue but upsetting experiences can be implanted in unwitting individuals.

After decades of debate about the status of repressed memories in the 1990s, a consensus was reached among academic memory researchers, who concluded that the existence of repressed memories is unsupported by empirical evidence. But while many memory researchers considered this issue settled, there have been recent signs of a resurgence in the debate. Belief in repressed memory—or "dissociative amnesia" within some clinical circles—may be undergoing a revival and gaining popularity among legal agents and clinical psychologists alike (Otgaar et al., 2019), despite the absence of any compelling new evidence for the phenomenon.

Unfortunately, the belief in repressed memory has consequences that extend beyond the therapeutic context. The 1980s and 1990s saw dozens of high-profile cases involving allegations of abuse based on recovered memories, only to later be debunked. For example, in 1988, Paul Ingram was accused by his children of a variety of acts of satanic ritual abuse and sexual abuse, including impregnating one of his daughters and giving her an STD; however, a physician who examined the daughter determined that this was not medically possible (see Herzog, 2019). Mr. Ingram spent over a decade in prison before his release in 2003.

While the practice of recovering memories may be therapeutic for some patients, these "recollections" need to be treated with caution. By seeking to uncover repressed memories and engaging in risky practices linked to false memory creation, misguided clinicians may lead their patients to "remember" horrific events that never actually occurred and create new and real trauma for the patient and the wrongly accused alike. False "recovered" memories have torn apart families, ruined reputations, and led to imprisonment for numerous innocent defendants. It is therefore valuable for clinicians, legal agents, and members of the public to have a rich understanding, not just of the way forgetting *does* occur (through work like Fawcett & Hulbert, 2020), but also of the ways it *does not*—dispelling damaging notions of forgetting like the myth of repression.

Dampening Traumatic Memories

The "Serenity" virtue of forgetting, as described by Fawcett and Hulbert (2020) illustrates how forgetting can help people overcome the burdens of negative memories and enable people to forgive transgressions. Notably, these benefits can occur with or without conscious intent on the part of the person experiencing troubling memories. But what if a person seeking to forget did not need to actively seek distraction, or wait passively for forgetting to occur, but could instead willfully choose to delete a traumatic experience from memory?

This possibility is not (total) science fiction. Medical researchers have been testing drugs such as propranolol which have the potential to dramatically reduce the formation of traumatic, emotionally-charged long-term memories (and PTSD) when consumed close to the time of a stressful event (Brunet et al., 2008; Pitman et al., 2002; see also Kolber, 2006, 2008). Such drugs may eventually become a regular part of post-trauma medical care, and their potential applications for reducing memory of trauma are fascinating and controversial.

Advocates of the use of memory-dampening drugs assert that this is a method of reducing human suffering and an option that victims deserve to have available to them. However, critics argue that victims of crime may have a duty to hold on to these memories for the sake of justice; successful prosecution of perpetrators could be made difficult if victims chose to forget criminal acts committed against them (see Kolber, 2008), potentially leaving those perpetrators free to harm others.

Interestingly, the limited research that has been done on perceptions of these memory-dampening drugs suggests that the public is reluctant to consider using them. For example, one study by Newman, Berkowitz, Nelson, Garry, and Loftus (2011) provided Americans and New Zealanders with a series of hypothetical scenarios where a memory-dampening drug could be used. Participants were asked to imagine they were either a restaurant manager or a soldier on a peace-keeping mission and were the victim of a violent assault. Overwhelmingly, a large majority of participants in both countries and across all scenarios indicated they would not want to take the memory-dampening drug. This was true even when participants were warned that they had a 40% chance of developing PTSD, and it was true even for participants who reported past experience with traumatic events. In fact, participants who reported past traumatic experiences were significantly *less* likely to want the drug then those who did not report prior traumatic experiences.

This study suggests that victims may be unwilling to dampen their own traumatic memories when given the opportunity to do so, even when warned there is a sizable risk of lasting psychological harm (i.e., developing PTSD). When given the choice to forget a trauma, extending and deliberately controlling the "Guardian" role of forgetting through drugs, it appears many people would prefer not to forget.

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Conclusion

Despite the clear "virtues" of forgetting presented by Fawcett and Hulbert (2020), the legal world has not caught on, often harshly judging defendants who forget details about the past. Some in the therapy community have also overlooked the value of forgetting, coaxing patients to remember traumatic experiences that may not have actually occurred. This is not to say that victims of traumatic events should just forget their true experiences of suffering. For many, that is not possible, and for some, forgetting comes at the expense of justice. But we should be careful not to put "remembering" on a pedestal. Forgetting ordinary details should not be such a strong mark of suspicion for suspects, and it should it not be seen as the enemy of healing in clinical contexts.

Author Contributions

Both authors contributed to the conceptual content, writing and revision of this commentary.

Conflict of Interest Statement

The authors declare that they have no conflict of interest.

Keywords: Memory, Forgetting, Repression

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Philip Vance
Executive Summary of the Case
Updated 12/8/2021

Philip Vance was prosecuted by the Dakota County Attorney in 2004 and is currently serving a life sentence in the Stillwater Correctional Facility. He has continued to maintain his innocence throughout the entire process, from his initial interactions with the police until today.

After his conviction in 2004, Vance filed a direct appeal to the Minnesota Supreme Court. The Court upheld his conviction, citing that the trial court did not abuse its discretion in many circumstances challenged, and that the appellant's claims of newly discovered evidence, exclusion of a letter for lack of foundation, and prosecutorial misconduct failed for lack of merit.[1] Following his direct appeal, Vance filed a pro se request for post-conviction relief. The Dakota County District Court denied the petition reasoning that Vance's claims were either raised and decided on direct appeal, or were known and not raised at the time of the appeal. Subsequently, Vance filed an appeal to the Minnesota Supreme Court, including claims of 1) ineffective assistance of counsel, 2) newly discovered evidence, 3) insufficiency of the indictment given recanted testimony, and 4) prosecutorial misconduct.[2] The Court affirmed his conviction, citing in part that some of his claims were procedurally barred, some claims were known to him or should have been known at the time of the direct appeal, and that the recantations of testimony did not provide "sufficient indicia of trustworthiness".[3] In 2008, Vance filed a writ of habeas corpus to the United States Eighth District Court of Minnesota alleging constitutional violations, which was later dismissed. Part of Magistrate Judge Susan R. Nelson's reasoning that the writ be dismissed with prejudice was that Vance's claims were *Knaffla*-barred.[4]

In September of 2016, Vance contacted the Innocence Project of Minnesota (now known as the Great North Innocence Project) (hereafter "IP") to receive assistance on appealing his conviction. The IP began their investigation of Vance's conviction by contacting involved parties, witnesses, and conducting interviews. After some time investigating, the IP determined they did not have the resources to continue tracking down missing parties and chose not to pursue Vance's request.

Mr. Vance has exhausted all his options for appeal of his conviction through the typical legal avenues. While he was represented by legal counsel during the trial and the direct appeal, he navigated through the post-conviction process on his own, even hiring a private investigator to track down witnesses to obtain recantations of their original testimony. Many of the confidential informants, jailhouse informants, and other witnesses utilized by the prosecution to convict Vance have since recanted their testimony, including Melissa Stites, whose testimony was instrumental

[1] *State v. Vance*, 714 N.W.2d 428 (Minn. 2006).
[2] Vance also included in his petition 5) failure to submit the charge to the grand jury, 6) errors that prevented a fair trial, and 7) abuse of discretion by the district court
[3] *Vance v. State*, 752 N.W.2d 509, 514 (Minn. 2008).
[4] Habeas Report & Recommendation at 11-24. Under *Knaffla*, once a petitioner has a direct appeal of a conviction, "all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief." The standard also bars all claims that should have been known at the time of direct appeal but were not raised in the direct appeal.

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in Vance's conviction. Further, Vance continually faced huge obstacles during his appeals process, namely court decisions that certain objections were not preserved for appeal, that the recanted testimony available at the time was known or should have been known at the time of the trial or direct appeal, and that it lacked trustworthiness and was barred by *Knaffla*.[5]

The Conviction Review Unit (CRU) should accept investigation into Vance's case because many of the factors outlined in the CRU charter are also present here.

Vance was convicted based on testimony that has since been recanted

Since 2004, 9 people who testified against Vance or made statements to police have recanted their testimony. At least four of the informants state in their affidavits that police officers, including Officer John McManus (South St. Paul PD and MGSF), pressured them to make statements against Vance. These witnesses were pressured through threats and offers to reduce charges that were pending against them. Three additional witnesses have stated their willingness to sign affidavits that recant their police testimony or otherwise speak toward Vance's innocence.[6] Many of the witnesses who have recanted stated they were unwilling to come forth sooner for fear of backlash from police or fear of facing a criminal charge of perjury.

Vance received a life sentence disproportionate to the sentence of his codefendant who pleaded guilty for a lesser sentence

Vance has maintained his innocence since he was first accused of the crime in 2002. He stated in numerous conversations with his loved ones that the police would not find any evidence connecting him to the crime and would not be able to convict him because he was not involved. He was so confident in his innocence that he cooperated with the police during the early stages of the investigation. His faith in his innocence ultimately made him a victim of the trial penalty. The trial penalty is a phenomenon that causes a substantial difference between a sentence offered in a plea offer by prosecutors and the sentence imposed on a defendant at trial.

According to the theory of the police who investigated the murders, there were four people involved in the crime: Vance, Dominick Johnson, Yvonne White, and Nicole Rauschnot. First, the charges against Ms. White and Ms. Rauschnot, who were two white women accused of driving the vehicle to the murder scene, had the charges against them dropped. Second, Dominick Johnson received a plea deal that resulted in 150 months of incarceration in exchange for pleading guilty to second degree murder. Out of that time, Johnson served less than 8 years of his sentence. Vance, however, was pegged by prosecutors and police as the most serious actor of the three accused. Vance insistent upon his innocence and did not attempt to negotiate a plea deal. He was so

[5] *Vance v. State*, 752 N.W.2d 509, 513 (Minn. 2008). Once a direct appeal has been taken, all claims raised in that appeal, all claims known at the time of that appeal, and all claims that should have been known at the time of that appeal will not be considered in a subsequent petition for postconviction relief." Leake v. State, 737 N.W.2d 531, 535 (Minn.2007) (citing State v. Knaffla, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976)). There are two exceptions to this rule: "(1) if a novel legal issue is presented, or (2) if the interests of justice require review." White v. State, 711 N.W.2d 106, 109 (Minn.2006).

[6] The team has spoken with Dominick Johnson, Maynard Cross, and Nicole Rauschnot.

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confident in his innocence that he insisted upon taking his case to trial. At trial he was convicted of first-degree premeditated murder and sentenced to serve life imprisonment.

This disparity is appalling. Both Ms. White and Ms. Rauschnot had their charges dismissed. Mr. Johnson took a plea bargain for 12.5 years. Yet Philip Vance, who maintained his innocence, never once thought of taking a plea deal, and thus will serve the rest of his life imprisoned. Vance has missed out on so much of his life as a result of his time imprisoned, including missing the upbringing of his 3 children who are now 18, 20, and 21 years old. His youngest child was born 1 month after he was incarcerated and has never seen their father out of prison.

The conviction was based on jailhouse informant information, some of whom gave testimony in other convictions or received benefits for their testimony and cooperation

The use of jailhouse informants at trial presents a risk that the informants will provide false information in exchange for leniency or other benefits.[7] Seven informants in Vance's case were jailhouse informants, including Isaac Hodge, an informant that was instrumental in the conviction of Myon Burrell.[8] Hodge is also the nephew of John Nunn, a person who provided information during the investigation of Vance. While it is not clear what Hodge and Nunn received in exchange for their testimony, the defense speculated that they provided information against Vance in hopes of receiving something in return.[9]

In addition to Hodge and Nunn, five other jailhouse informants testified before the Grand Jury or at trial. The informants were offered or received benefits in exchange for their testimony, including $400 toward one informant's outstanding phone bills, a promise of parole for another, consideration in pending federal charges for another, and time off a sentence for a sexual assault charge for another.[10] Maynard Cross also received an offer of $3,000 in exchange for information from the victim's brother, Tariq Bakkri.[11]z

The police involved in Vance's conviction were involved in official misconduct

Many of the police officers involved in the investigation of the murder of Khaled Al-Bakri and subsequent investigation into Vance were also members of the since disbanded Metro Gang Strike Force. The troubling history of the MGSF is discussed in detail in the attached "Narrative of the Case." The brief summation of events is that the MGSF was disbanded after the Office of the Legislative Auditor (OLA) reviewed the financial issues of the group, which resulted in a finding that the MGSF could not account for over $18,000 in seized cash and could not locate 14 of the

[7] Report of Independent Panel to Examine the Conviction and Sentence of Myon Burrell: for the Conviction Review Units Review at 56.
[8] Report of the Independent Panel to Examine the Conviction and Sentence of Myon Burrell, December 2020. Page 17.
[9] Trial Transcript at 546.
[10] Trial Transcript at 367, 417.
[11] February 3, 2004, Notarized letter from Tariq Bakkri to Maynard cross. The letter contains, in portion, a guarantee that Cross would receive a reward of $3000 if he could provide any information that "helps convict the people who caused [his] brother's death". The letter also states that the police told Maynard Cross that he may "have information that may prove instrumental in convicting the people responsible for this crime."

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80 forfeited or seized vehicles.[12] After unknown members of the MGSF shredded documents it was evident to the OLA that the force must be disbanded. In 2010, the agencies responsible for disbanding the MGSF reached a $3 million settlement with victims of the unit's misconduct.[13]

Six officers involved in Vance's conviction were members of the MGSF whilst investigating Vance. The most active in Vance's case were Officer Shoemaker and Officer McManus, both of whom had multiple disciplinary actions in the form of suspensions or suspensions pending investigation.[14] Additionally, Officer McManus had over 10 complaints alleged against him, many of which were dismissed by his superiors. The misconduct these officers engaged in negatively affected Vance's case. For instance, officers pressured witnesses to lie about Vance's involvement in the homicide per affidavits recently obtained.[15]

There is evidence that the Minnesota Gang Strike Force provided incentives to informants to testify against Vance. In some cases, inmates were offered a reduction or a drop of charges in exchange for their testimony.[16] In another instance, they paid an informant's outstanding phone bill.[17] At trial, Melissa Stites admitted that the police provided her $1,500 to rent a U-Haul and pay for gasoline.[18] Lastly, Colleen McManus, the bartender Vance allegedly confessed to, is the sister of Officer McManus. In an unrelated investigation Officer McManus was suspended without pay in part for his misconduct during a search warrant where he seized two jet skis that were not listed in the warrant. He failed to properly document the seizure and set up a sale of the jet skis to his sister, Colleen.[19]

The police involved in Vance's conviction conducted coercive and threatening interviews of informants and others

Upon review of transcripts from police interviews and investigations performed by the South St. Paul Police Department and the MGSF, it is clear that the police use manipulation, coercion, and threats during interviews and throughout their investigation to gain information to implicate Vance. During interviews with suspects and other related parties, police failed to respect interviewee's right to have an attorney present, showed up at suspects' workplaces, threatened interviewee's loved ones, lead interviewees to inferences, and fed interviewees information that

[12] OLA Special Report at page 9.
[13] https://www.mprnews.org/story/2010/08/25/strike-force-settlement
[14] http://complaints.cuapb.org/police_archive/
[15] Melissa Stites Affidavit at 1-3.
Maynard Cross is willing to submit a revised affidavit attesting to the pressure the police placed upon him to say that Vance committed this crime. Dominick Johnson is also willing to sign an affidavit discussing the pressure police placed on him.
[16] Trial Transcript at 522.
[17] Trial Transcript at 525.
[18] Trial Transcript at 217-218.
[19] John McManus letter of suspension, April 24, 2011. The jet skis were seized in a search warrant and not listed as items to be seized on the search warrant, nor did he document the items or the reason he seized them.

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fit the police narrative and theory.[20] These tactics are especially apparent in police interactions with Ms. White, Ms. Rauschnot, Richard Robinson, Keitha McKinney, and Maynard Cross.

No physical evidence collected at the scene can connect Vance to the murder

Upon securing the scene at Sabreen's, law enforcement collected several pieces of physical evidence. The evidence collected, analyzed by the Minnesota BCA (Bureau of Criminal Apprehension), included a pop can, a cigarette butt, fingerprints, cash register tray and receipts, shoeprint impressions, a tire track, plastic grocery bags, a piece of carpet, cartridge casings, and bullets. The BCA compared the evidence to known DNA and fingerprints of Vance, other suspects, and people known to be in the store frequently or around the time of the murder. None of the evidence could be tied to Vance or any of his co-defendants. Additionally, a search of the Minnesota DNA database was conducted and did not detect any matches. Further, the firearm ballistics were compared to a firearm obtained by police during a search warrant of Vance's residence, and another obtained during a sting operation involving Melissa Stites. These firearms did not match the evidence collected at the scene. At trial, neither the prosecution nor the defense presented information concerning this lack of physical evidence to the jury.

In place of physical evidence, the prosecution instead relied upon the testimony of jailhouse informants and police informants like Colleen McManus, the sister of Officer John McManus, and Melissa Stites, who has come forward stating her testimony was coerced by the police.[21] Ms. McManus was the recipient of goods wrongfully obtained by Officer McManus during his official duties, namely two snow mobiles.[22] Ms. Stites has since recanted her testimony, stating that the police pressured her into testifying against Vance, and that she was chemically dependent and vulnerable at the time of her cooperation with the police and testimony.[23] Without the testimony of these informants, the State's case against Vance would fall completely apart.

Defense Counsel performed deficiently

During his subsequent appeals and requests for post-conviction relief, Vance argued that he received ineffective assistance of counsel during his trial and direct appeal. Upon review of the records, his counsel acting deficiently in several ways.

First, defense counsel failed to conduct an independent investigation of witnesses. At trial, defense did not call any witnesses; every person who testified at trial was called by the prosecution. Further, although the defense had the opportunity to cross examine each of the witnesses, they failed to cross-examine key witnesses effectively.[24] On August 23, 2004, the defense counsel filed a Notice

[20] *See* Eide's Attorney Letter to SSPPD; Amy Drager Yvonne White Interview 7.15.03; Yvonne White Interview 2.10.03; 01.08.04 Yvonne White interview; 01.08.04 Yvonne White interview; Richard Robinson Interviews (4/17/03& 1/14/04); Keitha McKinney Interviews.

[21,] Melissa Stites Affidavit, January 22, 2021.

[22] John McManus letter of suspension, April 24, 2011.

[23] Melissa Stites Affidavit, January 22, 2021.

[24] For example, Defense Counsel failed to impeach Kathleen Johnson, the woman who witnessed the two suspects inside of Sabreen's shortly after the murder occurred. There was ample opportunity to impeach her statement at trial against her 911 call transcript and her police interview. The defense missed the opportunity to show that Kathleen

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of Defense Witnesses including the names of 10 witnesses. Two of the witnesses were inmates at MCF-Shakopee and served 4 subpoenas to appear on October 4, 2004. While it is not clear why these 10 witnesses were not called at trial, many of them appear to lean toward an alternative-perpetrator theory, as several of them were investigated by police early on during the investigation. As the Court denied admission of the alternative-perpetrator theory at trial, this may be the reason they were not called.

Although the Courts have failed to recognize Vance's claim of ineffective counsel, they continually cited that Vance's claims of ineffective counsel, including failure to conduct an investigation, talk to any witnesses, and call witnesses to testify are all facts Vance either knew or should have known at the time of trial or upon direct appeal. [25] Such an assertion would either prove that defense counsel acted ineffectively for failure to conduct independent interviews, or admission of the recanted testimony would show that Vance's conviction was based on coerced testimony at the hands of police misconduct.

Second, the defense counsel failed to preserve issues for appeal. In the Minnesota Supreme Court Opinion issued in 2006, the Court denied Vance's claims related to prosecutorial misconduct in connection with alleged threats made by Dominick Johnson that resulted in Sergeant Oeffling finding a letter from Vance to Johnson while searching Johnson's cell at MCF Stillwater. The Court held that because the defense did not object to the evidence at trial the issue was forfeited upon appeal.[26]

Finally, there is evidence that defense counsel believed Vance was guilty of the crime. In 2007 Wayne Jones submitted a handwritten affidavit attesting that Cean Shands told him that Phillip Vance was guilty. Jones states that Shands was also his public defender and told him that if Vance "would of kept his mouth closed he wouldn't of been tried" for the crime and that Vance was guilty. The affidavit was signed in the presence of a notary public under penalty of perjury.

The Prosecutor engaged in misconduct during the trial

Upon review of the trial transcript, it is clear that the prosecutor engaged in misconduct during the trial. One prime example of his misconduct, which defense counsel failed to object to, includes then Assistant County Attorney Kathryn Keena weeping during her opening statement.[27]

Ms. Keena also continued to use and refer to Vance and Johnson's "street names" when speaking to witnesses, despite the Court ordering her not to ["At the time did you know two men by the street names of Florida and Stacks?"][28] By referring to Vance's "street name" she created a negative inference toward Vance that could have prejudiced the jury.

Johnson's statement regarding the language spoken by the suspects changed between the time of the murder and her testimony at trial.

[25] *Vance v. State*, 752 N.W.2d 509, 514 (Minn. 2008).

[26] *State v. Vance*, 714 N.W.2d 428, 441 (Minn. 2006).

[27] *State v. Vance*, 714 N.W.2d 428, 444 (Minn. 2006) (the Court held that there is not support for this claim, however, as video recordings of trials are not common in the State of Minnesota, it's not clear how the record would show Ms. Keena's emotional reaction

[28] Trial Transcript at page 199.

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Vance further asserted his entitlement to postconviction relief due to prosecutor misconduct in his 2007 appeal request to the Supreme Court regarding the denial of his post-conviction relief petition. His claims of prosecutorial misconduct included that she [Ms. Keena] (1) inflamed the passions of the jury during her closing argument by commenting on Vance's failure to testify or provide an alibi; (2) commented on the State's witnesses' fear of Vance and how Vance disrupted the lives of the witnesses; (3) withheld exculpatory evidence; and (4) and misstated evidence.[29]The Court refused to comment on the merits of these claims, and instead cited to *Knaffla* that these claims are barred as they were known or should have been known to Vance at the time of the direct appeal but were not raised or were not raised successfully.[30]

Keena is now the Chief Deputy Dakota County Attorney. The fact that Ms. Keena is now in power in Dakota County may present challenges in conducting negotiations.

Vance has a positive prison record

During his time at Stillwater Correctional Facility, Mr. Vance has kept a positive record of involvement and community service. Although this is not one of the factors identified in the CRU Charter for consideration to review a case, character evolution and a pattern of responsibility and growth were factors that the independent panel considered in the release of Myon Burrell, so it is worth noting.[31] While at MCF Stillwater, Vance has mentored younger offenders, particularly younger offenders with disabilities, on alternatives to violence and aggression. In 2021, one of his mentees obtained a high school diploma with Vance's assistance. DOC (Department of Corrections) Teacher Dr. Heather Olson thanked Vance for his service to his mentee stating that he holds his mentees to high standards, upholds the goals of the program, and played an instrumental role in his mentee earning his diploma.

Vance has also been involved in physical activities and restorative justice programs during his time at MCF Stillwater. In 2016, he engaged in Restorative Justice programs, and although he maintains his innocence, he found the programs helpful to all inmates as it encourages introspection for character development. He has also engaged in programs such as Appreciation of Your Tireless Efforts, Anxiety Management, Anger Management, Building Character, Helping Prisoners Evolve, and a Long-Term Offender Program focused on cognitive behavioral treatment. From 2008-2019, Vance was involved in sports and physical education including football, softball, volleyball, basketball, soccer, and dodgeball. He participated in the teams' championships on several occasions and earned the 2014 MVP Award in volleyball.

Vance has also engaged in academic programs during his time at MCF Stillwater. He has taken courses in Computer Literacy and the Arts. In 2012 he earned his Art Diploma.

Defense Counsel objected to this statement, and The Court ordered Ms. Keena to not use street names, stating "No nicknames." Keena replied "Did I say it again? Sorry." at page 200.

[29] *Vance v. State*, 752 N.W.2d 509, 517 (Minn. 2008)

[30] *Id.*

[31] Report of the Independent Panel to Examine the Conviction and Sentence of Myon Burrell, December 2020. Page 4.

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DATE: July 11, 2003

CASE #: 02018427

INTERVIEW: Captain Daniel Vujovich
John McManus, MN Gang Strike Force

SUBJECT: Fabian Lionel Wilson DOB: 05/07/83

DV Today's date is July 11 and the time is 12:08 p.m. This interview being conducted at the Saint Paul Police Department with Fabian Lionel Wilson, date of birth 5/7 of '83. Present with this time is Officer John McManus Saint Paul Police Department and myself Captain Daniel Vujovich, South Saint Paul Police Department. Fabian I'm going to read you these ah, this information and I want you to listen along. Okay and read along with me. Can you read?

FW Ah huh.

DV Okay. And you're going to have to speak up quite a bit for the recording.

FW Okay.

DV And we have to record it because of the rules of ah, that we have to follow. You have the right to protection against self incrimination listed below. Please read along with the investigator and initial each statement if you understand it. You have the right to remain silent and my refuse at any time to answer any questions asked by a police officer investigator. Anything you do or say can be used against you. You have a right to talk to a lawyer and have him, have a lawyer with you during any questioning. If you cannot afford to hire a lawyer, one will be appointed for you and you may remain silent until you have talked to a lawyer. The above rights have been read to me. I have initialed each paragraph to show that I understand my rights and I have received a copy of this form. Do you understand all, everything?

FW Yep.

DV Okay. Go ahead and initial it then. And put your signature right there. You're okay talking to us then?

FW Yeah.

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DV You got to speak up again. Why don't you slide on up here so we can make sure we get, you're okay talking to us right?

FW Yep.

DV Alright. You understand all of this?

FW Yeah.

DV Okay. The reason why we're here, I'm sure you've heard the talk on the street of a ah, incident that happened in South Saint Paul in December of 2002. It was a robbery homicide. Do you know of that incident?

FW Ah, it was South Saint Paul?

DV Yes.

FW A robbery homicide. I think I did hear about it.

DV Okay. That's what we're here to talk to you about today. We've been working this case, obviously since December and I can't tell you how many people that we've talked to and ah, you know, you hang downtown quite a bit?

FW I used to

DV Used to.

FW but not no more.

DV Okay. Are you with ah, affiliated with any gangs?

FW No.

DV You're not?

FW (inaudible)

DV A couple of people that I'm sure that you know then and if you hung downtown at all you know that we're looking at them very seriously for this crime. Do you know Dominic Johnson?

FW Yeah.

DV Okay. What do you know him by? What street name?

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FW Ah, Stacks.

DV Stacks.

JM Who's that?

FW Dominic.

JM Okay.

DV Okay. Do you know Phillip Vance?

FW Yeah.

DV Okay. What do you know him by? What street name?

FW Florida.

DV Okay. Is that Florida?

FW Yep.

DV Okay. We've just shown you 2 pictures of Dominic and Philip and you've identified them as Stacks and Florida. How long have you known Florida?

FW I've known Florida for 2 years now. I have a baby with his sister.

DV With his sister?

FW Yeah.

DV Okay. Who's that?

FW Shauna Vance.

DV Shauna Vance?

FW Yeah.

DV Okay. Who's ah, Florida's baby's mama?

FW Her name's um, Tarinthia (sp?) Sims.

DV Okay. And

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FW Yeah. He got more than one.

DV Okay. Where's ah, Tarinthia (sp?)? Where's she at?

FW Um, I think she moved to Kansas.

DV Okay. Do you know about how long ago?

FW Nope.

DV Do you know why she moved?

FW Nope.

DV Okay. Who else does he have a baby with?

FW Um, I can't remember her name.

DV can you describe her?

FW Um, she, she kind of short, she not heavy set, she not real heavy set but she kind of a little chubby and she dark skinned.

DV Dark skinned? White girl? Hispanic? Black?

FW No. She black.

DV Black?

FW Yeah.

DV You don't know what at all?

FW I forgot her name. I remember it but I, I forgot it now. I don't even remember her name. I think it was um, I can't remember.

DV What do you think it was?

FW Um, I can't remember her name. I think it started with a "c".

DV With a "t"?

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FW Either a "c" or a "t". One of them. I can't even remember now.

JM Cantrell (sp?)?

FW No. That's not (inaudible)

JM You know Cantrell (sp?)?

FW Yeah.

JM Okay. You know Darlene?

FW Yeah. I know her too.

JM How do you know them?

FW I know them because from when I first moved up here, they used to, we used to hang out together.

JM Okay.

FW That's how I know them 2.

DV Okay. Who's, who was Florida hanging with of those 2?

FW Cantrell (sp?).

DV Cantrell (sp?)? Florida was with Cantrell (sp?) or Darlene?

FW No. He, really he was with both of them.

DV Okay. He was a player.

FW Ah huh.

DV Okay. Alright. So he was with both of them. Did you ever stay at that house where they lived, Darlene and Cantrell (sp?)?

FW No.

DV Up on Minnehaha.

FW Nope. I never stayed there.

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DV Do you have a relatives there on Minnehaha?

FW Nope.

DV Have you ever gone there?

FW Nope. Never even been there?

DV Okay. Do you know why we're talking about Florida and Stacks?

FW Nope. Is it cuz what happened over at South?

DV Yes.

FW That's why?

DV That's why.

FW Oh.

DV And I want to know what you know about it. And ah, I know that there's 35 different types of cops out there. But I can tell you that John and I have been working this case from the day one and we know a whole lot of information about what's going on and I may be asking you a question, but I already know the answer. I'm not trying to trick you, so ah, when I ask you, I want to know what you know about it. We already know that you have information about it.

FW Alright.

DV And right now Florida's, you know Florida's locked up right?

FW Yeah.

DV You know Stacks is locked up right?

FW I didn't know that.

DV Okay. Did you hear Stacks tried taking out, out of the area?

FW Yeah.

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DV Okay. Well, he's back. So ah, and I'm not, that's all fact. I'm not B. S.'n you on it. So do you want to be able to walk out of here and say Fabian stood up and told us what he knew and confirmed what we had heard. So why don't you tell us what you know about what happened down in South Saint Paul.

FW Well, really, I don't know what happened but I remember one day being at, at um, Florida's sister house and Florida was there too.

JM Is that on Front Street over here?

FW No. This is when she was living on um,

DV Birmingham?

JM Birmingham.

FW Birmingham. Yeah.

DV Okay.

FW I remember being over there one day and Florida was there and me and Florida was talking and he was telling about what he got arrested for over south, what happened over south. He was telling me and he was telling me that, what did he say? I'm trying to remember what he said. He was kind of drunk when he said it. So I couldn't really understand what he said. But he, he was telling me about when he got investigated and all the questions that the police was asking and then I asked him did he do it. I don't know if he was lying or telling me the truth. But he said they did do it.

DV He did do it?

FW That's what he told me. I, I don't know if he was lying or telling the truth or, or if he was trying to make his self look good or not.

DV Okay.

FW But that's what he had, told me, he was drunk when he told me this.

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DV Okay. Tell me exactly the words that he said. That you remember it as.

FW I'm trying to remember how he said. He said, he was like, I can't remember exactly how he said.

DV Okay. Just paraphrase it then. Okay.

FW Okay. He was like, okay, he was telling me about the questions that you all asked, that the police asked him or whatever. And he was like, and I was like, did you do it? He was like, he was like, yeah, he was like, yeah, I did it. Me, me and Dominic we did it. We gave him 5's to the back of the head.

DV Okay. When he says we did it, who is he referring to with him?

FW Dominic.

DV Him and Dominic, did he say Dominic or did he say Stacks?

FW He didn't, he didn't say Dominic, he didn't say Stacks or Dominic, he just said we. But I knew he, who he was referring it to.

DV How did you know that?

FW Because he was telling me, I don't know.

DV Go ahead. No. Just tell me how you know it.

FW I

DV I know that you know it and I'm believing you but what ends up happening is that we're going to have to tell somebody else this, or you know, they're going to look at this and they're going to say, you now, how does Fabian know this? So just in your own words just tell us how you knew that he was talking about Stacks.

FW Because I, I knew he was talking, the way I knew he was talking about Stacks was because, Stacks' baby mother her house had got raided and they were looking for him too for the same thing. That's how I knew he was talking about Stacks.

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DV Okay.

FW And Stacks told me that, that his baby mama got, house got raided and the police was looking for him and he had to go out of town and all that.

DV Alright. And he said what then?

FW That he was going to leave.

DV Okay.

JM Because of this incident? He was going to get out of town?

FW Ah huh.

JM Go back to, do you know where he was going to go?

FW He said, said Peoria.

JM Peoria?

FW Yeah.

JM Okay.

DV Okay. I'm lost now. Stacks said that?

FW Yeah.

DV Who told you that they did it?

FW Florida.

DV Florida did. Did Stacks ever tell you they did it?

FW Nope.

DV Okay. But then you saw Stacks and

FW Yeah. Then I seen Stacks then. Stacks was telling me about when the baby mama house had got raided and the police was looking for him and they had, and they had already got Florida. And he said he was going out of, he was going to leave to get out of town.

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JM Cuz he didn't want to talk to the police.

FW Right.

JM Okay.

DV Okay. Alright.

JM Okay.

DV Florida say why they did it?

FW No.

DV I mean, was it, you know, somebody's, the gun went off accidently or did the guy fight with them?

FW He, he didn't, he didn't never tell me why they did it. But I think, I think they did it because, because it was around Christmas time and they wanted their kids to have some Christmas presents or something or whatever. That's why I think they did it. I don't know.

DV Okay. Do you know how much they got?

FW Nope.

DV Did you ever hear?

FW Nope. They never tell me how much they got.

DV Have you ever seen Florida with a gun?

FW Yeah. He showed me a gun.

DV He what?

FW He showed me a gun. A little 25.

DV Okay. Alright.

FW All black. But he didn't have a clip to it though.

DV Okay.

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FW He had told me that he took it from somebody downtown St. Paul.

DV Okay. How did he put 5 in the back of his head if he didn't have a clip?

JM I don't know. But he did say he put 5 in the back of the guy's head? Okay.

DV Yes or no for the tape.

FW Yes.

DV Alright. Okay. Who else was there when he said that to you?

FW Well, he, his baby mama was in the house and my baby mama was in the house. Wasn't nobody in the room but me and him.

DV Okay. Alright. Did he say anything else?

FW Nope.

DV Did he tell you what they did with the gun?

FW Nope.

JM Have you heard through the street what happened to the gun?

FW Nope. I thought you all had the gun.

DV Okay. How did the, what, where did the conversation go from there after he said I put 5 in the back of his head? What did you say?

FW I said, are you serious? You, you all really killed dude? And he was like yeah. And then we changed the subject to something else cuz he was listening to some music and he liked the rapper JZ and so we got to change the subject to JZ. We didn't talk about it no more.

DV Okay. About, do you know when this was that he told you that?

FW I think it was in, I think it was in like, it was either early January or late December. Somewhere around that time.

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JM Was this before or after the Dominic's house got raided. Dominic's baby's mama's house. Was it after the raids or before the raids that he said that he did it?

FW It was after.

JM Okay.

DV Have you ever seen him in a car? Drive a car?

FW No.

DV Do you know Dominic? Stack's baby's mama?

FW Yeah.

DV What kind of car does she have?

FW She didn't have a car.

DV Did you ever see her in a car?

FW Nope.

JM You never drove her, her mom's car?

FW I don't know if she ever drove her mom's car.

JM Have you ever seen her mom's car?

FW Nope.

DV Stacks and Florida had a couple of girls in South St. Paul. Do you know who they are? Their first names?

FW No.

DV Do you ever see them?

FW I think, yeah, I seen them. I seen them. I seen them like twice. They came downtown to pick Stacks, Stacks and Florida up.

DV When was that that you saw him?

FW This, this was before, this was before December.

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DV Before when?

FW Before December.

DV Okay. Between Thanksgiving and Christmas or?

FW Yeah. Between

DV Before Thanksgiving? I'm just trying to throw out a time frame that we would know.

FW It was like, it was, it was after Thanksgiving but before Christmas.

DV Okay. You saw them pick Florida and Stacks up or?

FW Yeah.

DV Can you describe them?

FW Okay. One, one of them was heavy set. She, she had long blond hair. She was a white girl. The other one was, she was kind of tall. She had long dark hair. She was real lean. She was a white girl.

DV Both of them were white?

FW Ah huh.

DV And they lived in South St. Paul.

FW Ah huh.

DV How do you know that?

FW Cuz, cuz, Stacks had told me, the night, the night, one of the nights that they came to pick them up he had told me that he was going to go to South St. Paul and his girls are going to come pick him up and take him over there.

JM To their house.

FW Yeah.

JM Okay.

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DV Do you know about where in South St. Paul?

FW No. I don't know where in South St. Paul.

JM Did you ever go over there with him?

FW Nope.

JM Do you know where, did you ever see him pick him up?

FW Yeah. I seen him pick him up.

JM What were they driving? What kind of car were they (inaudible)

FW They was driving a, a blue Corsica. I think it was about a, a '90 or a '91.

DV Do you know what the tail lights look on a car like that?

FW Um,

DV Are the rectangle, vertical?

FW Rectangle.

DV Horizontal?

FW Rectangular.

DV Okay. Were the lights up and down or were they across, horizontal?

FW It was going across.

DV Okay. How many, and how many times did you see them in that car?

FW I seen them in that car twice.

DV Twice?

FW Yeah.

DV Okay. And that was before Christmas, excuse me, yeah, before Christmas but after Thanksgiving.

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FW Yeah.

DV Did you ever hear a name that they called them?

FW No. When, whenever they talked to me about the girls they said girls. They didn't say names, they just said girls.

DV Okay. But they told, but Stacks told you specifically that they were in South St. Paul?

FW Yeah. He, he told me they was, (inaudible) go over to South St. Paul. These girls were going to come pick them up and take them to their house.

DV Okay. How about Florida.

FW He didn't, he didn't never really say nothing about South St. Paul. He just rode with Stacks.

DV Okay.

JM But the night that the girls picked him up Florida and Stacks got in the car?

FW Yeah.

JM Okay.

DV What else have you heard about this robbery homicide out there?

FW Really, there's nothing else about it really.

JM Have you talked to Cantrell about it?

FW No. I never talked to her about it.

JM How about Darlene?

FW I don't even see her no more.

JM You don't see her. How about Dominique?

FW I think she, I think she moved somewhere. I don't see her no more.

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JM When Dominic left you say he took off because he didn't want to talk to the police

FW Ah huh

JM about this and he went to Peoria.

FW Right.

JM Did Dominique stay in town or did Dominique go with him to Peoria or do you know where Dominique went I guess.

FW She went with him to Peoria. She went with him.

JM She's been there since.

FW Yeah.

JM As far as you know.

FW As far as I know yeah.

JM So they both took off and got out of town and went to

FW Yeah.

JM went down to Peoria. Okay. How about Florida's girl. Do you know what his baby's mama's name is?

FW Tarinthia (sp?) Sims.

JM Tarinthia (sp?) Sims?

FW Ah huh.

JM What do you know about her?

FW Well, I haven't really new her that long but, I don't really know too much about her. Because me and her we don't really conversate like that.

JM Is she still in town?

FW No.

JM She took off?

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FW She's in Kansas.

JM Kansas. Do you know when about she went to Kansas?

FW Um, I'm saying like February.

JM Okay. So after the houses were, yeah. Do you know why she went to Kansas?

FW She said she didn't want to be in Minnesota no more.

JM Because of this?

FW No. She was already planning to go to Kansas before this even happened. She was already planning to go.

JM Okay. Okay.

DV How about Florida's sister Shauna? Your baby's mama. What does she say about this? Florida talking to her about it?

FW Um, I don't know. Me and her we really don't conversate no more cuz she moved. She's in Florida now.

DV She's in Florida?

FW Yeah. She moved to Florida.

DV With your kid?

FW Uh uh (negative). My kid's still up here.

DV Oh. Okay. Well, that's good for you then.

FW Ah huh.

JM Who, who do your kids stay with right now?

FW Her mother.

JM Her mother over on Front street?

FW Yep.

JM You get over there much to see them?

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FW Yeah.

JM And is her mom cool with you?

FW Yeah. Well, her ma, she really don't like me but when I go to get my daughter, she let me get her though.

DV Okay.

JM Okay.

DV And what are they saying about Florida being locked up?

FW They ain't saying anything about it to me.

DV How long have you known Stacks?

FW I've known Stacks for, I knew Stacks ever since I met Florida.

DV So you met Florida then you met Stacks through Florida?

FW No. I met Florida's sister then I met Florida then I met Stacks.

DV Okay. Alright. How long ago was that. I'm sorry.

FW I'd say about 2 years ago.

DV Okay.

FW Or a year and a half.

DV Did you ever see Stacks with a gun?

FW Nope.

DV But you've seen Florida with a gun.

FW Yeah. When he came, when he came to his sister house and he told me that he just took it from somebody. That's, that's, that's when I seen him with a gun.

DV Okay.

JM Do you know if he's had anymore guns?

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FW No. I don't know.

JM You don't know? Okay.

DV Okay. Do you know where he would keep his guns at?

FW No.

JM What is, you know his mom right? Obviously.

FW Yeah.

JM Would she help him hide the guns or?

FW No. She wouldn't help him hide the guns.

JM She's straight up.

FW Yeah. She wouldn't help him.

JM Okay. What does she think about this whole thing?

FW I don't know.

JM You never talked to her about it?

FW Nope.

JM Never brought it up? Now you used to hang 5th and Minnesota right? Around the Buttery and

FW Yeah. I used to hang 5th and Minnesota but I never went to the buttery.

JM Okay. How about your fat brother John. John Martin. The one you're locked up here with.

FW Ah huh.

JM He hang out there with you?

FW Yeah.

JM Okay. At one point did you hear from anybody that maybe he was involved in it?

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FW Somebody did tell me he, that, that, that, the police was looking for him.

JM In relation to this South St. Paul deal?

FW Yeah.

JM Do you know who told you that?

FW I think it was Cantrell (sp?). I think she told, you know, it was her. She did tell me that.

JM Okay. How long ago was that?

FW Ah, I can't really remember how long ago it was.

JM Couple weeks ago, a month ago, 2 months ago.

FW No. It was in like, I think like February or March.

JM Okay.

DV Do you um, do you know some of the other stuff that Stacks and Florida are in to?

FW No.

DV Did you ever see them do any other type of ah, crimes?

FW I've seen then get drunk and go up the hill over by Dirty D and beat up some people.

DV How long ago was that?

FW That was, that was like before Thanksgiving. That was during like summer time.

DV How bad did they beat the guy up?

FW They beat up more than one person a lot of times.

DV Really.

FW Yeah.

DV How bad?

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FW They beat up one person real bad.

DV When was that?

FW Like I think it was, it was in the summer time. I think it was in like June or July.

DV 2002?

JM This year?

DV Or 2001?

FW 2002.

DV 2002.

JM Where was that at?

FW Up the hill on Dorothy Day. By Dorothy Day on 7th street.

JM Okay. White guy, black guy?

FW Black guy.

JM Black guy.

FW Ah huh.

JM Why did they do that?

FW Drunk.

JM Did they take his money too?

FW I don't know. They took the money.

JM Were you there. I'm not saying that you.

FW No. I wasn't there. They told me about it.

JM They told you about it.

FW Yeah.

JM Okay. Where they worried that they beat him real bad?

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FW Nope.

JM They didn't care.

FW Nope.

JM Okay.

DV Did they say they beat him bad?

FW I mean, they said.

DV Is that kind of their behavior when they're drinking?

FW Yeah. When they drinking they, they do that a lot.

DV They do.

FW Yeah.

DV Have you ever seen them beat anybody up? You know, you're some place and all of a sudden they just go off on somebody?

FW Yeah. No, we, we, we've been to a couple of parties together and they got real drunk and started something at a party with a couple of people.

JM So when they drink they get violent.

FW Right.

JM Okay.

DV Have you ever seen Florida drink to the point where the next day, Fabian I don't remember what I did last night. Can you tell me?

FW Yeah.

DV How often?

FW Um. I don't know how often but he, he, he does it a lot though.

JM So he blacks out. That's what

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FW Yeah.

JM Blacks out. You know, I don't remember where I was last night, what I did last night and I had too much to drink.

FW Yeah.

JM That called a black out. Okay. And he does that a lot.

FW A lot.

JM How about Dominic?

FW Well, they drink together. So

JM But does Dominic drink as much as Florida and black out or does Dominic stop or?

FW I, I don't know if Dominic black out or not, but he drinks as much as Florida.

JM Okay. But has Dominic ever come to you and said hey, I can't remember what I did last night like Florida has?

FW No. Dominic never came to me like that. Me and Dominic we don't conversate like that.

JM Okay.

DV You're more friends with Florida.

FW Yeah.

JM Cuz of your relationship with his sister.

FW Right.

Jm Okay. Alright.

DV That's what we're hearing is that these guys are 2 different guys. If you meet them at 12 o'clock in the afternoon and they're sober

FW Ah huh.

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DV they're okay guys to talk to and if you meet them at 12 o'clock at night and they're been drinking most of the night, they're just totally different. They're just nasty.

FW Ah huh.

DV And they'll just go off on nobody for no reason.

FW Yeah. That's how they is when they get drunk.

JM Okay.

FW They're ready to fight anybody.

JM Okay.

DV I heard Florida likes to talk a lot when he's drunk.

FW Yeah.

JM Likes, okay. Is he kind of tight lipped when he's sober? I mean, would he talk about this if he weren't, do you think?

FW I, I mean, I, I, if he was sober I don't think he would talk about it, but when he drunk he like,

JM He would tell you what he's done?

FW Yeah.

JM Okay.

DV Do you think he did it?

FW Honestly. I don't know. I don't know if he did or not.

DV Sound like something he would do?

FW No.

DV If he's beating everybody up.

FW I mean, I mean, I mean, not, beating up people when he get drunk, that's something he would do. But killing somebody, I don't think he would do it.

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DV He told you he did.

FW Yeah. He said he did it so he probably did do it.

DV Okay.

FW He said he did.

JM This is totally kind of unrelated okay. I mean, you been arrested in Minneapolis before? And this is, I ain't going anywhere with this question, but when you, back ah, like 2000, about, almost 3 years ago, okay. You were arrested for curfew?

FW Yeah.

JM Over in Minneapolis?

FW Yeah.

JM Who were you with that night?

FW Who was I with that night?

JM Yeah.

FW I was with my cousin Darrel.

JM Darrel Stewart?

FW Yep.

JM Okay. And who else?

FW And, who else was with us. I think it was just me and him.

JM Who's Lamont Ray Wilson?

FW Lamont Ray Wilson?

JM Yeah.

FW I went to school with him. We went to the same school.

JM A, a kin?

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FW No. We not kin. We went to the same school together though.

JM Where did you go to school?

FW Johnson.

JM Johnson. Do you know where he lived then?

FW Then, when 2000?

JM Yeah.

FW He was living with Stacks at um, he was living with Stacks over on um, 7th Street.

JM 7th Street?

FW Yeah. 7th and um, down from um, United Hospital. In them, in them ah,

DV Forbes? Off of Forbes?

FW Ah, I don't know the street that is.

DV In an apartment or a house?

FW In an apartment.

JM Where were you living when you got arrested?

FW In 2000?

JM Yeah.

FW I think I was living, was I living ah, I think I was living on Grotto. (inaudible)

JM When you, when they do all this

(Second side of tape)

JM Let me find it here. This is just to clear something up in my own mind. Nothing really to do, who gives 956 Minnehaha? Right here.

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FW 956 Minnehaha. Ah,

JM Okay. You got this right here, okay. Do you know who was living at 956 Minnehaha at that time?

FW No.

JM Okay. Have you ever been to Cantrell's house?

FW No.

JM Have you ever been to Darlene's house?

FW No.

JM How about Kevin, Kevin Anthony?

FW Who is that?

JM That's ah, Darlene's brother.

FW No. I don't even know him.

JM You don't know Kevin?

FW No.

JM He hangs down here. (inaudible) LTG. You know who the LTGs are?

FW Yeah.

JM You know Kevin the LTG?

FW No.

JM Okay.

FW I don't really, I don't mess with the LTGs. They always trying to fight with little sisters.

JM Your sisters?

FW Yeah. My little sisters.

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JM Your kid sisters? Who did, they hang with the Selby side kids?

FW No. They, they don't hang with the Selby side kids but they think they hang with the Selby side kids so they always try to fight them when they see them.

JM Okay. I'm just trying to clear up because this address is the same as Cantrell's (sp?). So somebody used that address and I just, for my own mind, for something totally different. I wanted to know if he knew who was staying over there at that time.

FW I don't know.

JM Okay. That's fine. That's neither here nor there.

DV Who else would Florida and Stacks hang with downtown?

FW Who else? They hang with, they hang with John, um,

JM John Martin. Your half brother.

FW Ah huh.

JM Okay.

FW And who else do they hang with? Really, basically, they hang with everybody who, who was downtown.

DV Okay. Have you ever heard of ah, "G"?

FW "G"?

DV Guy goes by the name of street, street name of "G"?

FW Yeah.

DV Okay. How about Rooster?

FW Rooster? I heard, I heard, I don't know him but I heard his name.

DV Okay. Are you with any gangs now?

FW No. I don't.

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DV GD?

FW No. I don't

DV Hang with them at all?

FW I don't gang bang no more.

JM Who did you bang with?

FW GD. But I don't know any of them.

JM John's GD too?

FW Yeah. But we don't, me and John we don't,

JM You don't bang anymore?

FW No. We don't do nothing.

JM Did you do it up here? Up here or were you somewhere else when you were doing your banging?

FW We was up here.

JM Okay. John's from Detroit.

FW Ah huh.

JM Are you from Detroit originally?

FW No. I'm from Chicago.

JM Chicago. Is that when you joined the GDs down there?

FW No. I joined them when I was in Wisconsin..

JM Racine?

FW Yep.

JM Okay. You got any tats?

FW I got one.

JM You got a G.D. tat? Let's see it. (inaudible) Just GD?

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FW Ah huh.

JM Okay.

DV Do you know ah, Waldo?

FW Who?

DV Waldo?

FW Waldo? I heard of that name before too.

JM How about Q?

FW No.

JM Hennessy?

FW Yeah.

JM How do you know Hennessy?

FW That's ah, Stacks cousin.

JM Stacks cousin.

FW Yeah.

DV They pretty tight?

FW Yeah.

DV How about him and Florida. They pretty tight?

FW Yeah.

DV Florida and Hennessy are tight?

FW Yeah.

JM If we're, if we're looking for other people that maybe involved in this incident, and I'm saying, I'm not saying you know who was with them that night, who, if you , if you said, boy, you know, I'm a betting guy. There's another person or 2 involved in this. Who would you think Florida and Stacks would do something like this with?

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FW I'd bet Hennessy, "J".

JM Who's "J"?

FW Stacks cousin.

JM Okay. "J"

FW It's Hennessy's brother.

JM "J" (inaudible) or not. They just call him "J".

FW I don't know his real name but they call him "J".

JM Okay.

FW And Stacks other cousin A-1.

JM A-1.

FW Yeah.

JM Do you know where they live?

FW No. The last, the last time, last place I knew they was living they was over there by Holiday.

JM Okay. Yep.

DV Do you know Monk?

FW Monk?

JM Heard of Monk?

FW I think I, I heard of that name.

JM From downtown with Florida and Stacks or?

FW From Florida. Florida said, he said something to me about a dude named Monk before.

JM Okay. So he knows, Florida knows Monk.

DV Did he get his dope from Monk?

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FW I don't know.

DV Okay. Sorry.

JM Okay. Go ahead.

DV What kind of dope was Florida selling?

FW I didn't know he was selling dope.

DV Not much but you know, he was a street dealer I should say.

JM Sell a little sacks, dime sacks.

FW Yeah. Well, I did see him sell dope a couple times. He was selling little, little pills.

JM Little pills.

FW Yeah. Little 20 pills.

JM Okay. How about Stacks? Same thing just pills?

FW Yeah.

JM No big ballers. Just.

FW Yeah. They were no big ballers. They just all little pills.

JM Okay. Were they ever selling bunk?

FW Selling what?

JM Bunk? You know soap, peanuts.

FW Yeah. Yeah.

JM Okay. Anything else you?

DV When was the last time you saw Florida?

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FW The last time, I think it was in, the last time I saw him was when I had, when I, when I got, when I got locked up for, for a warrant I had for leaving the scene of the accident. And I got out and I seen him that day. So I think that was in, it was before May. It was in April.

DV Okay. Was the warrant here?

JM What was the accident?

FW Yeah.

DV Ramsey County?

FW Yeah.

DV Okay.

JM Where was the accident at?

FW What accident?

JM The one that you left the scene.

FW Oh. Leaving the scene of the accident? It was, I was taken, it was um, up there by St. Joseph's hospital.

JM Okay.

FW I was taking my baby's mama to the doctor for a check up.

JM Okay.

FW Cuz she was pregnant at the time.

JM What cars have you seen Florida drive?

FW I seen him drive, he had this little red, um, Tempo.

JM A red Tempo?

FW Yeah.

JM Do you know who it belonged to?

FW Tarinthia (sp?).

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JM Tarinthia (sp?). Okay. Any other ones?

FW Nope. That's the only car I ever seen him drive.

JM How about Stacks?

FW He had this, he had, he had a car. A little brown, I can't even remember the name of it. It was a hatchback though.

JM Okay. Do you know who that belonged to?

FW That belonged to him. He said he bought it.

JM Okay. Have you ever seen Dominique. You know who Dominique is.

FW Ah huh.

JM The baby's mama.

FW Ah huh.

JM What does she drive?

FW I don't know. I never seen her drive.

JM You never seen her drive?

FW No.

JM Okay.

DV How about Rochelle?

FW Who?

DV Do you know Rochelle?

FW Rochelle?

DV Stack's girl Rochelle?

FW No. I don't know her.

DV Okay.

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JM Now. A while back Florida got into an accident. And when he crashed the car and got caught for it and took off up, remember him ever talking about crashing a car?

FW No. He never told me he crashed.

JM Okay. Alright. That's when, do you know that he got a DUI, DWI, driving while intoxicated. Did he ever tell you that?

DW Yeah. He told me he got a ticket before for driving while he was drunk.

JM Okay. Do you know whose car he was driving then?

FW I, I think it was Tarinthia's (sp?).

JM Tarinthia's (sp?)? Okay. Alright.

DV anything else that you can think that we should know about?

FW No.

JM What, what have you heard that we haven't asked you? Are we missing stuff that you've heard that we haven't asked you yet?

FW Well, I don't, I don't really hear too much about it so. I don't really know too much.

JM Stacks or Florida tells you that he did it.

FW Ah huh.

JM He and Stacks.

FW Ah huh.

JM Okay. Have you heard anything on the street or maybe Darlene or?

FW I don't, I don't see Darlene anymore.

JM Cantrell (sp?)?

FW I don't see Cantrell (sp?) no more either.

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JM Any other people hanging out downtown? Shine or any of those guys?

FW I don't even know Shine.

JM Okay. So basically, what you, what you know is what Florida told you.

FW Right.

JM That he did it. He and Stacks did it. Okay.

FW Yeah.

JM Any idea where they hide their guns?

FW No.

JM Okay. We had information that people were hiding guns downtown. Okay. I'm sure you heard that too. That there were hiding spots downtown where people put their guns. You heard that?

FW No.

JM Never heard that?

FW No.

JM Okay. Alright.

DV Well, I know you got to make your court, court appearance here. That's what we're hearing.

FW I do?

JM We believe you do. We're going to check for you but I think you're going to have to go to court on your other deal.

DV (inaudible)

FW Oh.

DV Is it okay to come talk to you again sometime?

FW Yeah.

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DV We'll show you a couple of pictures of ah, a few ladies and see if they're the ones that ah, you saw pick up Florida and Stacks. Is that okay?

FW Okay.

DV Alright.

JM Alright.

DV We're going to stop the ah, tape now and it's 1:50 p.m.

END

DV,JM/jdc

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X

DATE: August 1, 2003

CASE #: 02018427

INTERVIEW: Captain Daniel Vujovich
Agent John McManus

SUBJECT: Kentrell Latasha Anthony **DOB:** 10/28/83

DV Today's date is August 1, 2003. This is an interview being conducted at the Minnesota Gang Strike Force office in Saint Paul by myself Captain Daniel Vujovich and Agent John McManus. Present at this time is Kentrell. Kentrell for the audio recording can you please state your full name and spell your last name?

KA Kentrell Anthony. A-n-t-h-o-n-y.

DV Okay. What, what's your middle name?

KA Latasha.

DV Okay. You're going to have to speak up for the audio recording. Okay.

KA Latasha.

DV Okay. And what is your date of birth?

KA 10/28/83.

DV And what is your home address?

KA 956 East Minnehaha.

DV And do you have a phone number there?

KA 651/772-8334.

DV And also present is your mother?

KA My grandmother.

DV Grandmother. Aquiline?

JE Yeah.

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DV Okay. Can you state your name and for the audio recording?

JE My name is Jacqueline Ezell.

DV Okay. And where do you reside at Jacqueline?

JE 956 East Minnehaha.

DV Okay. What we want, we came, let's just get this over with right away too. Is that you came here voluntarily today?

KA Ah huh. Yes.

DV And you had called ah, Agent McManus on Wednesday I believe it was or Thursday, Thursday, yesterday.

KA Yes, I, yes, sir.

DV And said ah, you have some information that we're looking for in reference to the homicide in South St. Paul?

KA No. I said that my granddad was telling me that my name was being tossed around in what was going on and I didn't want to be in, involved in that. If I had, if I knew something that I don't know that you all need, I probably do. I don't know.

DV Okay.

KA But I haven't been asked any questions about it. So.

DV Okay. And you're willing to talk to us about it today.

KA Yes.

DV Okay. Great. Ah, how long have you known Dominic Johnson who goes by the street name of Stacks?

KA For about 2½ - 3 years.

DV Okay. In the last, say, you know, year, 2½ years?

KA Yeah.

DV 3 years, how often would you see him?

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KA Every blue moon.

DV Okay.

KA I, he would pop every blue moon around me. I, I would see Florida a lot but I wouldn't see Stacks a lot.

DV It's my understanding you and Stacks were boyfriend, girlfriend for a while?

KA Yeah. For a while but we wouldn't, he had a baby mom so he was actually with her and me.

DV Okay.

KA And it was a (inaudible) going on between us so he was with her most of the time. He would come and talk, you know, just.

DV Sure.

KA But after I stopped talking to him I had started seeing him every blue moon. I just rare, would rarely see him because he would go to jail or he would do something crazy. You know. And I wouldn't be around.

DV what do you mean by something crazy?

KA Like he would cuss me out or try to fight or be drunk somewhere, you know, sloppy drunk at a bar or something and I would be like, naw, I'm not being around you sorry.

DV What kind of person was he when he was drinking?

KA A real drunk crazy person. (laughing)

DV (laughing)

KA Um, a real drunk crazy person. He just

DV Did, you know, we've talked to him

KA Like sloppy drunk.

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DV Okay. We, you know, we've ah, spoken to him a few times already. And you know, you get a different impression from somebody that's ah, you know, sober

KA You know have a falling down drunk.

DV and then drinking. Did he get

KA Like

DV Did he seem to get a little bit meaner when he was drunking, or drinking?

KA Yeah.

DV Or was he the kind of same?

KA A little meaner. He ain't he wasn't like he was virant or trying to beat nobody up or nothing you know, but he was just a sloppy drunk. He'd fall down and stuff, lose his shoes and pants that kind of drunk. You know. He would get so drunk where he wouldn't even remember what happened.

DV Okay. Ah, you said he had a, had a baby.

KA Baby mama. Yeah. He got 2 kids.

DV who is that?

KA Her name is Dominique. I don't know her last name.

DV Okay. Do you know how many children he has?

KA Two. Two.

DV With who?

KA Dominique.

DV Okay. Does he have any other children with anybody else?

KA Not that I know of.

DV Okay. How long have you known Florida? You said you know him a little bit more.

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KA No, I've been

DV Or better.

KA knowing them the same time.

DV Okay.

KA But I, I've been more around Florida than Stacks.

DV Okay. How often would you see Florida?

KA Oh, every 2, 3 days.

DV He'd show up over at Minnehaha, over at your house?

KA No. He didn't come over to my house. I would like, I wouldn't let him come in my house. My, he came to visit my cousin when I wasn't there, but I see him like downtown St. Paul and over like if I'm with my friend Nicole or something, I seen him, him or whatever, you know.

DV Okay. Who's Nicole?

KA Ah, this one girl that I used to hang with her name's Nicky, Nicole.

DV Okay. Do you know what her last name is?

KA It's ah, Rauschnot.

DV Rauschnot?

KA Yeah, something like that.

DV Okay. How long have you know Nicky?

KA Since December of last year of 2002.

DV Okay.

KA I met her through Florida boy.

DV Through Florida?

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KA Yeah.

DV Okay. How long has she known Florida?

KA I don't know. Cuz, they, I know they, that, one of her friends was dating Florida and another one of her friends was dating Stacks when Stacks went to jail for his, what charge was that? His driving drunk charge. He crashed his car or whatever.

DV Okay.

KA I know that one of them was dating him at the time cuz she told me that he was dating another girl. You know, and it was like oh. But I met Nicole through Florida and me and Nicole had just kicked it off from being friends and got drunk and high together you know.

DV Okay.

KA She was with me where, I thought, I really don't like being around Florida when he drunk. So I steer near of him but I was hanging with her. She would come around and I hang with her and I go kicking with her a little and stuff like, but.

DV Is say you don't like hanging around with Florida when he's drunk.

KA Yeah.

DV What kind of drunk is he?

KA A crazy drunk. A fightful drunk, ah, he gets crazy when he's drunk.

DV So he likes to fight when he drinks?

KA Yeah.

DV Okay. Have you ever seen him fight when he's drunk?

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KA Like start stuff with people. And yeah. He like to argue with people start stuff with people, swing on people. You know, just drunk. Acting stupid. Getting loud with people for nothing.

DV Okay. Did you ever see him drink to the point where he forgets things like Stacks?

KA Yeah.

DV How often about that?

KA Every time he got drunk and I seen him he would forget what happened. But you have to remind him like, yeah, you did that the other night. You know.

DV Does he eventually admit to it then or does he just keep saying I don't know?

KA He was like, I probably did or I, he would be like, for real? Well, I was drunk. He would just, well, I was drunk or something you know, but it was just like, he, I don't like when he, I don't like being around him when he drunk.

DV Okay. How about Nicole? What does she think of Florida and Stacks?

KA She like them. Them, she used to come and pick them up back and forth from Saint Paul, from over downtown and stuff and take them to her friends house and stuff when she would, like she would leave for periods of time when she was hanging with me. Cuz she, I actually, she stayed away from them for a while when she was hanging with me cuz I told he I don't like, don't like that to be around them that much, cuz I don't like when Florida's drunk at all.

DV Okay.

KA So she would come with me and she would be with me for a couple of days and then I wouldn't see her for 3 or 4 days and she would have them out with her at her friend's house.

DV Do you know who the friends are?

KA I have no idea what the friend's name is.

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DV Have you ever met them?

KA No.

DV Okay.

KA I know one of them has some brown hair and I know, but I know they live in South St. Paul. I know that.

DV Do you know where in South St. Paul?

KA I never been over, I never been out there with them and been like associating really that much with them. All I know is that the girl stayed out in South St. Paul and it was like a house full of girls and it was, Florida would go out there and be with the girl and she bought him a cell phone one time so. I don't know.

DV Nicky did?

KA No. The girl. His girlfriend. The girl, Nicky's friend.

DV Nicky's friend bought

KA Florida

DV Florida a cell phone?

KA Yeah, one time. And I don't know where he (inaudible)

DV Have you ever seen these girls?

KA Nope.

DV Okay.

KA I know one of them.

DV how do you know that?

KA The one of them I think I seen her in the car one day. I seen one of the girl, they like, they goes with Stacks. She had brown hair and she was chubby. She was like kind of fat.

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DV Okay.

KA That was her in the passengers seat when Nicole came and picked me up.

DV When was that?

KA Probably like a day before Christmas.

DV Okay. You know we, just so we know we maybe asking you some questions or following up something you're saying with a question. There really may or may not be any meaning behind it. We're just trying to get as much information as we can to compare it to what other people are telling us.

KA Okay.

DV And some times a little bit of what you say may not make sense until we hear it from somebody else and we put it together and it's like, oh, okay, it's this car that they were in.

KA Yeah. She had a blue Corsica.

DV Blue Corsica? How many times were you in that car?

KA A lot.

DV A lot?

KA Yeah. She, actually, we went to Chicago in that car.

DV Okay.

KA and we came back from Chicago she stole my clothes and I never see it again. And I, every time I would call her mom's house, she, her mom will hang up on me and like Nicole doesn't live here or something. You know, and hang up in my face or something. But I was actually like, okay, if she don't live here, why is she giving me this phone number. I want my clothes. You know, cuz when we came from Chicago I had all my clothes in her trunk.

DV Okay.

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KA And I never, she never returned them back.

DV When was that that you went to Chicago?

KA Um, like January 26th. No. January 26th, December 26th cuz we stayed up there for New Years.

DV Okay.

KA And when we came back, it was my granddad's birthday and our house got raided the next day.

DV Okay. Who were you with that ah, in Chicago.

KA Um, my baby's father and

DV Who's that?

KA Nicole.

DV Who's your baby's father?

KA His name is Cory.

DV Cory.

KA Yeah.

DV Cory what?

KA Clark.

DV Okay. And who else? Nicky?

KA yeah.

DV And who else.

KA And his cousin.

DV Her cousin.

KA No. His cousin. My baby's father's cousin.

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DV Okay. What's, what's his

KA Moe Octavia.

DV Pardon me?

KA Octavia.

JM Do you know what Octavia's last name is?

KA Uh uh (negative). I don't know.

JM They just call him Moe?

KA Yeah.

JM Okay.

DV Okay. So the 4 of you went down to Chicago.

KA Yeah.

DV Okay.

KA And we stayed down there for about a week an a half, 2 weeks.

DV Okay.

KA Cuz I had my mama send my some money from down there, from here to down there. And when we came back that was the last time I actually seen her.

DV Okay.

KA Cuz she, I was so mad at her cuz she wouldn't come, she wouldn't answer my calls, she wouldn't call my house or nothing and she wouldn't give me my clothes. And I was like why are you, why would you keep my stuff? I wouldn't mind letting you wear it.

DV Right.

KA But why would you not give me all my clothes back?

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DV Right.

KA That was the last time I heard from her.

DV When you were hanging out downtown with her did you hang out at the Buttery bar at all?

KA Um, not me and Nicole.

DV No.

KA No. I hang at the Buttery with a couple of other girls that hang downtown but I haven't hanged down there with her at the Buttery.

DV But she would go down there and pick up Florida and Stacks?

KA Yeah. She, I know he came, she came down there one time and Florida told me that she came down there to pick him up and he was sloppy drunk and he told me Nicole came and got him. (inaudible)

DV When was that?

KA Um, I don't remember the day.

DV Before Christmas, after Christmas?

KA It was right up in that time because it was snowing outside and she was the only one with the transportation. So, it was probably right before Christmas.

DV Right before Christmas?

KA Yeah. They would, she would come and get him and stuff and she would always come and pick Florida and Stacks up. You know and she would disappear from me. Like one time she had my coat and I couldn't get my coat from her. She had disappeared for 3 days. Like (inaudible) about it was up and around Christmas time because when she disappeared I went home to my mom's house. And I couldn't, I was trying to get in touch with her. She never brought me my, my coat so I wore my mom's coat outside.

DV Okay.

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KA But I had, she had came back like 3 days later and was like, oh, I'm sorry, you know, and she gave me my coat. And we started kicking it again. She would disappear periodically like she was like, I was like, what are you doing? Why would you just up and disappear and not give my stuff or

DV Right.

KA just be crazy. You know?

DV Did she say if she was with Florida or Stacks during that time?

KA Yeah. She was saying, her first, she took them out to her friend house and stuff. She was like I was with Florida and Florida went here and (inaudible) house one time they hit a party. And Florida and Stacks was out there and she had took them out there. And (inaudible) what day was that? It was on a Saturday her friend had a party. And she, she didn't come back and see me for like 3 days. And I was like dang Nicole. She was like, I was out there and I was she had to get cleaned up and she be, she would disappear at crazy ways. I would be like okay.

DV Okay. Did she drink a lot?

KA Yeah, she drink and smoke.

DV Okay.

KA She smoked a lot though.

DV Crack or?

KA Weed. No.

DV Weed. Okay. Alright. Ah, how many times would you say that you saw Florida and Stacks in her car, the blue Corsica?

KA About 20 times.

DV How many?

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KA About 20 times.

DV 20 times.

KA (inaudible)

DV Okay. So if Nicky told me or told Officer McManus that I don't know Florida, I don't know Stacks.

KA She lying.

DV Plain out right lying.

KA She lying. She know both of them. She knew Florida and Stacks before I met her.

DV Okay.

KA So. That's how I met her.

DV there's another guy that they hung around with ah,

KA Davey and John.

DV Yeah. (inaudible)

KA John.

DV Yes.

KA Yeah. They hung around John. Florida hang around John.

DV Okay.

KA Yeah.

DV How about Nicole, Nicky did she know John?

KA Yeah. We all know John. Everybody knows John.

DV Is he a pretty good guy or how does he fit into the whole picture?

KA He's actually a good lying person. (laughing)

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DV (laughing)

KA I don't believe, I would, I really like talking to him because he lie about everything. And I be like, okay John, whatever. But he, sometimes he's cool to be around when he's just kicking it with him and getting drunk and high but I don't like being around him like that cuz he, he laughs too fast.

DV Okay. What if ah, Nicky said I don't know John Martin?

KA Yes, she do.

DV She does.

KA Yes.

DV Okay. She'd be lying if she said that.

KA Yeah. She lying.

DV Okay. How, if we showed, well, you didn't see these 2 girls that Florida and Stacks were with that were with ah, Nicky's friends.

KA I only seen one of them.

DV If we showed you a picture you wouldn't know, if we showed you a picture you might recognize one?

KA Yeah.

DV Okay. After we're through here we'll

KA I know the girl that Stacks.

DV I left them at the office.

JM Yvonne?

DV Yeah.

KA That's her name. Ooo, he good. I remember that name. Yvonne.

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DV What's the name, Yvonne?

KA Yeah. I remember that name.

DV Okay. Do you remember any other names?

KA Not right off hand. But I remember that name Yvonne. It popped up a couple of times.

DV Okay.

KA I think that was the girl Stacks was messing with. Yvonne.

DV Okay. And he called her a South St. Paul girl?

KA Yeah. They all hung in South St. Paul.

DV Where in South St. Paul?

KA I don't know where it's at. I know Nicki used to, I don't know where it's at. I never been out there so she ain't never took me to that girl house. I don't ever, cuz I don't want to be around no girls that my ex is messing with, you know. And

DV Right. I understand that yeah.

KA She just, when they, she would disappear and go to South St. Paul. She would tell me, I was staying in South St. Paul. You know, that's when I was like, oh, okay. But, whenever the murder and stuff happened I was, I ain't never think to put them in that place. You know, but, hey, anything's possible.

DV What about um, have you ever heard the name Hennessey?

KA Yeah.

DV Who's that?

KA Ah, (laughing) um, that's Stack's cousin.

DV Stack's cousin.

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KA Yeah.

DV Do you know Hennessey?

KA Yeah.

DV Okay. Do you know where Hennessey hangs out at?

KA He used to hang out downtown and at Stacks house. On um, Forbes.

DV Okay.

KA At this girl named Vanessa house.

DV Hennessey hung out there too?

KA Yeah.

DV Okay. Do you know who Hennessey's girlfriend is?

KA Um, I don't really hang with Hennessey like that.

DV Okay.

KA All I know is I know who Hennessey is and I know he's a pervert.

DV Really.

KA Yeah. A little freaky boy.

DV How about his girl. His lady's called Ketha.

KA Ketha.

DV Have you ever heard that name?

KA No.

DV How about another girl that was her roommate Trisha? Think sometimes they called her Shorty. I'm not sure.

KA Shorty. Um, no, I don't know no.

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DV Okay. What I'm trying figure out and that's what we heard too is that Florida and Stacks are hanging with a couple of girls that they referred to as the South St. Paul girls. And we're trying to figure out where the place is that they would be hanging at in South St. Paul.

KA I cannot um, recall if she would tell me about where the house was. But I know it was in South St. Paul. Cuz I know Florida used to always say I'm going to South St. Paul.

DV He did?

KA And he would be drunk. And he was like I'm going over here. I'm going to my new roof, I go, he referred to it, his white girl. He was like, I'm going to my white girl house in South St. Paul. You know, drunk and he would get mad at my cousin or something and he was like, I be in South St. Paul. And I was like ah, ugh.

DV And he would say that to you?

KA Yeah. He would say that to me and my cousin.

DV What timeframe of the year? Before New Years or after New Years?

KA Before.

DV Before.

KA For New Years and stuff I wasn't in Minnesota.

DV Okay.

KA I was in Chicago.

DV But

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KA He called me one time and said he was in Chicago but he wasn't. He laughed and he, it was up in like December he told me he was in Chicago for ah, Christmas and he wasn't. I was like, why was you lying to me? Him and Stacks was in South St. Paul. It was a 2-2-2 number. Trying to remember the number cuz I, I remember him saying that the number was 2-2-2 something or, it was a 3 digit number of the same number. I was like,

DV Do you have it written down any place?

KA (inaudible) I probably, nope it was only in my cell phone. And I don't have my cell phone no more.

DV Did they call your cell phone with that?

KA Yeah.

DV In what month?

KA In December.

DV December.

KA Yeah.

DV You don't have your cell phone records or do you at all?

KA No. It was a pre-pay phone.

DV Pre-pay phone. Okay. Alright.

KA Cuz I was, I was like, you know, quit calling my phone I ain't got no minutes so why are you doing it. Or he would call my house phone too with that number. My house phone.

DV (inaudible) from South St. Paul.

KA Yeah. From the number, it, it was the girl's phone.

DV Really.

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KA But I don't remember the number. But I remember that, I remember seeing, I remember of the number but I can't place of what, what number it was. 2-2-2-, 2-0-8, it was up, it was a 2 in it I know.

DV 5-5-2?

KA No. I don't think it was that.

DV We have an exchange of that in South St. Paul. 4-5-5, 4-5-1.

KA It's some, it's her, I think it was her cell phone.

DV Okay.

KA Cuz I know he had that cell phone a lot. And she was paying the bill.

DV Which girl now.

KA The one that Florida was going with. I don't know her name. But I know, I think Yvonne was going with stacks.

DV Yvonne was with Stacks.

KA Yeah. And the other girl was with Florida. I never met the other girl.

DV Did you ever hear of the name Sonja?

KA No.

DV Okay. Amy?

KA I heard of Amy. Yeah, I heard Nicole say Amy but.

DV Okay. Who would Amy be with then?

KA I don't know.

DV Okay.

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KA They was just out, I know, Nicole always said something about her friends out in South St. Paul. She had mentioned their names every blue moon. You know, that's why I didn't remember Yvonne, cuz it's been a while since I even heard from her.

DV So would Yvonne and Amy be the South St. Paul girls then?

KA Yeah.

DV Oh, they would be.

KA Yeah.

DV Okay.

KA That they all hang out in South ST. Paul. All the girls that Nicole and Stacks and Florida know all hang out in South St. Paul.

DV But we don't know where.

KA Nope. I, I wish I did. I sure would but, but I don't. I ain't never been out there or nothing.

DV Okay. What have you heard, have you talked to anybody that's told you about this homicide, what happened, robbery?

KA Um, Nope. I didn't, when they raided my house, I was just like, what is my house being raided for and he's like Dominic Johnson (inaudible) I'm like who? I was stuck cuz I know them names and I'm like why is my house being raided for Florida and Stacks? And they were like it got something to do with a murder and stuff and I was stuck like, okay my house is being raided cuz they did somebody murder.

DV Right.

KA So I was like, where is that coming, I don't understand that. Where is that coming in at?

DV Well, Florida was hanging out at your

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KA My grandma's house.

DV Yeah.

KA With my cousin. He was going with my cousin.

DV Yeah. And where did you live? You lived upstairs?

KA upstairs.

DV Yeah. So Florida was there. In fact Florida kept something there, didn't he?

KA Yeah. He, from what I was told he had a gun there.

DV Okay.

KA I didn't know about that though until after the raid.

DV Okay.

KA They had nobody had mentioned to me that Florida had a gun in my house until after everything went down.

JE (inaudible)

KA Was in my grandma house.

DV Okay.

KA It's a big old house so I was my house.

DV That's fine. Did you ever see Florida come there to get the gun?

KA No I wasn't there when he came there. My grandmother was there.

JE I was there.

DV You were there. Okay

JE (inaudible)

DV And then you talked, who did you talk to after about that?

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JE Nobody.

DV Okay.

JE She, didn't no, didn't nobody, he, he came to get the gun before the raid.

DV Okay. Right.

JE He came to get the gun before the raid. And didn't tell nobody about the gun until after the raid.

DV Okay.

KA But my cousin, his girlfriend I guess she knew he hid it there or whatever. She, she, I don't know.

DV Who's your cousin now, what's her name again?

KA Darlene.

DV Darlene. Okay.

JE No. She didn't know. Me and her found out the same night.

KA Oh.

DV Okay. Darlene was with you the night that.

JE Yeah.

DV Okay.

JE Yeah.

KA But I was stuck like why is he up in here, you know I don't let him come over to my house. I always tell him don't come over to my house. You know, I don't like him being over there. He'll come over there every blue moon and say hell, whatever, and my grandma would be like I don't want him in my house cuz when he drunk, he stupid.

DV Okay.

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KA You know. And Stacks, he rarely came over. I don't know when he, was doing popping up.

DV Okay.

KA Cuz they popped up when I wasn't nowhere to be found.

DV Have you talked to anybody that's told you about this homicide? I mean, friends or acquaintances that know Stacks and Florida.

KA I talked to Stacks baby mom.

DV Which one?

KA Dominique.

DV Dominique. And what does Dominique say?

KA She said they, he was, they had arrested him for and her house got raided for it and they were searching for him at her house and stuff and he wasn't nowhere to be found but she said she got raided like 2 or 3 times over. And I was like well, I got, my house got raided too. You know I don't know what was going on. Why, why would they do some stuff like that. She said, I don't know, I don't, she said, Stacks, I don't believe Stacks did that. I was like, I kind of don't believe Stacks would do it but I couldn't put it past Florida cuz I know how he is when he drunk. But I don't believe Stacks would do it. But I was like if they did it they crazy. You know, but that was, me and her, I, I rarely talked to her. I don't really like her.

DV Okay.

KA But he had a conversation in the social security board. So, I was like. I don't know what was going on with them.

DV Dominique has never told you that they did it?

KA No.

DV You're sure.

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KA Yeah. She ain't never tell me that. She, she wouldn't tell me something like that cuz I know personally deep down inside she don't like me. Cuz I was (inaudible) about Stacks.

DV Right.

KA So she really just

JM That's the best I could do.

KA she just like, she don't like me like that. But she got a, she, she wouldn't tell me if he did it or not but the other girl, Vanessa,

DV Vanessa okay.

KA the girl Stacks was staying with, she told me that he did it and John had something to do with it. And I was just like (sound) they crazy. They're going to lose the rest of their life.

DV Okay. What did Vanessa say?

KA Vanessa told me that Stacks had did it. Him and Florida. And that Florida threw the gun in the river.

DV Vanessa told you that.

KA Yeah. And she said they were implicating John's name.

DV Okay.

KA And I was like, well, I didn't have no idea John would be with them. You know, and she was like, well, that's what the police came and told me when they raided my house. I was like, his life's gone.

DV Which river did they throw it in?

KA The Mississippi. That's for what she told me it was the Mississippi.

DV They say where in the Mississippi?

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KA No. She just said it was in the river, the Mississippi.

DV I mean, you know there are several bridges in Saint Paul that

KA Right. I don't know. She didn't, she just said it was thrown in the Mississippi river.

DV Okay. And when did Vanessa tell you this?

KA About 1 or 2 ago. Yep, about (inaudible) when I seen her, I had seen her downtown coming from school. And she had seen, she had told me that her house, the police had been over there talking to her. And that they implicated John's name to her and she said she knew where John being with them and she was like, she just started telling me like, Stacks, Stacks told me he did it. When he was talking to me. And I was like, oh, poor baby, he gone.

DV Who ah, did Vanessa say pulled the trigger?

KA She, I didn't, she didn't say who pulled no trigger.

DV Did Vanessa say how it happened?

KA Nope. She just said Stacks told me he did it. Cuz we all knew the man got shot. But she just

DV How did you know that?

KA It's in the paper.

DV Okay. I didn't, I told you, I told you I've got to ask you questions that, you know, (laughing) sorry.

KA (laughing). She had just, everybody from all the hang out downtown, knew the man he got shot. And everybody knew Florida and Stacks was in jail for it.

DV Okay.

KA So. And then we knew, Florida always used to be downtown talking about it. And (inaudible) he was on the run.

DV Really.

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KA yeah. And I was like, he was like, um, what was he, he had left Minnesota and came back for his taxes. And he got caught.

DV He came back for his taxes? Oh, his return?

KA (laughing) Yes, he did.

DV Okay. Where did he go?

KA I don't know. He when back to Florida I think. Yeah, he went back to Florida. He told me he went back to Florida. And he came back.

DV Okay. That's what he told you.

KA Yeah.

DV Alright. Then he came back for his taxes

KA Yeah.

DV tax refund then he got caught.

KA yeah. Cuz they didn't give him his taxes.

DV Oh.

KA I remember him drunk tripping about him not getting his taxes and he didn't get them.

DV Why did he say he was on the run?

KA He said cuz the police was after him. He had a warrant.

DV Okay. Did he ever talk about the ah, robbery to you?

KA No.

DV Really.

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KA He ain't, I don't, when Florida talked to me, I kind of throw him out of the way cuz he just stupid to me. He just be acting so dumb. And I was just be like, okay Florida whatever, you drunk, okay. But

DV Okay. I'm just going to turn the tape around here for a second.

(Second side of tape)

DV Okay. We're back on the other side of the tape. Florida would, you wouldn't listen to Florida when he talked?

KA No. He was always drunk. I would like, Florida, whatever. You know, cuz I be drunk too but I wouldn't be as drunk as them. And he get skummy drunk. He want to drink everything in site. And I'd be like whatever Florida you drunk move.

DV Where would you be with him when you guys would be drinking?

KA Downtown.

DV In a bar, outside a bar or?

KA Um, I couldn't go in the bars. They wouldn't let me in the bars so we would be outside the bars. Like we would were at ah, Dorothy Day Center.

DV Okay.

KA And we would be over there getting drunk and stuff. They would buy liquor from the store (inaudible) the 10 o'clock or to the liquor store before they close and get liquor and stuff. But we wouldn't, they wouldn't, I actually tried to go in the bars with them, but they wouldn't let me go in the bars. The bars

DV Okay.

KA the people bars with. Do you have an ID? And I get mad and leave. (laughing)

DV (laughing)

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KA They make me mad.

DV That's okay. But he never talked to you about the robbery or the homicide or?

KA No. He ain't never talked to me personally about it.

DV Okay.

KA But he, one time he always, one time when we was like we were hanging downtown he was drunk and he was like he was like this close to my face trying to kiss me and I'm like, you know, move. And he like, let me tell you something, I'm like, what, and I remember him saying, cuz he was like, you know I killed somebody before? I said, okay, Florida okay, you did, okay, why? And he didn't tell me like, he was just like I did. And I was like, well, okay, why? Goodbye, okay. He, we both was drunk. And I'm like okay Florida and I don't be believing nothing they be saying when they drunk. It's, I was just like, well, I can't do nothing about it. you did it. it ain't my fault.

DV What did he say to that?

KA Nothing. He was just still trying to kiss me and stuff. I was like, would you move. You know he's always like, I like you, did ah, he would change the subject and be like, why don't you be my girlfriend, you won't ever give me a chance. I'm like no. he'll be like, if you wouldn't have knew Stacks, if I would have met you before Stacks, you think you would have liked me? I, I tell him like, yeah, Florida I probably would. Ah huh, just to get him to move, you know. Cuz he would be this close to me trying to kiss me and stuff and I don't, I, would you move. And just, ugh, irritating.

DV When was the last time you saw Florida?

KA Downtown he was tripping about his tax returns.

DV Okay. Just before he got arrested?

KA Yeah.

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DV Have you talked to him since he's been in jail?

KA Nope.

DV Has he tried to call you at all?

KA He ain't tried to get in contact with me.

DV You tried to call him at all?

KA No. I don't talk, uh uh (negative)

DV Okay. How about Stacks?

KA Nope I haven't heard from him. I seen Stacks after that, after Florida cuz Stacks said, I don't know what he, he was here and he asked, I seen him on 7th Street at the (inaudible) shop on 7th Street and Arcade and that was the last time I seen Stacks.

DV Okay.

KA And I, but I have seen his baby mama. She told me they was in Peoria so.

DV Why did they go to Peoria?

KA I don't know. Stack's mom live up there. I know that.

DV Okay.

KA But I don't know why they went to Peoria. They moved him and her kids, you know, and that was the last time I had seen Stacks. I just knew he was gone.

DV Where do you think Dominique is at right now?

KA She's in Saint Paul.

DV She is?

KA Yeah. I seen her the other day.

DV Okay. She's back home then.

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KA Yeah.

DV Do you ever see Dominique in a car at all?

KA Nope.

DV Or someone else's car?

KA My, my, they, but my grandma know, says she came, that Stacks came over to my house with a, with a girl and they was in a white car.

DV Was that Dominique you think or?

KA Yeah. Stacks baby mama, her mom has a white car.

DV Her mom does?

KA Yeah.

DV How do you know that?

KA Cuz Stacks always would be like, my baby mama, I'm going to get my baby mama mama car. And I knew it was white. But I ain't never seen Dominique drive that car.

DV Okay.

KA You know I ain't never been around Dominique to see her doing but my grandma and them said that she came, they came over to the house in a white car 'cuz Stacks was looking for Florida.

DV When, okay, and you heard that from your grandma?

KA Yeah.

DV Okay. When did, ah, when was the last time Stacks talked to you about driving his baby's mama's mama's car?

KA He went, he went to jail and got out of jail and what did he go to jail for? I don't know. But he did. Like went in the workhouse or something.

DV Okay.

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KA And he got out and he was talking about going to get the car. And he was like he was, he wanted to kick it with me and I was just like okay well we'll kick it but we never did because my baby's father was in my life at that time and I really wasn't trying to be in Stacks face, you know. But, he would all, I don't know, they would go get a lot of cars. They would have a lot of different cars.

DV They would? Tell me some of the cars that you've seen them in?

KA A black big old body car. He crashed it. That's when he got his DWI I think.

DV Who Stacks?

KA Yeah.

DV Okay.

KA Um,

JM Do you know whose car that was?

KA They said it was theirs.

DV Do you know about what time of the year that was?

KA Probably in November.

DV Okay.

KA And, ah, they had a blue car. They had another white car. I remember him having a white car. But I think it was Hennesy's car or

DV Hennesy's?

KA his brother's car.

DV Hennesy's brother's car?

KA Yeah. One of the cars.

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DV What kind of white car was that one?

KA I don't know the name of it.

DV Okay.

KA It was like a little short body car though.

DV Okay. Two door, four door?

KA Four door.

DV Good shape, bad shape?

KA It was in okay shape. Like it wasn't

DV Okay.

KA brand new but it wasn't old, old.

DV Okay.

KA You know. It's just in the middle.

DV Okay.

KA But, they had, um, they were in stolen cars before.

DV Stolen cars?

KA Yeah. One of their friends had stolen a car and gave it to Florida 'cuz I remember Florida tripping about it. And even they had it, was coming from the club and they got out of the car and left the car.

DV Where's the club?

KA Cancun.

DV Okay. What kind of car was that?

KA Well I don't know. I don't remember what color it was.

DV Do you remember what color at all?

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KA No.

DV Have you ever seen him in a light gray or silver car?

KA Un unh.

DV No? Okay.

JM Did you ever see Stacks driving Nicole's car?

KA Yeah. Stacks and Florida would drive it.

JM (Inaudible.)

KA And I would drive it. They were with her.

JM With her?

KA I think Florida drive it one time without her and I asked him where she was at and he was like she at the house in South St. Paul where her friend would be at. I was like and she let you take her car. He was like yeah. I was like okay.

DV And that was the blue Corsica?

KA Yeah.

DV Was there anything, ah, you know, noticeable on that car that you could identify that one from another blue Corsica?

KA Um,

DV You know, any marks

KA I always identified it from the rust. It was like on the bottom of the back, where the license plate would be at.

DV Okay.

KA There was like a little rust right there and then the license plate would half way hang off.

DV Okay.

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KA So that's how I always noticed who car it was when I see it and I'd be like there go Nicole right there.

DV Okay.

KA She always blow her horn when she seen me so.

DV Okay. And she referred to her friends as South St. Paul girls?

KA Yeah. She, she, she'd be like I'm going to South St. Paul to hang with my own girls, you know, and I'd be like okay. We'll just drop me off at my mom house and just come back and get me. She'd be like I'm going out there to take a bath or get in the tub, you know. And she'll say she going to her mom house but never show up at her mom house.

DV Okay. We'll show you a picture and just tell me if you've ever seen this person or not.

KA Yeah. That's Yvonne.

DV That's Yvonne?

KA Yeah.

DV Okay.

KA That's the girl that was in the car with her.

DV When was that?

KA Um, it was sometime around the time Stacks was in jail 'cuz she had said she was going to court for her boyfriend and I was like what's your boyfriend name. And she said Stacks and I was just like Stacks, you know, and I was stuck like Stacks, what you mean.

DV If, if, ah, and you may not have the answer to this question either, but, if Stacks was with Yvonne and Florida was with Amy why would Nicole keep picking them up?

KA I don't know. Nicole always, I don't know why she would pick them up. I was actually trying to get her from stop hanging with them.

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DV Right.

KA But she always would go get them and she, every time he would, Florida would see her he would flag her down and she'd go right back and pick him up and take him wherever he wanted to go. I was just like, at first I kind of thought she was messing with one of them. But I just couldn't tell, I couldn't pinpoint and just say you freaking one of them, you know, 'cuz, but I thought she was but I didn't know if she was or not.

DV Okay. And she never told you?

KA She was like, she always tried to be secret to you. Only time I remember her one time when I went to, ah, West St. Paul with her, to her dad's house, her mom and her dad house and she all stayed in the car and she came back and got in the car and we left. But she was like, it was like she was secretive and I'm like okay, whatever. And her mom was just like crazy. Her, every time I call her mom house her mom would snap and go crazy and was like Nicole doesn't live here. Stop calling my house for Nicole. Nicole's, we, her friend and I'd be like okay could you tell her Kentrell called. Sometimes I change up my name and say somebody different or say like a job or something so I could see if Nicole was at her mom's house.

DV Okay.

KA But she wasn't there and I couldn't find out where she was. Then I see Florida and I'd be like you see Nicole and he was like yeah. I'd be like where she at. He'd be like out in South St. Paul. I'd be like okay. And I, every time she would come back I would be like why do you lie to me. You know, why, why is you playing games. She's like I was not playing games and me and her used to get into argument all the time. Me and her my baby's dad would get into an argument all the time. They all crazy.

DV Who would, who would we talk to to try to find out who her friends are in South St. Paul or where she was hanging at in South St. Paul?

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KA Stacks and Florida. That's the only people that actually, when she was in St. Paul around me she never hung around nobody but me.

DV Okay.

KA And when she seen Florida and them she would go off with them and something, you know, and I'd be downtown with my baby's dad or something. But she always come back and pick me up but she was only, like she was with Florida and Stacks around me.

DV Okay.

KA I haven't seen her with nobody different, you know, no different kind of boys or nothing. But she was talking, she

** (Inaudible.)

KA was talking to my baby's dad cousin.

DV And Stacks and Florida both told you that they've gone to South St. Paul?

KA Yeah.

DV What would be if I said that, ah, Florida and Stacks both told me they didn't, they, they haven't been in South St. Paul?

KA They lying 'cuz they both been there 'cuz I know for sure they both been there.

DV Because of what they told you or

KA Yeah and because well and Nicole always would tell me they were going to South St. Paul to meet up with their little girlfriends. And they called me from out there one time. Nicole, her mom's number was a 493 number, Nicole's mom's number and that other number was 763-220 or 200-763-220 or 200. 200 something. 200. 763-200. That was the digits in the girl's cell phone number. I don't remember the last digits

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DV The last four?

KA Yeah.

DV 763 wouldn't be an exchange down this way but it's an area code.

KA Yeah it is an area code.

DV Right. But not down this way but this was for a cell phone?

KA Yeah.

DV Okay.

KA But I know they be in South St. Paul. Excuse

JM Do you know this girl that you identified as Yvonne here?

KA I know of her.

JM Is she one that they mention when they say South St. Paul girl?

KA Yeah.

JM Do they mean Yvonne?

KA Yeah 'cuz she hang with all them girls that be out there.

JM So there's other girls also?

KA Yeah. There was, from what I was told from Florida there was a lot of girls out there and they be doing a lot of crazy stuff out there.

DV Like what?

KA (Inaudible) and stuff and getting so drunk (inaudible). I'd be like okay.

DV Really?

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KA You know, it was like they, the house, whoever house it was, I think it was Amy's house. But whoever's house it was they, the girls was just wild. They were wild a lot. Crazy.

DV You don't remember any other girls first names or last names?

KA I ain't never know any last names. The only last person last name I knew was Nicole because I had her I.D. before.

DV Okay. Have you ever seen Florida or Stacks with a gun?

KA Not in my face, no.

DV Well not your face but have you ever seen them carrying one or

KA No.

DV or showing off one to somebody else or?

KA No. But I heard Florida had took a gun from somebody.

DV Okay.

KA And he sold it. And I was like whew.

DV What would be if we, you know, we talked to Vanessa and we say that, you know, Vanessa do you know has Dominique or Stacks said anything to you about this homicide or has Florida said anything to you and she says I don't know anything.

KA She lying.

DV She's lying?

KA Yeah. 'Cuz she told me. I ain't going to lie for them. They ain't going to put me in something to try to get me in egg boil. They lying.

DV Why would she lie?

KA Vanessa was sleeping with Stacks.

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DV Okay.

KA And I caught them.

DV Really?

KA Yeah she was being, she like the (inaudible) of everybody. She did it with Stacks, she did it with Florida.

DV Really?

KA Yeah.

DV We heard she didn't like Florida.

KA She lying. She did see him. She used to have him over to her house. She lying. She used to have him over her house. What. And (inaudible) they be just up there doing it and stuff. She lying 'cuz she was messing with Florida. And I knew she, I, I was playing with her about her new baby and I'd be like oh that's Stack's baby right there. And she, sometimes she was like no and then sometimes does she look like him. And that's why I called her at like, he looked like him. You did it to him didn't you. And she would try to put it off like no but your baby ought to look like him if you know your baby ain't his. Why are you going to ask me do he look him, you know. And I used to just play with her just, just to try to see what she would say. Like that's Stack's baby right there. That's, that's little Stacks. And everybody downtown hear me saying it like that's little Stacks. And she was like no, no. And the third time she's like I want some child support from him. I was like hmm, okay.

DV Have you ever seen her with a car?

KA No. Vanessa a bus rider.

DV Bus rider? How about her mother?

KA Her sister had a car. It was a van but I ain't, her mom, no.

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DV Did Nicole ever talk to you about, ah, this robbery homicide at all?

KA No. No. She ain't never talked to me about nothing like that. When me and Nicole, I don't know, we always talked about my baby's dad and me and him fighting. Me calling the police on him and stuff, you know. I ain't never really, she never really talked to me about none of her business. She was always being secretive. And I asked her stuff and she, she told me she had one little brother. That, her dad, I only met her dad and her little brother.

DV What's the brother's name?

KA Oh I don't know his name. He a little boy.

DV Okay. What do you mean by little boy?

KA He's like a little boy. Like a 7 or 8 year old.

DV Oh.

KA A little boy but she always used to say I'm going to be with my brother. I need to go see my brother or something. Her little, she got a big brother too. He, she say he (inaudible) right now. He got a lot of money and stuff. And he was supposed, he got, ah, what kind of car was that. A Suburban I think. A big body car. It's a big old car like a (inaudible).

JM And he's selling.

KA Yeah.

JM Do you know what he's selling?

KA I thought it was crack.

JM Crack. Meth?

KA Yeah meth.

DV Meth?

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KA It was a big time drug. Like you can make a lot of money off of it. But she was like he (inaudible) right now. Whatever, yeah, I think it was meth.

DV Did she ever use his cars do you think?

KA Yeah she used his car.

DV Her brother's car?

KA Yeah.

DV How about her mother's?

KA She ain't never come and pick me up in the blue Corsica. She probably did use her mom car.

DV How do you know she used her brother's car?

KA 'Cuz she always used to say my brother giving me his car.

DV Okay. Do you ever ride in that car though?

KA No.

DV Just the blue Corsica?

KA Yeah. She never, she would come over my house with the Corsica and stuff. I'd be like are you going to come get me with her brother car and stuff and she'd like yeah but she never popped up. And I was like well dang. And I had to go (inaudible) get on the bus and go where I need to go and stuff 'cuz half of the time I would ask her to come and take me somewhere and she'd be like okay I'm going to come over there after I get out this, you done doing this. And I got to go meet up with my brother. And I seen her in a month.

DV Okay.

KA And, but I know she always kept weed so.

JM Does her brother live with her parents or doe she live

KA No he lives by his self. He don't live by mom and dad.

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DV Do you know where he lives at?

KA Un unh.

DV Darlene. Do you think she knows anything about this incident?

KA Not about Nicole. She don't know Nicole.

DV I mean about, about Stacks and Florida being involved in this homicide.

KA Not from what she says. She says she don't really know nothing about that and everybody keeps questioning her. She says she don't, she, me and her ain't on, me and her don't get along like that so

DV Okay.

KA But she, from what she was telling me when I asked her about it she don't know nothing. To like, she know what I know, you know. Certain stuff that me and her did talked about but she don't know, she said she ain't, he ain't told her about him killing nobody, so, I don't know.

DV Okay. Who's your mother now?

KA My mother?

DV Yes.

KA Delores.

DV Delores. Okay.

KA The, the upstair house they got.

DV Okay who is Darlene Jone's mother?

KA Her mom's in Chicago.

DV Okay. Is there anything else you could think of? Who's Regina?

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KA My auntie.

DV That's your aunt?

KA Yeah.

DV Okay. Does she have a daughter?

KA No. She got little girl.

DV Little girls. Okay. Do you live, who lives with Regina?

KA Darlene.

DV Darlene lives with Regina?

KA Yeah. I know Florida was calling her but she said she wasn't accepting the calls.

DV Florida was, okay, so she was dating Florida?

KA Yeah.

DV I have to try to keep these guys straight. When was she dating Florida?

KA About the end of November, the end of December. (Inaudible.)

DV Of last year?

KA Yeah something like that.

** Yeah I think it 'cuz when Kiki's birthday was this September

KA Yeah.

** that's when he first came on the scene. September. Okay then

KA At the party. At, at,

** In about a month or so later

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KA It was after my birthday though 'cuz we was at the hotel for my birthday. And Florida and them wasn't around.

** And when he really started popping up at my house was around Thanksgiving, right before Christmas, between Thanksgiving

KA Yeah.

** That's when he really started popping up.

KA November, the beginning of December.

JM Now were you home the day Stacks and a female came

KA No.

JM to the house and talked to your grandma?

KA No.

** I was at home and Darlene was at home.

JM And that's, that's when he gave the message to you, he wants his half of the money?

** He said that he, just, I could keep, I said I don't know but he's telling Stacks I wanted my money.

KA (Inaudible) Florida (inaudible).

** I mean, yeah, it was Stacks that came to the house. I said, first it was Florida. Florida came to the house first to get his gun.

DV Right.

** Then after he left a little while later Stacks called. I said what is that because there it was after 12:00 o'clock. So then he, when Stacks came in he say he wasn't really talking to me but I was sitting there and Darlene was sitting next to him. He say, ah, tell Florida Boy he want his money. And, ah, he wasn't playing. He did me wrong. So, being, being noisy like I am I'm listening. So Darlene said well what did he do. And he kept talking about he

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know what he did but he playing it bogus and I want, and he better not say, after I get, after I get my money. You know, I had nothing else to say to him 'cuz we do. And then he said he played me bogus. He kept on with it. So I said what did he do. He said I don't mean to come over your house this late and disrespect you but I'm looking for Florida, you know, 'cuz he got my money. And he had the police chasing me. Police is, police was chasing me. It didn't come up with this chasing me I said why was the police chasing you. And he was shooting, somebody was shooting at him. I said who was (inaudible).

KA Yeah 'cuz he said, didn't he tell you how the car got shot up.

** Shot up 13th Avenue. Somebody was shooting at. That what made me get up

KA (Inaudible.)

** 'cuz that, I said okay, now I told Dominique I said well if I see, we see Florida Boy we'll tell him what you said. So he got ready, he left out the door. I said Dominique come on. I said let's go see if this car was shot up. Now if the police or anybody shooting at you and don't you think they're going

KA Hit the car.

** to hit the car or come, you ain't going to get out of it. The police ain't going to let you go if they notice, if they shooting at you. So I say he lying about this car being shot up. And my, my word he had walked to the car and got in the car but he said that his family was in the car but by it being dark I didn't see nobody. I only see the side of it, you know, 'cuz, you know, the street. I just seen the side. I said well this side ain't shot up so that side is shot up. He just laughed about somebody shooting at him. I said now about the money part he might be telling the truth but, ah, there ain't nobody shooting at him or nobody after him.

DV What do you think? Think these guys are involved?

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KA Yeah in a way. I believe they, they is. I don't know I, I always say when (inaudible) I was like they could be 'cuz when they get drunk and when they do want to do what they want to do they will do it. But, I wouldn't put it past them. I can't say they did 'cuz I wasn't there. I wouldn't put it past them though 'cuz you can't put no, you can't put that past nobody. If you were implicated to being in the area, if they found some kind of evidence of you being there you could have did it.

DV Right. I'm going to stop the tape. I don't mean to interrupt. I'm just going to stop the tape and change it. (End of Side 2 of Tape 1.) Okay, so you're saying that you think they did it?

KA Yeah they could have did it, yeah. I want to say

DV Neither one has told you directly though other than the one comment

KA No.

DV that Florida made to you

KA Yeah.

DV that he had killed somebody.

KA He killed somebody, but, nobody, they haven't told me directly like you know about this and, um, they put, told me personally I killed somebody in South St. Paul.

DV Okay.

KA Florida, he said, I killed somebody. I don't know who, but he said

DV Now Vanessa was telling you something

KA Yeah about Stacks saying it to her.

DV When was this that you had that meeting with Vanessa?

KA It was about two months ago.

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DV Where at?

KA Downtown.

DV Okay. Where downtown?

KA Downtown St. Paul on 5th and Minnesota.

DV Out on the street or at

KA At a bus stop.

DV Bus stop.

KA You know, everybody usually sits there at the bus stop.

DV Okay.

KA They hang at the bus stop. And people, me and her walked off and was talking and she had one of her friends were watching her kids and we was talking and she was like yeah Stacks told me he did it. I was like hey. It's his life. It's gone. I can't do nothing about it. She was like I didn't tell the police nothing but, I was like yeah right Vanessa. Because it was, she, it was kind of funny that they mentioned John name because I ain't know nothing about John being with them when all of that, you know, all's I remember is just two people that did it. And they, somebody, in the paper they said that, you know, who told them the short boy shot him.

DV Who did?

KA Somebody said the short boy shot him. That whoever the short one was with the mask on shot him. And I was like oh okay. That's kind of crazy 'cuz Stacks is the short one and Florida is the tall one. It was like poor baby. They like just

JM Do you know who told you that?

KA I can't remember. I be trying to remember so much. My granddaddy said somebody said the short boy shot him.

DV This

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JM The short boy with the mask?

KA Yeah.

JM Okay.

KA Did she say any other details of the, what Stacks told her?

KA No.

DV You know, other than they threw the gun in the river.

KA Yeah.

DV Did they say when?

KA No. She, all I, she was like they said they threw the gun in the river and that was, I'm like well it ain't going to be found now. It's in the Mississippi.

DV She said that or you said that?

KA No I said that. It ain't going to be found now. It's in the Minn, it's in the Mississippi 'cuz they going to stay here at my grandma house

DV Right.

KA I guess it wasn't the gun that shot the man. That was the gun you saw was a under cover.

DV Okay.

KA But, the other gun was the one that they threw in the river. That's what I was kind of stuff like he throw the gun to the under covers but I was told it was threw in the river.

DV Who told you that they sold the gun to the under cover?

KA My granddaddy.

DV Okay.

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KA He said somebody sold it

DV Okay. Vanessa didn't though.

KA No.

DV Okay. Alright. But Vanessa

** No but that's what, ah, Darlene told us that they was arrested for.

KA The gun.

** He, matter of fact, he told Darlene himself. He called when

DV Florida?

** Yeah, the day that he was in jail and then he called my house 'cuz she has, Darlene was staying with me at that time. And she asked him why was he in jail. And he said 'cuz he sold to an under cover but I thought it was some crack or whatever. And then I told her when she got off the phone, you know how you be listening, so when she got off the phone I asked her I said well what he in jail for. And she says something to the under cover cop. I said what some crack. I said oh he be out. She said no a gun. I said is it the gun that he got from here. She said grandma I don't know. But that's what it was, a gun. And, ah, Gene said that don't get, he sitting there listening. And so that's where he got it from.

DV Okay. You have John's phone number, right?

KA Mmm, hmm.

DV Okay. If you could think of anything else would you mind giving him a call.

KA No I would.

DV Okay.

KA You all got a rude staff member 'cuz I called here to get in touch with you today.

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JM Mmm, hmm.

KA And she says, she just cuts me out. She was like didn't I just give you his number five times. I'm like no.

JM I'll give you my direct number to my desk then you don't have to go through her.

KA Okay.

DV What I'd like you to do here Kentrell is just initial this and put the date by it that you've identified this person as being Yvonne. That you know as the South St. Paul girl. How many times have you seen her?

KA Once.

DV Once?

KA Yeah.

DV Okay.

KA In the car with Nicole. Um, what's today's date?

DV Ah, August 1st.

** Could I ask you something. When did this man get shot?

DV Pardon me?

** This, this murder. What date was it?

DV December 22nd.

JM Just before Christmas.

** Thank you.

DV Just before Christmas.

** They (inaudible) what day it was.

KA And you know she disappeared around that time.

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DV Nicole?

KA Yeah.

JM Think she's involved?

KA Yeah. If, if, she be in South St. Paul with them and she disappeared from me around that time and she had my coat with her. And it was cold outside and I was mad at her. And I know she disappeared from me about three day, for about three days and then she surfaced. 'Cuz she took me to get my mom something for Christmas. And it was on the 24th when she surfaced.

DV 24th is when she surfaced?

KA Yeah.

JM Did she say she was with Florida and Stacks at that, at that time?

KA No I ain't asked her. I just like why, you know, where, where was my stuff at, you know. I was mad at her 'cuz she had took my coat so I was arguing with her about my coat. And I didn't ask her where she, but I know she be inside St. Paul, so, I just was like well okay I know you was out there, you know. I ain't asked her were you in South St. Paul 'cuz I didn't think to ask her that. But I know of her being out there so I just assumed she was out there.

JM So she disappeared right around that time for awhile?

KA Yeah.

JM Okay.

KA And I was mad, I was mad (inaudible). And I know it was right around that time.

DV Okay. Has she said anything to you about this at all?

KA Un unh.

DV The investigation when you guys were in Chicago?

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KA No.

DV Just kept quiet about it?

KA Yeah.

DV Did she talk

KA She

DV about Florida or Stacks down there?

KA 'cuz we were in Chicago, when we was, no. When we was in Chicago we was up there having fun ignoring everything and trying to have fun. That was the whole point of us going to Chicago for that week (inaudible). But she didn't really talk about Florida and Stacks while we were down there. Nobody mentioned their name like that 'cuz that wasn't what on my mind. I didn't care about them at the time. I wanted to have fun.

DV Right.

KA I got family down there that I wanted to see.

DV Okay. Well if you're in contact with her or if you hear anything else if you'd give John a call.

KA She won't be in contact with me 'cuz she know I mad at her and I want to fight her.

DV Okay.

KA For stealing my clothes.

DV I'm just trying to get this on these South St. Paul girls and I don't mean to harp on it but how many times have you heard Florida or Stacks refer to Yvonne here as a South St. Paul girl or did he refer to Nicole as

KA The South St. Paul girl too.

DV He did?

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KA Yeah.

DV Okay.

KA They all, they always refers to them as South St. Paul girls.

DV How many

KA Every time he talked about them.

DV Really?

KA They don't, that's why I don't remember, I didn't remember their names like that because I wasn't aware of all their names, you know. But I know that they all hung in South St. Paul and every time Florida would say I'm going to South St. Paul I knew he was going where Nicole friends hang at.

DV Okay.

KA And I know she was out there 'cuz her and her mom got into it and she left her mom's house and she was staying out there with them. And she, but she would always come to St. Paul and be hanging with me, you know. So I know they always call them girls South St. Paul girls.

DV But do you know about when he met them?

KA No. I wasn't nowhere, I don't even remember

DV Okay so they, they, he knew

KA They knew each other.

DV Nicole before you did?

KA Before I did, yeah. That's how I met Nicole.

DV And, okay.

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KA And then I met, I seen her while Stacks was in jail. She was in a car and I, she said she was Stacks's girlfriend. And I know I ain't going to forget her. She, I was like oh Stacks girlfriend.

DV Okay. Alright. And they just, they never said where or anything close by. Do you ever remember them talking about a gas station or a store or a church or a school?

KA No.

JM Do you know if they lived in a house or an apartment?

KA It was a house.

JM Okay.

KA It was a house. I know that 'cuz I don't think you're going to be able to be in no apartment being loud like that and doing all the stuff that they do. So, I think it was the house.

JM You've never been there?

KA No.

JM Okay.

DV Do you know anybody else that may have been besides Stacks or Florida or Nicole?

KA No. Stacks, Florida and Nicole. Them is the main people that always talked about them girls.

DV Okay. If there's anything else you can think of we'd sure like to hear it.

KA I sure will call.

DV We appreciate you coming in and, ah, is it okay to maybe, you know, give you a call next week, ah, John and I need to sit down and compare a couple notes and

KA Yeah. That's okay.

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DV there may be something that, ah, I had forgotten to ask you, ah, you know, John had to leave the room for a minute. He or, you know, he may have forgotten or we might talk to somebody else and they're going to say geez, you know, what about this and we're going to have to give you a call back.

KA Yeah.

DV It's okay?

KA It's okay.

** (Inaudible) Darlene going back to Chicago.

KA Yeah.

DV Okay.

KA She went back home.

DV Where's she at in Chicago? Whose place?

** Her, my daughter's.

KA Her daughter's.

DV Okay. If we needed to we could give her a call on the phone there you think?

KA Ain't got no phone.

** She don't have any phone. She don't have no phone.

JM But you'd be able to get in contact with her for us somehow?

** Yeah, yeah.

JM If we needed to.

** Yeah.

KA They'd probably think of the day (inaudible).

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** Day but, ah, they'll call her in advance of whatever but (inaudible).

DV Okay. Alright.

JM Okay. Good.

DV I appreciate it. Going to stop the audio recording now. And it's, ah, 2:25.

End of Statement

DV/JM/jc/me

MINNESOTA JUDICIAL BRANCH

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State of Minnesota
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DATE: **April 21, 2003**

CASE #: **02018427**

INTERVIEW: **Captain Daniel Vujovich**
Agent Dave Nygren

SUBJECT: **Phillip Randal Vance**

?? That's cool.

DV You know I told you to call me anytime.

?? I was (inaudible)

DV you called at 11 o'clock and I called you back.

?? Well,

DV Today's date is April 21, 2003. The time is 11:54 a.m. This interview being conducted at the United States Marshal's office in Minneapolis. Ah, present at this time is myself Captain Daniel Vujovich, Agent Dave Nygren of the ATF and Phillip Randal Vance. Phillip for the audio recording would you please again state your full name and spell your last name.

PV Ah, Phillip Randal Vance, Jr., V-a-n-c-e.

DV Okay. Phillip ah, we're here today to talk to you about some information that you wanted us to be aware of ah, in reference to the case that we are investigating. On Saturday, ah, you asked the jailers from the Ramsey County Sheriff's office to give me a call and after that ah, you ended up getting on the phone ah, but prior to talking to him I want you to still understand that you're Miranda Rights apply to you here.

PV Alright.

DV Are you aware of that?

PV Yes, sir.

DV Okay. Do you remember those rights?

PV Yes, sir.

DV Okay. And having those rights in mind do you still wish to continue talking?

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PV Yes, sir.

DV Okay. On Saturday you asked the Ramsey County Jailers Office to, jailers to give me a call and subsequently you ended up on the phone with me. And you wanted to clarify a, a point in your previous statement.

PV Yes, sir.

DV Okay. Why don't you tell me what that is.

PV Um, during ah, the previous time as we were talking, you guys came, you all told me that um, it was heard that I made a term of 5 times in the back on the South side with a Winchester or so, all I wanted to say was ah, I thought about it and it's kind of coincidental that I got ah, my sister's boyfriend, ex-boyfriend, he, he stays on the South side of Chicago all Winchester. Do you know what I'm saying? And I was going to tell you that's maybe, that's the only way I figured out that I said that, ah, anything about a Winchester. Cuz like I said previously, I didn't even know what a Winchester was.

DV What, what's your sister's boyfriend's name?

PV His name is Fabian Wilson.

DV Fabian Wilson?

PV Yep.

DV What's the phone number there?

PV Ah, I don't know his phone number but you can locate my sister at 493-7111. She'll be able to give you the number.

DV Okay. What's your sister's name?

PV Her name is Shauna Vance.

DV Okay. And where is this address that's?

PV Um, it's in Chicago. 45th and Winchester. South side of Chicago.

DV And what's the street address?

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PV It is a street. It's a cross street. 45th and Winchester.

DV What's the actual house that he lives on? What's the actual address of the house where he lives?

PV Oh, I don't know the add, I know that that's the address because.

DV How long ago was that that he lived there?

PV Um, I knew that he had, recently him and my sister had just came back from Chicago and they was telling me about him.

DV Is he up here now?

PV Yep.

DV Where do we get a hold of him?

PV Um, I know you can get a hold of him through my sister. She can get a hold of him quicker than I can. I rare, I see him rarely but I see him every year in there though.

DV Okay. Why would that come up in a conversation?

PV Well, maybe we was talking about places. I don't know. Talking about

DV Okay.

PV people family maybe.

DV Okay. I'm going to tell you that that's not true. That's not what you were talking about. Okay. You have some more information that you want to tell us today.

PV Alright.

DV Okay. What is that?

PV Ah, ah, I was thinking real hard. The night of the 21st, Saturday night. I remember I was getting real drunk. It was me and Stacks. And um, we got, we caught a ride with his cousin. We seen his cousin downtown ride past and we got in the car with him. They took me home to 293 Birmingham. I got out of the car to go in the house and

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they was going to leave. They left. After they left me in the house, I noticed my cell phone was missing. I called Stacks. I told him my phone missing. I told him bring my phone back. He said he couldn't bring my phone cuz they was too far. I said, alright. Whatever. I called back. Kept calling back. He cut my phone up. The next day I remember Sunday the 22nd it was on a Sunday. I woke up. I woke up maybe after 12, I left after 12. It was, it wasn't maybe quite 1 but I know it's after 12. I remember I got on the city bus. The 70. I left my house. I remember I had a, a, a pint of vsopnj (sp?) from the previous night cuz I was so drunk that night before I couldn't even drink any of it. I left, I went downtown. I got off downtown. I ran into a buddy of mine named Rooster. He's with his girlfriend. I remember he was talking about let's go have a drink. And I had a bottle so I drunk the bottle that I had. So after we drunk the bottle me and his girlfriend they was like let's go have, let's go have some more drinks. They got 2 for 1 down here at the Lab. So I remember we went to the Lab.

DV About what time was that?

PV Um, had to be 1:30 maybe 2.

DV Okay.

PV Um, we went to the Lab. We sat in the Lab for a few hours having drinks, shooting pool. Just having a good time. I really, that, I know the evening part ah, I was at the place where Melissa worked at. That night I went in there, I was with, I know I was with John but I doubt if I was, I couldn't have been with Stacks cuz (inaudible) was with T-y-e or this other guy named Claimy (sp?) I know. Cuz I only took 3 other people in there besides Stacks.

DV TY and who else?

PV Claimy E.

DV What do you call him?

PV E.

DV E?

PV Yeah.

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DV Okay.

PV Yeah. Besides, besides me Stacks and John, them was the only 3 people that ever been in this bar with us before, ever. So ah, I broke loose from them. I broke loose from them and I remember walking around. I was looking for Stacks. Cuz I couldn't find him. Cuz he had my phone. That's when I, I walked past the Buttery and I seen them in the Buttery that night.

DV About what time was that?

PV This was before when I came in around 10 o'clock or yeah, 10, around 10 o'clock. After 10.

DV What time did you leave them at the Radisson?

PV Ah, it had to be earlier like 8. Because I remember ah, Melissa kept telling me she was leaving earlier that night. She was going out of town or something. She said something about getting off early. She was going out of town or whatever. Cuz I was trying to get her to come have, to try to come have a drink or whatever. Ah, I probably, I left there, maybe walk around through downtown back and forth. I know I eventually ended up towards the Buttery that night. Towards 10. I went in the Buttery. That's when I seen Stacks. I remember the first thing I did when I walked into the Buttery. He was sitting over in a booth. He had some drinks on the table. And the first thing he did when I walked in he handed me my phone. Like, huh, cuz he know that was the first thing I was going to say. He had my phone that whole day, all night. That's when I asked him for a drink. To buy me a drink. And he told me no. He told me he was broke now. I ain't got no money. Whatever. That's when I walked over to the bar and I seen Colleen and I spoke to Colleen.

DV Okay. Who was with Stacks that night?

PV Which one night? The previous night?

DV No. The night of the 22nd.

PV Who was he with?

DV Ah huh.

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PV When I came in there he was by hisself.

DV Okay. What time did you leave the bar then?

PV That night?

DV yeah.

PV Ah, it couldn't have been that long after. I had a few drinks. Maybe a hour after that.

DV Okay.

PV Maybe. Maybe a hour after that?

DV About 11?

PV Yeah, maybe.

DV Who did you leave with?

PV I left with him.

DV Where did you go?

PV We went to Vanessa's house.

DV Okay. Then what did you do? Did you stay the night there the night then?

PV No. We left and went out to, to Amy and Amy's house.

DV And where's that?

PV It's either in Inver Grove Heights or Eagan. One of those, one of them. It was real far out cuz we got in a cab and went.

DV What time did you get there?

PV Ah, I know it was after 12.

DV About how long after 12?

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PV Maybe 12, 20, 12:30. With what, cuz as soon as we got to, we got to Vanessa's house, I remember he was arguing with Rochelle cuz she had to wait for him all day there. And he never came. He was supposed to meet her back there and he told he were was going to catch a cab down to Mickey's to get something to eat. That we would be right back. But that was just a disguise for us to leave and go to Amy's house. To the other girl's house.

DV On the phone earlier today you told me that ah, Stacks had a car that day.

PV What day? The night before?

DV On the 22nd.

PV He had a car?

DV Yeah. So if he would have had a car, why did you take a cab?

PV No. He didn't have no car. (inaudible) I told you about the blue Corsica. That wasn't the Saturday night. I thought about that. I thought real hard. It wasn't (inaudible)

DV What blue Corsica?

PV The one I told you was in the car with them girls. We was in the car with those girls. The, the night we went and got the alcohol. Cuz I thought about it

DV No. I'm talking about the, I'm talking about the 22nd. The night of the shooting. You told me that Stacks had a car.

PV I didn't tell you he had no car.

DV Just this morning though.

PV This morning.

DV You told me he had a

PV No, I didn't. I said, the night before when he left with Bird he was in the Chevy bubble.

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DV Okay. So now that's the 21st.

PV Yeah.

DV Okay. Whose car is that?

PV That's his cousin Bird's car.

DV What's his real name?

PV I don't even know. All I know him by, by is Bird.

DV By Bird?

PV Yeah.

DV What kind of car was it?

PV A Chevy bubble.

DV What year?

PV I don't know. Something like a Brougham.

DV What color?

PV It was like Maroon. Maybe Burgundy.

DV Okay. What else do you want to tell me?

PV Um, oh, yeah, that night I told you about I thought was the 22nd. That night, I told you, when we got the weed. This, cuz this is how I thought about it. I figure I had the 22nd was on the Sunday and we couldn't have went to the liquor store that day. Remember I told you we went to the liquor store and it was smoking and I got out of the car and whatever, yeah, the liquor store was open and then, so that couldn't, that couldn't of been the 22nd. That's why I kept thinking about it. And then it just make me think even harder when you tell me, when they (inaudible) ah, Kreager showed me the phone records that night. But I thought about it, it was right around that time cuz I remember getting on the bus that morning. I remember I had a big borrow and the night before that Stacks was talking shit cuz I wanted to leave the bar with him. He wanted to get drunk but I wanted to keep it for the next day cuz it was Sunday.

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DV Okay.

PV That's the night he, he ran off with my phone.

DV What else do you want to tell me?

PV Um, that's all that came off hand.

DV Okay. I got to tell you again, you know, which statement are you not telling the truth? The first one? The second one? Or actually the first one when you stopped, we spoke at the Ramsey County Jail, when you were picked up on a ah, probation violation. We talked to you there? Remember?

PV Okay.

DV Then we talked to you down at the Dakota County Sheriff's Office?

PV Alright.

DV And we talked to you at the Ramsey County Jail?

PV Alright.

DV And now we talked to you up here at the U.S. Marshal's Office.

PV This.

DV Which, which statement is the correct statement? Which one are you telling the truth at?

PV No. I try to give you the, the most, upmost truth on all of them but I know for a fact this is what, that, what I just said, just now, that is what happened on the 22nd.

DV Okay. But know when we were at the Sheriff's Office on Saturday,

PV Okay.

DV You told that that was the truth.

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PV Cuz I had to think about it. You told me to go in there and think hard. I thought very hard. I put everything I could together.

DV okay.

PV It was on a Sunday. So if it was on a Sunday, I couldn't have went to the liquor store and bought no liquor like I told you before that we rolled around and got some liquor. Cuz we couldn't of got no liquor. I remember the exact liquor store. We went on West 7th Street and go the liquor so it couldn't have been on Sunday.

DV Okay. Do you know that each time we talk to you, you give us a different time line?

PV Ah,

DV Do you know that? Do you know you're doing that?

PV I'm not the greatest at the time. I know, I don't, I didn't know exactly what, specifically what time anything happened. (inaudible) give you a ball park figure.

DV Some of these aren't even close to on. Tell me up front.

PV I'm just, I'm trying to get you my best story of what happened.

DV And I'm telling you up front. I'm not trying to trick you into anything. I'm just telling you up front that this time line doesn't match the other time lines that you gave us.

PV Well,

DV I told you all along that this case is ah, we've got information that comes in on this and it keeps coming in and there's no reason for me to sit over here and lie to you. And I'm not sitting over here trying to trick you.

PV I understand.

DV Because I'm hoping that some day you're going to tell me the truth. And tell me what happened.

PV I just told you what happened.

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DV And when it's all said and done, you know, I want you to be able to look at myself and Agent Nygren, Sergeant Pica, Detective Kreager

PV If I could,

DV and I want you to be able to say, you know, what, even though I told them all this stuff, they still stood there and listened to it and eventually now we have the truth out. And that's what's going to help you down the road.

PV Well, if I had a chance to actually put ah, ah, the, the, if I can't, if I had to lay my story down right now, the story I just told you would be the one I would lay down.

DV That's the one you want to stick with this time?

PV Well,

DV I'll tell you it's still not the same as the other ones. Do you want to do some more thinking about this?

PV I'll try as hard as I can.

DV Okay.

PV As much as I think, I try to bring much back as possible. IT's hard to think back all that many months to one specific thing.

DV I think part of it is because you were doing so much dope and alcohol back then.

PV I told you I don't do (inaudible)

DV You were out of control during that time. When we talked. Anybody that knows you during that time frame,

PV I drunk a lot.

DV You were out of control. You were getting drunk every night. You even told us that.

PV Yeah.

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DV And I think that that's really clouded your memory of what's going on.

PV Yeah. I know it's hard for me to remember stuff. I got the (inaudible)

DV Where do you think we can find Stacks at?

PV I don't know.

DV Cuz he tells us a whole nother time frame.

PV Oh?

DV He tells us a whole nother time line.

PV I don't know. I haven't seen him since I left. The last time I seen him was the day I left for Kansas City.

DV Thought you 2 were almost like brothers?

PV We was. Something like, I don't know, he got, he got spooked or whatever after he had that, when he was supposed to go um, turn, go for sentencing whatever.

DV Why was he spooked?

PV I don't know. I guess he's scared to go to jail.

DV Well, that's not a fun place to be.

PV (inaudible)

DV I understand that. But still he has to do his time.

PV Yeah.

DV He's only making it worse by not going in.

PV I know. Everybody ain't caught up thought. Everything catch up.

DV Yep. Anything else you want to tell me?

PV No. That's it.

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DV Okay. Next time you think of something

PV I will call you.

DV Next time you think of something just tell the ah, which ever, you know, whether it be in the jail or where ever you're at, you just tell them to call down to our office

PV Alright.

DV and have him ah, page me.

PV Alright.

DV And ah, I'll make the decision whether to come now or not. But I told you that I would. When you start remember stuff.

PV Alright.

DV I think the alcohol's really affected you here. And ah, you know, the other side is if Stacks did this whole thing, then you need to get it out too.

PV Man.

DV The guys's not worth protecting.

PV No, I, I understand that. I'm not, I don't want to go to jail for my life, for something somebody else did.

DV Well, I, you know, I think you're getting kind of hung up on some of that (inaudible). I don't know what the exact charge is going to be when this is all worked out. But I do know from talking to the County Attorney that's working on the case with us, and I do know talking from other officer's and I do know from my one experience, that the clerk is dead. We can't change that. But I do know that it depends on how he died determines the appropriate charges and those charges have different levels of how long a sentence would be. And I do know this is, you know, and this comes from our County Attorney too. The first person that comes up and gives us the most truthful story on everything, is probably the person that has the best chance to cut some type of deal. And you know, you've been in the system long enough, you've got all kinds of friends out there that you know as well as I know, as well as Agent Nygren knows, deals are cut

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every month.

PV Ah huh.

DV And

PV Can I ask you a question?

DV Yeah.

PV What if somewhere I, this is hypothetically speaking. What if somebody tried to cut a deal with you all (inaudible) that don't have anything, he don't know nothing about it or nothing to do with it. Just,

DV Just tell him

PV is that part? Is that possible?

DV In this particular case or in any case?

PV I'm saying in this particular case.

DV Because there's enough people telling us what's going on, that they, there is no deal for them to cut. There is no deal.

PV Alright.

DV What deal does Melissa have to cut?

PV No. I'm saying, cuz I remember you telling me about Handy seeing ah, ah, Maynard. I'm saying he told me they was trying to cut a deal cuz they (inaudible) and I know Handy, I don't know who Maynard is. I hope he brought a picture or something so I could see who the hell he was. But, I don't know.

DV I told you before

PV Cuz I'm

DV I'm not going to tip the whole case to you.

PV I ain't mad at you.

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DV I come up here, I thought I was being fair by bringing up the tape

PV Yeah.

DV to show you that, you know, hey we were there the night you sold the gun to Melissa.

PV (Inaudible.)

DV We did hear what we heard. You know that's the only reason I brought that tape up. I didn't play everything specific 'cuz I'm not going to give you the evidence of the case. You get that at discovery when you're on trial. But I want you to know that none of us are feeding you a line of bull shit.

PV I know

DV (Inaudible.)

PV that. 'Cuz at first I'm going to tell you honestly at first (inaudible) bull shit I thought it was just like I thought it would be like you all just trying to (inaudible) and find out I didn't do it

DV We're not fishing.

PV you know what I'm saying.

DV We're not fishing.

PV You know what I'm saying. But then I see how persistent you all is at doing and, and it's kind of messed up 'cuz the, after the first time I seen you all and, ah, we, you all interviewed me at ADC I remember I got out, I got out and when I was out I, ah, all I did was I went to the house and, ah, I was over there on Rice Street with, ah, with Jay Hennesy(sp?) you know, and all I did was like man like man the police said I did this or they, I told them everything I did this, they told me I did this, well whoo. And then, now all the sudden Hennesy he called me back I want nobody come back and and tell you what I told them like from what you all think I did, you know what I'm saying, as, ah, coming at you all like saying like I confessed to them of doing it 'cuz I ain't ever confess to nobody of doing this or, you

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know what I'm saying. And I still say on the record I don't know nothing about this.

DV Okay.

PV All I can do is tell you the best thing I know.

DV All I'm telling you is that we're not on a fishing expedition.

PV I understand.

DV You know.

PV Yeah.

DV We've got a case.

PV I understand.

DV And it's coming together very nicely.

PV I understand. If I had any information to get me away from this, I don't care if Stack did it and I knew he did it I'd tell you all so I could be off this shit.

DV I would think so because everybody else is talking.

PV I don't see how. I didn't do nothing.

DV Well you've got people that are, that you've talked to and they're talking to us and, ah, you know, we got other information that's coming in and, you know, obviously it's pointing to you otherwise we wouldn't be here. And if you want to help yourself out that's what we want a statement for. You know, I think everyone's talked to you a hundred times over that it makes a difference how it happened as for the charges. And really that's our job right now is to find out and get it nailed down from you as to how it happened.

PV This

DV You know. If you were just there and Stacks pulled the trigger then we need to know that. But that's not what everybody else is saying. But if that's what happened, you were there, you could tell us.

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PV I told you if I could tell you what happened I would tell you.

DV Alright.

PV But I don't know 'cuz

DV Okay. Do you have anything else you want to tell us?

PV No sir.

DN Let me ask you something real quick. Ah, in relation to the, the gun that you sold Melissa on or about January 7, that one you had a gun

PV Yeah.

DN the (inaudible) .22 caliber, the one you took from Kenny Wilson, how prior, how, how soon, how much earlier did you take that when you grabbed it and took off from him. What, what was the time period?

PV How long did I have it after, I'll tell you

DN Yeah when you

PV before I sold it?

DN Yeah before you sold the gun to Melissa

PV How long did I have

DN how, how much sooner or how, how long did you have it from when you took it from Kenny out in front there?

PV Ah,

DN When did you do that, that's what I'm trying to ask you.

PV ah,

DN Was it a week, was it two weeks, was it 10 days?

PV You said, you said I started the 7th?

DN Yeah. I think that was the date.

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PV It was before, it had to be like the, more like, more like the 20th. It was, it was that, within that week of December

DN December 20th?

PV It might have been within that week. (Inaudible.) The 22nd was Fri or Sun more like it might have been Sat, last Saturday. It might have been the 21st or the 20th.

DN Or on or about. I mean roughly. That's what I was trying to say.

PV That's what I'm saying. Before I sold, you see if I sold it the 7th I only had it for like two weeks maybe.

DN So was that sometime the 21st and 22nd?

PV To the 20th, yeah.

DN And that's right out there on 5th and Minnesota when you grabbed it?

PV No I got it from the Buttery.

DN Well that's the Minne, were you inside the bar or were out

PV Yeah I was in the bar.

DN Oh.

PV I was in the bathroom.

DN Oh I thought you were out

PV No.

DN Alright. That's what I, I just wanted to kind of nail down a date.

PV That's cool.

DV How many other guns do you have?

PV None. That's it.

DV How about Stacks? How many guns does he have?

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PV None that I know of.

DV Why would he say that you have more, you have a couple guns?

PV I ain't got no guns. That's the only gun I ever had.

DV Do you just make stuff up

PV That's why I, that's why I took it.

DV do you just make stuff up to people?

PV I told Melissa I had a, I had a whole bunch of guns but I was just talking shit.

DV Where you keep, where did you keep that gun at?

PV Ah, in a box.

DV At where?

PV At the house.

DV What house?

PV Ah, on Birmingham.

DV Okay. Why did you take us to 956 Minnehaha then to show the gun?

PV Because I was going to go get, I was going to go get it and show it to her.

DV Go get what?

PV Go get the gun.

DV Which gun?

PV The gun. The one you all got.

DV You just told me you keep that on Birmingham.

PV I do. But before, I had it put somewhere else then.

DV Where?

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PV In the house.

DV On Minnehaha?

PV Yeah. I hid it somewhere in the house.

DV Who were you there visiting?

PV I know everybody there.

DV And they all know you there?

PV Yeah.

DV How many guns are in that house?

PV (Inaudible) that's all (inaudible) their grand daddy got a lot of guns but I ain't never seen any none of them guns.

DV So where did you keep the gun there at that house?

PV I hid it in a room.

DV Pardon me?

PV I said I hid it in the room.

DV What room?

PV Ah, the first, when you first come in the room to the left.

DV The living room?

PV It's not the living room but

DV That little porch room?

PV Yeah. And then, then I, then I was, I was drunk, I was drunk as hell that night. I went in the house to go get the gun but when I, I had went inside 'cuz their grandma she was like, I told her I had to get something and it was so late she like what you got to get and I told her I had to get something. She wouldn't let me in the house. And I sat there talking to her trying to tell her I put something up in a room I need to go get it. She wanted to know what it was. And I wouldn't tell her what it was.

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DV Okay.

PV And I went and got it but when I went and got it I came outside Melissa had left. So that's when I moved it. I took out the house and I went and put it up somewhere else.

DV Okay. I just want to clarify one more thing. On the night of the 22nd between 8:00 o'clock and 10:00 o'clock you're telling me you were not with Stacks?

PV I'm thinking, no. Un unh.

DV Okay.

PV No.

DV The time now is 12:20 and we will stop the audio recording.

End of Statement

DV/jdc/mke

MINNESOTA JUDICIAL BRANCH

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DATE: **April 18, 2003**

CASE #: **02018427**

INTERVIEW: **Captain Daniel Vujovich**
Detective Tom Kreager

SUBJECT: **PHILLIP RANDALL VANCE, JR./DOB 10-20-80**

DV We have to record this Phillip. And today's date is April 18 and the time is 4:16 p.m. This interview being conducted at the Ramsey County Annex by myself, Daniel Vujovich and Detective Tom Kreager. We're here with Phillip Randall Vance, Jr. Phillip, for the audio recording would you please state your full name and your date of birth?

PV Phillip Randall Vance, Jr.

DV Okay.

PV 10-20-80.

DV We were here last night, ah, to talk to you on the 17th and we read you your rights per the Miranda Warning, is that correct?

PV Yes sir.

DV Okay. Do you remember the Miranda Warning?

PV Ah, (inaudible) put my initials

DV Right, you initialed it all. Do you remember all that?

PV Yeah.

DV Okay, do you understand that that still applies right now?

PV Alright.

DV Okay. Do you want me to go over it again or are you comfortable remembering it?

PV I remember.

DV You're going to have to speak up a little bit.

PV I remember it.

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DV Okay. We left the conversation last night with giving you a few things to think about. Have you had a chance to think about some things?

PV Yeah. Tried to think about everything.

DV Pardon me?

PV I said I tried to think about everything.

DV Okay. And I'm sorry. I've got a little bit of a cold tonight. I'm low of hearing loss and I don't understand so you're going to have to speak up a little bit okay?

PV Alright.

DV Have you had a chance to kind of think about doing the right thing here?

PV Yes sir.

DV Okay. Is there something you want to tell me?

PV I'm telling you everything.

DV We also told you that, you know, a lot of what you're telling us we know not to be true. And even in your statement last night you were telling me that you had, ah, told us some lies the first time you talked to us and, you know, I talked to you about, you know, who's going to know if you're lying again last, you know, this, last night. Well we know you were lying about some things last night because, you know, we were there. We heard you say some things. And we also talked about how all these people that we've talked to that don't know each other come up with the same similar version of what took place. And maybe today, you know, is your chance to get this straightened out. We talked about being 22 years old, having to make some decisions for your life. We talked about, you know, being 22 making these decision with kids at home. How it's going to affect the family. (Inaudible) this stuff is not going to go away and it's going to keep reoccurring and, ah, you know, if we need to put this to rest and we need to get it out in the open. If you don't want people to continue on and if, everything that's being said, even though what they're saying, you know, what they're saying is the truth

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what happened and how they know it to be. But there's also your side and that's what we're here to get is your side of the story.

PV Well, I don't know what to say. I mean I, I, I told you all I don't know nothing about it. I wasn't there. I get drunk and I, like you said I used to get drunk, do some silly stuff but I ain't never got that drunk where I went in no store and did nothing like that.

DV Are you sure?

PV Yes sir.

DV Are you sure that you weren't that drunk that night?

PV Yes sir.

DV How do you know?

PV Because I remember, I remember that night but I don't remember that day.

DV Okay. Who were you at the Radisson with that night at 8:00 o'clock?

PV At the Radisson? At the bar?

DV Yes.

PV Ah,

DV Was the Capitol Grill or

PV Yeah. More than likely it was with Stacks.

DV Well you were with Stacks. Don't tell me more than likely.

PV Yes, yes.

DV I'm telling you you were with Stacks.

PV Stacks. Yes.

DV Okay. Who was the third person?

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PV The other person? Was it John?

DV Who?

PV John.

DV John Martin?

PV I think it was John.

DV John Martin?

PV Yeah. Yeah.

DV Where would I find John Martin right now?

PV Ah, honestly I haven't seen in so long. I don't know. I usually see him here and there but I haven't, I haven't been downtown, hanging out down there so I don't, I don't see him.

DV Why haven't you been downtown?

PV Because Officer Bang told me not to come down here anymore.

DV Okay.

TK Officer who?

PV Bang.

TK He's a street cop down there?

PV Yeah.

TK He takes care of all the bars and stuff?

PV Yep.

DV Well, what do you want to tell me what happened? If, if you were that drunk, you don't remember what happened?

PV No. Ah,

DV If you just remember parts of it let me know.

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PV Yeah. What I do remember is, um, I know I had been downtown that day.

DV Yeah.

PV And I know me and Stacks and John we was walk, we was together for a long period of time. We went up to the bar, we went up to Capitol Bar in the Radisson.

DV Okay.

PV We had some drinks 'cuz I remember John had some checks. He said write some, some checks for Melissa and she used to cash them and give us the money back for them. And

DV Where did you go from there?

PV Ah, we went back, we moved around back downtown. We was walking around through downtown. John ran into his girlfriend. Then we ran into the two girls that, ah, who house we went over that night. We ran into them. One of them had a, ah, she was driving.

DV Okay. What kind of car did she have?

PV She have a blue, she had like a blue Corsica.

DV Okay.

PV We ran into them. Ah, we got in the car with them. Me, Stacks, this other guy named Reo. He was in there with us. 'Cuz we left John. John left with his girlfriend. Ah, we drove around. We went to the liquor store. We got some liquor. We rode around some more. We was drinking and riding around. They went and got some weed.

DV Went and got what?

PV Went and bought some weed. Stacks took them somewhere and got some weed.

DV Did you smoke any of that?

PV Who me?

DV Yeah.

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PV No I don't smoke weed. I just was drinking.

DV Okay.

PV Ah,

DV What was these girl's names?

PV One of 'em, I only remember one of 'em name 'cuz that was the one Stacks was messing with. Ah,

DV Amy?

PV No that's the one the house we went over.

DV Oh you were with Amy huh?

PV No. But Amy wasn't in the car then. Amy was at home. This was another girl that was driving. I forgot her name but the other girl

DV Yvonne?

PV Yvonne. That's her name.

DV So you're with Yvonne and Am

PV Yvonne. No. I was with Yvonne and Amy at their house out in, ah, far out wherever it was at.

DV When did you get to their house?

PV Later on that night. It was

DV About what time?

PV Like, I know it had to be at least 12:00, a little after 12:00 'cuz I know we left, we left Vanessa's house after

DV Okay. Alright. Okay. Let's go to this now, okay. First time I talked to you you tell me you're out at Amy's at about 2:30 in the morning. Amy and Yvonne's at 2:30 in the morning. Last night you tell me at 11:00 o'clock you're out with the girls in Inver Grove heights. Now you're telling me it's 12:00 o'clock and you're out with Amy and Yvonne.

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PV I know it was late. It was, it was like

DV Those are three different times

PV it was late, it was late. I don't, I don't, I'm trying to remember. I don't remember looking at a clock you know what I'm saying.

DV I'm bringing this up because you're digging yourself into more of a hole.

PV Alright.

DV You know.

PV Can I finish my story?

DV Pardon me?

PV Can I finish my story?

DV Go ahead.

PV Alright. We was riding around. We was drinking and they were smoking. And I remember, ah, they was about to, they was, no this is before they even start smoking. They was about to start smoking. I told them I don't smoke weed. So we went over, we went to (inaudible) house 'cuz Stacks was almost (inaudible) my cousin. I'm like cool 'cuz I can get out the car then. So they all can smoke in the car and I got the car. And I stood, I kind of like sat on the car, hood of the car. I was, she was drinking. And they got in the car and they smoked and then we got back in the car. We got back in the car and they dropped us back off downtown.

DV What time was that you get out?

PV It was like

DV How do we explain hearing you say you shot someone five times on the South Side with your Winchester?

PV I never had a Winchester.

DV Did you say that?

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PV No sir.

DV Okay. I'm not going to B.S. around. I'm certainly not going to show you my whole case. I'm not going to show you Tom's whole case. Just going to show you something. It shows that we have a lot more than you think we have.

** (Inaudible.)

M (Inaudible.) (Inaudible) here and have a drink but no. You're going to give it back to me when I get (inaudible). (Inaudible.)

** (Inaudible.)

DV That's you and Melissa.

PV Hmm.

DV Mmm hmm.

PV Well I ain't, well I ain't never said about shooting nobody with no,

TK Ah geez. You know, we sit here and we listen to you and we're, we're like you're sitting back and just saying prove it, prove it, prove it. The process is starting today. That's, you know, we're waiting for this other guy. We want you to know the process is starting today where we're going to change your life. And you're, you're telling us to go ahead and do it by this attitude.

PV I'm, I'm not saying that.

TK You got to listen up to me for a second or you're going to miss my point.

PV Okay.

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TK My point is we're going to go ahead with what we think is right because the, the inside element that you can give us you're refusing to. You're lying, you're denying, you're waiting to see our full case in front of you and then you're going to try and squirm and by then it's going to be too late. What I'm telling you right now is now is the time to, what you think we're going to go through the whole tape with you. We got hours of that stuff. We do that, you thought I was kidding last time. You were out partying with how many cops that night and you didn't even know it. They were all around, you know. The process is starting today and, and every time that you deny, you lie and everything it gets, it keeps pushing the case back this way to absolutely Murder 1, intended, went in there to do the job just the way it went down. No mistakes happened. It was a perfect robbery the way you wanted it to happen. It was cold blooded. The guy was executed for no witnesses and that's just the way it's going to be charged out 'cuz the process really is starting today and you don't believe it but later on when, ah, we finally get the paperwork up here you'll believe it. Now is the time to get, ah, I'm not kidding you if you want to get ahead of this and get some control over the rest of your life now is the time to do it. Otherwise you're telling me and my Captain here to go ahead and do it. And we'll do it. But it's going to be this guy lied all along. How many hours have we talked to you? We've talked to you for several hours and you continue with this story when we've put that, your attitude about denying this, being remorseless about his execution, ah, refusal to give his family any peace about his final prayers or anything. Put that all together we figure you planned it this way. You and Stacks planned it. Wanted to leave no witnesses and from the time you went into the store the whole idea was to kill him. Kill him and take the money, leave no witnesses. That's what the lack of control and your lack of cooperation is leading to. And I know you don't think the hammer's going to fall on you for this thing but I'm telling you this guy's a little late, this process starts today, enforcement. That's all you've given us. Now your, my Captain wants this to be a nicer day for you. Personally like I said I go home to my wife and my babies and I take care of them. You say you're a man and you want to take care of your babies I say it's time to stand up and show it. Now we're talking to different, and again maybe you want to, ah, think this over but don't listen to people who you're going to hear from down here. We're talking about the difference in a couple

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years and the rest of your life. 'Cuz Murder 1, intentional murder, felony murder, those are all going to be, there'll be a laundry list. They're all Murder 1's.

PV But I never said

TK And you crossed the line on every one.

PV That's what I keep denying 'cuz I didn't do

TK But the problem is, and again you're denying this, we have you having specific knowledge, nobody else except the officers who investigated the case had. You had that knowledge, you conveyed it to another person. You conveyed it and it was recorded and heard by, I don't know, six different cops were on you at the time listening. And they're all going to get on the stand and say yeah he said that. Remember the analogy I gave you about if I'm in a bar saying that I stole 12 spotted cows and the cops take a report the next day and everybody in the bar says hey Kreager was talking about these cows that he got. They're going to come to me. The same thing happened to you. And it wasn't somebody else that fingered you for that it was you saying it. And you said it to a person, she's a, the first night told a person that's experienced with dealing with people with problems. She works in bars all the time right? And she's older. You know, she's my age. She has experience. She knows the difference between somebody that's just drunk and goofy and somebody that's acting really out of character. And she knows the difference between somebody that's had too much drink and gets sick and somebody that's just, ah, emotionally gone and so nervous that they were throwing up and stuff. And that's what she says about Stacks. He was, wasn't loaded, falling down drunk. He was very nervous, hyper, jumpy and the next thing you know he's running out to throw up outside. And then you're totally out of character for the way you'd been down there. I mean she doesn't have a degree in psychology but she has a degree in life, you know. She has one of those jobs where part of her job is reading people. Kind of like a cop. She has to know if somebody's going to be a problem, right? She's a credible person. The cops that are even going to testify against you are credible. And I'm telling you if you keep this attitude you are going to talk to yourself into a straight ass murder, gone for life. And you told me yesterday what was important for, to you were your

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kids. Your love for your kids and being able to express that and be that, be there with them and take care of them. I'm taking from that that maybe at times you didn't have the best of care yourself. And you want to make sure nothing happens to your kids. That's something we can both understand. I mean we both have babies. We both have other kids too. We know that those are the only things that really matter. Those little kids can't protect themselves, they can't feed themselves. They need parents there to do it. And you've got to come around to the place where you know the only way that you, you're going to be back there to be that parent, be that good father, that strong figure that person that teaches your kid right from wrong and keeps them warm and happy and protects them when the bully down the block is giving him crap, is to stand up right now and tell the truth because you cannot explain away all the things that you've done. You can't do it. You can't explain away the police officers that are going to testify. You can't explain away all the various other people that have overheard you in different contexts and they've come to us with basically the same story. You can't explain that away.

PV So basically it's another person's word against mine.

TK No what it is is about 15 people's word against yours right now. That's what we've got going. And Stacks ain't helping you. He ain't.

DV The only reason I brought this tape today was, we normally don't do it. I want you to have it concrete in your mind that we did do our homework and we did do the investigation and that we're not sitting across this table flinging mud at you. It's there.

PV But if I knew something to tell you all I would tell you all. I don't know nothing. If I knew anything I could tell you all, anything, I would tell you. But I don't know nothing. I have nothing to tell you at all. I don't. I wish I could tell you whatever you want to hear but I don't know nothing. And I know you're getting tired of hearing me say that but I don't know anything. I told you that the first time man I got fucked up and said a whole bunch of bull shit. I don't remember saying no, ah, nothing about doing nothing on the South Side or none of that. I don't have any recollection of nobody, anybody told me about like you said. I don't know what the hell's going on.

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TK And, and we've told you before that the odds on you just being fucked up and these words dribbling out of your mouth for the hell of it with those kinds of odds you should have won the lottery twice.

PV I thought about that (inaudible). I could have won the lottery. That's bull shit.

TK But you didn't. You won us.

PV I know.

TK And I really think that, that maybe somebody is giving you advise down here that you're sitting with. I'm telling you it's

PV I ain't talking

TK you, you're going to get screwed over if you listen to these guys.

PV I haven't been speaking to nobody.

TK I think you're sitting tight and waiting to see if it's really going to happen.

PV Well I don't even want to see

TK And I, I have never brought bull shit to the table for you. I have never done that. And I'm not bringing bull shit today because I'm telling you the truth the process starts today. We're about ten minutes ahead of when it starts for and I'm, maybe, I don't know if you just can't realize it or not but once it starts it, it's an avalanche. This is, what happens today is going to lead to what happens in a few days which is going to lead to something else and you're going to end up stacked up. You're going to get to know the judge by his first name by the time this thing is over. And I think you don't believe that it's going to happen. I really think you're just going to hold out and say maybe there's a, you know, 50% chance these guys are all full of crap and they're trying to bluff me down this road. I'm not a good bluffer so I stay away from it. I lay my cards on the table and I'm telling you right now it really starts today and once it starts it is next to impossible to stop it because then we do have all the people involved above us and other agencies

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wanting charging decisions on their own. They're going to take it away from me, take it away from you, take it away from everybody that's been working on this. The bigger the charges the bigger the headlines. The happier the family. The family wants you back in Saudi Arabia.

PV Who?

TK The victim's family. You know what happens over there to people convicted of this stuff?

PV They kill them.

TK Quick and clean man. Off with the head. I'm not saying that's right. You're thinking I

PV You know what I'm saying they think I did it. That's another thing. I ain't trying to no, no fucking (inaudible) sit there and he's the one (inaudible) I did the shit.

TK They're not mother fuckers to start with. They lost a family member.

PV I'm sorry.

TK Show some respect for somebody around here.

PV I apologize but I don't want nobody thinking I did it 'cuz I didn't do it. I don't know who did it.

TK Well it seems to me I've been spending a hell of a lot of time thinking about it since you've been out either. You still can't tell my Captain exactly what you did that day.

PV I just told

TK You know this dude?

PV Yeah.

TK What's his name?

PV (Inaudible.)

TK What, what's he go by?

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PV Hennesey.

TK Hennesey?

PV Yeah.

TK What's he up to?

PV Nothing.

TK Nothing?

PV Yeah that's my (inaudible).

TK He's your buddy?

PV Yeah.

TK He's a drug dealer, right?

PV I don't know.

TK You don't know? You see when you answer things like that your cred, credibility just (sound).

PV I'm saying

TK It's gone man.

PV We hang out together. We drink together. His name is Hennesey.

TK And you have, that's right, you said you quit drug dealing a long time ago.

PV Yeah.

TK How long ago was that?

PV Maybe a year.

TK A year?

PV I don't do drugs.

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DV How come when you were in the Buttery everybody was, ah, flipping you money when they walked through the door?

PV Ah, that's 'cuz a lot of people they just know me like this.

DV They give you money?

PV No they ain't, a lot of people owed me a lot.

DV Owed you for what?

PV Just some things in the past.

DV You tell me you don't have any money?

PV I know I don't. I'm saying things went bad. I used to give people stuff, credit (inaudible).

TK Here's your damn phone records that say that take care of everything. Here's the phone calls you were making right along there during the robbery. Those go back to his girlfriend.

PV Hold up. Who's them? Someone (inaudible).

TK (Inaudible.)

PV I know that number but I'm trying to remember where I

TK It's his girlfriend's cell phone.

PV 387-692

TK That's (inaudible) cell phone.

PV That's ah, ah, that's an old girl, you know, who I told you who like the only, the two occasions I went over there was to go over them female's house and to the car place and them was the females but we ain't ever go there with Stacks' car over there

TK What's he know 'cuz he lives with her boyfriend.

PV She live with her, she live in (inaudible).

TK (Inaudible?)

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PV Who?

TK Hennesey.

PV Oh I ain't nothing about that. 692, I don't know. 692, Stacks had to call that number.

DV It's right there on the phone records.

PV 692

DV So the, (Inaudible) is the girl you went and saw?

PV Who?

DV (Inaudible) in South St. Paul?

PV No that ain't her then. Stacks called that number. These other girl, I know some other girls live over there.

DV That lives with (Inaudible)?

PV No these girls live, I don't know no girl named (Inaudible). I know these females. We use to go over there. Used to be a lot of females over there but I ain't remember no girl named (Inaudible).

DV Lefty?

PV Who?

DV Lefty?

PV No. There was a girl there named Jackie. There was a girl there named, ah,

DV Who stays out there?

PV 692

DV (Inaudible) telling you, do you want to tell me what happened while he's out of the room now.

PV I'm trying to telling you, I don't know.

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DV Do you understand that the process is starting, do you understand that part of it?

PV This is fucked up, shit from real.

DV Do you understand? I normally don't bring any type of, ah, you know, my paperwork to an interview but I wanted you to listen to this tape so you understand that what we're telling you is not bull shit. We're telling you the truth. And we really are here today to get your side of the story. But what's going to happen here, Florida, I want you to understand this. Look at me a second, okay, 'cuz I really want you to understand this. We talked to you the one day. Gave you a ride back up to St. Paul. We talked to you last night said think about things. We talked to you today. That's not the pattern. We're not going to keep coming back and talk to you. We're going to take our time and energy and just keep talking to these people that keep coming up to us independently, we're not looking for them. We're picking up the phone call, they're telling us

PV Can I see that paper please, please?

DV No. You can see it at court.

PV I just need to see the numbers after that and before there.

DV No.

PV 'Cuz I don't, man, I, I never called the numbers.

DV No.

PV Ever. Stacks might had

DV You had the phone.

PV Stacks might have had my phone that night. I don't know.

DV You had the phone that night. Sonya gave you that phone so you could keep in touch with her.

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PV I been, yeah I been had the phone but I used to talk on it. I used to let, (inaudible) let Stacks take the phone. His (inaudible) but I'm trying to figure out is this the same date that I told, what I told Carlene 'cuz when I told Carlene that that night in the bar I know that night she asked me for my phone number. And she called me the next day. And the next day I was out at, ah, Amy's house 'cuz I at the bus stop I remember Stacks if I lose that it's Carlene. And he like how did she get your number. I gave it to her last night.

** Hey Phillip.

PV How you doing.

** Um, I'm not going to interrupt their interview here but I was just going to let you know that, ah, I told you last night, did you have a chance to talk, to think about it? What we talked about last night? Alright, well, I contacted the U.S. Attorney today. We got a complaint arrest for you. So, (End of Side 1 of Tape).

TK It's an arrest warrant. It's a federal appeal. If they give you 385 days and 2 hours and 15 seconds that's exactly what you're going to do and it's going to be (inaudible) five years for a firearm violation. And you don't, you're not going to be in Minnesota doing time either. They're going to move your ass. It starts right now. You want some control you got to exert some manhood, stand up and get some responsibility and tell us your side of what happened, anything you know. Because this is the start. This one will lead to another one and to another one. You're going to be in front of the judge every other week for the next six months. It won't stop until it's done. (Tape Cut Out.)

** ...aren't playing. I mean, you get in the, ah, you're going to play the game with, with guns and that and these judges don't have the time or the patience when it comes to firearm violations. These are not the times to be involved with that and that's why I told you you got to think long and hard because

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TK The judge is going to read these transcripts. He's going to see all of it. He's going to see your response to 90% of our questions is that's bull shit. That's not going to impress that guy. We know you're in a hot spot. You're between a rock and hard place. You're trying to find the easiest way out. You're hoping against all hope that somehow you can just do the turtle wax suck in, be quiet and it's going to somehow go away. I guarantee you it won't.

** You're going to be visited by your kids through a glass window. Think about that. When's the next time you're going to get to hug your kid or touch your kid. You're going to be talking through a little mesh hole in a plexiglass window. And you better, you better wake up and realize what you're looking at. When I read this complaint, when I brought the complaint to the judge and he read it he was interested. I mean these judges in these times they're not playing.

TK 60 months. 60 months is 5 years. How many days do you think that is? 18,000 days, something like that. You do each and every one of them for the federal judge. No good time. No special deals. Once you're sentenced you go. It doesn't know if you know where Hoffa or anybody else is buried then. Once you're sentenced nobody cares. Now is the only time anybody's going to give a rats ass what you can do.

** That's why I came in last night and I said wipe that smile off your face. I wasn't kidding. I'm not here, I'm not here to waste my time. Neither are these two gentlemen. I told you, I mean, hey it's a job for me. I'll take care of you and I'll move on to the next. It's not my life on the line here. It's yours. You know, you just, you're just one, one of many that I deal with and these guys deal with everyday.

TK Right now we've got time to move on this warrant. We've got time to move on everything. Once you see a judge times up. Time is absolutely damn up. You want us to start moving for you you got to move something for us.

PV I want to help you. I don't know what to say.

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TK Well that, that's enough right there. Because that means I'm not working the rest of the weekend. I can spend the rest of the weekend with my family which suits me just fine. I don't need the overtime. I don't need to run down anything that you might be able to give me to get it taken care of before you see a judge Monday.

PV I know if you showed me. I swear to God I, I can never call that number.

DV No we're not, you know, no we're not going to do that.

PV But especially, you know, right about where it happened, when it happened. I don't know.

DV We're not, we're not going to show you the case. You can see it at court. We brought this today because last night we were telling you what we had and you weren't believing us and believe it or not we were here to get your side of the story, to get, so it comes out honestly what happened to make sure that everything is right and no one is getting anything more than they deserve or anything less than they deserve. We brought that here to show you. You told us to get the phone records, it's going to prove everything. Well it did prove some things. I brought a tape here. I just played it so you could hear your voice and you could hear Melissa's voice. Yeah you sold the gun to Melissa. You bet you.

PV I never

DV Was, was she in with us? You bet. You bet. She was on our side. Did we know where you were last night? You bet. Somebody else is on our side. We got a whole lot of people on our side. And then there's Phillip Vance out there. Phillip Vance has got to get on his own side and do what's right. You know. Anything else you want to see you can see down the road. I'm not bringing it to the table. You're going to have to take me at my word that what I'm telling you is the truth.

PV Well I wish I knew (inaudible) tell you. I don't know.

DV I can't take you at your word. Every time I talk to you you tell me some other type of lie.

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PV I don't know nothing.

DV So I don't have a word from you. You have no credibility with me right now. But we have credibility 'cuz I'm showing you. I'm backing up what I'm saying.

PV I understand but I don't know, I don't know how the hell I get in this predicament.

TK What I'm telling you, you can tell your kids that, that I was a tough ass. I told the cops to pound it with this I don't know crap all day and night, you know. Right to the guys down the cell block you did what they told you to, you know. And they'll laugh about it because they're down here on disorderly conduct or some bull shit that they do a weekend and they're gone. And you're going to be doing five years in Illinois some place or I don't even know where the hell, Wisconsin.

** Do you want your kids calling somebody else Daddy while you're in jail?

PV No.

TK You think TT's waiting on you?

PV No.

TK You know, everything you told us is a lie about yourself personally too. You know, you want to be a man.

PV I do.

TK You want to express, you know, a positive image to your kids, stuff like that. You're not acting like it. Not acting like it at all when we were up on you, watching you. You're out spending every nickel you had on whiskey and shit. You weren't buying diapers or food for your kids.

** Think of the guy that was shot. He's never going to get a chance to be a man or see his kids. That was all taken away from him.

PV If I knew who did it I'd tell you. I don't know who did it. I don't.

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** I got things to do. I told you what I was going to do.

TK I appreciate you running this up for us.

** Oh yeah.

TK I thought he deserved to see it for himself.

** Yeah well I just, I had to do it, ah, to make sure that the, the jailers here knew and, ah, Phil I will see you Monday, Monday morning. So, ah, take a big breath of that fresh air when you go outside. It's going to be one of the last for awhile. And you better think long and hard because like I said you, you're coming closer and closer to that point of no return. I mean I was, I wasn't joking around with you when I came in here last night. And I guarantee you the U.S. Attorney's office and a District Judge is not going to be playing with you either.

TK They're going to spend 5 seconds on your case. Exactly 5 seconds. As long as it takes them to read through the damn thing they'll say flush this guy. Why bother with him. Got nothing.

** The case against you in Federal Court is an attempt of what, what these guys have put in and the evidence they've gathered. And that's a slam dunk.

PV How come I'm the only person getting accused of this and I didn't even do it?

DV I'm not going over the case with you.

PV You said these people (inaudible).

DV I brought you this to show you that we've got it, you know. You can see the rest of the case someplace else.

TK And that statement really shows how little you know about what we've been doing.

PV I don't know anything about it.

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TK Yeah. That's right.

DV That's just too bad and all your buddy's aren't going to hang as tough as you are 'cuz you're the one that's going to be hung out to dry on this deal.

TK I'm, let me, you, you seem to think that your statement to us is going to be our whole case. Our whole case is sitting back in South St. Paul in the file cabinet. It's damn near done. It's there. The statement is up for you. You know, we're not hinging our hopes and dreams and what we're going to do the rest of our careers on whether or not you give us a good statement. It don't matter that much to us for the case. For specifying the charges that might help you it matters a great deal to you.

** To a certain degree what you've done is done. You've come to the point now that all you can do is help yourself.

TK And as a matter of fact maybe help out some of the other guys involved in this. But it's going down Murder 1. Felony murder. There'll be about four Murder 1 charges at the top of the warrant 'cuz you just go right down the list and hit them all. Murder in the commission of a felony and that's just the murder one. The robbery, robbery with a firearm, there'll be four more.

DV This isn't going to be what happened to you down in Florida when they let you out with no further charges per the investigation and that's the end of it. This is going top happen that way up here. Do you understand that? You know what happened down in Florida. It's not happening in Minnesota.

** Burglary dismissed. Burglary dismissed. Possession of cocaine dismissed. That right there, ain't going away. Their case is not going away.

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TK Think about that. Five years. Just on this thing. Just on the first step we've taken against you. We're going to add on to that. How much are we going to add on? It's up to you. You say something's are important to you, but we're telling you, we're giving the opportunity to demonstrate they're important to you. Family, personal integrity, passing on some things to your kids. You said they're important. Now's about the only time you're going to have for the next 30 years to demonstrate it.

** You know this warrant's been issued and before you go to the judge Monday, I mean, there's still time, I go to the U.S. Attorney, they dismiss this warrant. That's not out of the question. Once you go before that judge Monday morning, it's all over. Then the wheels are already set in motion. They you got 2 rocks ready to fall on your head. I'm not going to waste my time.

** Okay.

** I'll see you guys. Big (inaudible) Give me a call. I'll call you Monday.

DV Okay.

TK Phillip, it's time to bring it out. Whatever is inside of you, it's time to bring it out.

PV I'm trying to bring, I don't know.

TK Think back, how old are you now?

PV I'm 22.

TK 22? Think back to you're, when you were 17. How long ago was that?

PV Um, 5 years ago.

TK Now think ahead 5 years.

PV 28.

TK That's when you're going to start doing your 30 to life for Murder 1. It means you might get back out when you're pushing 68 or 70. Probably have great grand kids by then.

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PV I don't even want to live no more if I had to go that long. Dang.

TK So dying's easier than telling the truth?

PV I don't know. I don't want to die in jail. I don't want to go to jail for no life. If I had anything I could tell you, I would. I don't know anything.

TK You're sitting there like you're powerless, like we've done all this to you. We haven't done it to you.

PV I did this to myself, but I didn't do anything.

TK And your not powerless yet. You will be once you get in front of the judge. No power at all then. It's just yes sir, no sir, off you go whatever he says. Right now he can, we have input. After the judge is involved, huh, you've talked to judges before, haven't you? Stood in front of them? Hell, I don't even like it. They're going to do what they're going to do. This is it. I mean, this is, we gave you all night to think about it. I think, last night you were still thinking that we're blowing smoke up your ass or something. We're not. The case is done. We're waiting, we've got one more thing that's got to come in that's just going to tie you even tighter. Cuz we know the cell phone that was used to call those numbers right in South St. Paul, right when the robbery's going on, right before and after, we know that when we get all the information back from that, the calls are going to be made from the St. Paul towers. Right here. We know that. It's going to tie you in tighter. We know what Hennesey's got. We know what Stacks' is going to have. We know what, it's time for you to bring it home for yourself and your kids. That, this is it. Cuz we both have families to get back to. Start of Easter weekend and you got your ass in jail over Easter weekend. How many, how many Easters do you want to spend in jail? 30, 35, 40? 2 or 3. How many Christmas'? No more 4th of fucking July. I don't know, maybe you don't mind.

DV Obviously not.

TK Three hots and a cot. Is that what we're going with? Whatever you got, you got to bring right now. That tape's almost out. I'm not going to put another one in.

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PV I don't have nothing, I don't know nothing. I swear I don't know nothing. On my kids I don't know nothing about it.

TK Okay. Well, I'm done.

DV I'm done. Okay.

TK Um, time now is 1706 hours. (inaudible) when I walk out. If you got it in you now, get it out. This is that last tape we're recording with you. How much worse would it be to get it out? You're thinking it's going to get worse.

PV If I could tell you anything that would help me, I would.

TK Okay.

PV I'm sorry sir. I don't know anything. I don't know anything that I could say to help you out.

TK Okay. Well, we're just going to say that you should take care of yourself. You've got our number if you want to talk to us later and stay healthy. Okay? Time is now 1707.

DV Alright? Why don't you have a seat. We'll let them know you're ready. If you decide you want to talk, just tell the jailers and they will get a hold of us, okay?

END

DV,TK/mke,jdc

MINNESOTA JUDICIAL BRANCH

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DATE: June 18, 2003

CASE NO: 02018427

INTERVIEW: Captain Daniel Vujovich
Detective Tom Kreager

PHILIP RANDALL VANCE

TK The 18th.

DV The date is June 18, 2003. The time is 15:05 hours. This is an interview being conducted at the Sherburne County Jail with Philip Randall Vance. Present is Detective Tom Kreager of South St. Paul Police Department. The interview is being conducted by myself, Captain Daniel Vujovich. Philip, for the audio recording would you please state your full name, spell your last name? Why don't you slide up to the table her a little bit more so the recorder picks it up.

PV Philip Randall Vance Junior, V A N C E.

DV Philip, what is your date of birth?

PV 10-28.

DV Of?

PV October 28, 1980.

DV Okay. And you are currently being held here at Sherburne County Jail.

PV Correct.

DV Do you know how long you are going to be here?

PV No.

DV Okay. Philip, we talked to you a few times about a incident that occurred in South St. Paul. And it's a robbery homicide at Sabreens Market. The incident happened on December 22, 2003. Each time we talk to you we reminded you of your rights per Miranda or read you your rights per Miranda. What we are going to do is read them to you again so you have an opportunity

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to review them. Okay? I want you to listen carefully. You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to a lawyer and have him present with you while you are being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish. You can decide at any time to exercise these rights and not answer any questions or make any statements. Do you understand each of these rights I've explained to you?

PV Yes.

DV Okay, you're going to have to speak up.

PV Yes.

DV Having these rights in mind do you wish to talk to us now?

PV Yes.

DV Speak up a little bit.

PV Yes.

DV Okay. You also go by the street name of Florida, Florida Boy?

PV Yes.

DV Okay. I know that a lot of things have been happening in your life here, you know, since December 22. It was back when you were on the, for lack of a better word, a binge on some alcohol, probably drugs and a lot of your life was turned upside down there for a while. That was in December. Now we're coming on out here to June and with that, you know, you've been in custody for a while. You're starting to clean up, get yourself straightened around mentally. A lot of other things have happened in your life between you and your significant others. So I want to talk to you today about the robbery homicide that occurred. We have talked to you a few times and we have your statements. And you know, as we said before, we're prepared to go ahead and offer all of our paperwork to the county

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attorney's office who has been reviewing much of it at this point. And they've made quite a few decisions on how they want to proceed. We were able to pick up some additional information the other day, and you know, it may change some light on what you have to tell us. And it would maybe change what the county attorney is, you know, using for their decision process and it may change some of the decisions that they are making at this point based on the statements that you provided to us to this point. Does that make sense?

PV Yes sir.

DV Okay. One of the things that we learned is - or have been told is that you know, you may not have been the trigger man on this case, incident, that it was your friend and counterpart Dominick Johnson who goes by the street name of Stacks. And we have a couple different versions of what your involvement was at that point. And I'm not sure which ones true, but from these two people that they are putting Stacks as the trigger man. So now is your opportunity to put it on the table and tell us what happened. We want to hear your side of the story. If you want to stand by the statements that you've already given us then that's what the county attorneys are going to be making their decisions on. I'm sure you're aware of that, you know, we have some other individuals in custody right now and - for unrelated charges. And the county attorney is reviewing case files against them also. You're not the lone person in this. What can you tell me about that night?

PV All I remember about that night is being in the bar. I remember coming to the bar. But I don't remember exactly what time I came to the bar. And I remember we left with - I left with Stacks.

DV Which bar was that?

PV Buttery.

DV Buttery? Okay. And where did you go?

PV After we left?

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DV After you left the - excuse me, the Radisson. Which bar are you talking about, the Radisson or the Buttery?

PV The Buttery. Um, I don't remember being at the Radisson that day but it's more than likely I was there that day. But I don't remember (inaudible).

DV Okay. And then you were at the Buttery with Stacks?

PV Yeah. I remember that night we was at the Buttery. And we left to Vanessa's house, out to the baby's house.

DV Remember that you told me that after you - there was a period of time that you were driving downtown with some girls going to a liquor store.

PV Uh, that wasn't the same day.

DV Pardon me?

PV I said it wasn't the same day.

DV It wasn't?

PV No.

DV So it's totally different?

PV I'm talking about - yeah that was a different day. I was trying - that was around that time. I was trying to think about that day. 'Cause I kind of put it together that day was on Sunday. The liquor store not open on Sunday so it couldn't have been.

DV Okay. So you - so when you left the Radisson bar you were with Stacks, right?

PV Um, more than likely.

DV Who else was at the Radisson Bar with you that night?

PV Um, I don't remember that. I don't know. I know when I was at the bar, at the Buttery that night with Stacks (inaudible).

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DV Okay. So you don't remember anything from being at the Radisson Bar until you ended up at the Buttery Bar?

PV Honestly I don't. I don't even remember - I remember being at the Buttery that night. And a few things happened (inaudible).

DV Okay who were you at the Buttery with?

PV Stacks.

DV And who did you see there?

PV Just Stacks (inaudible).

DV Well you talked to some other people.

PV (Inaudible) me and Stacks.

DV Well. You know, the other people said they talked to you and you made comments to them. How about after all this happened? Who did you talk to about this incident?

PV (Inaudible) afterwards? I told my girlfriend about it.

DV Okay, who is your girlfriend?

PV Terinthia.

DV Pardon me?

PV Terinthia.

DV Okay, where is she at right now.

PV She in Kansas City.

DV Kansas City?

PV Um hum.

DV Do you have a phone number down there?

PV Yeah, it's in my stuff.

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DV Okay, are you able to call her every once in a while and check in on her?

PV Yeah.

DV Do you have a child by her?

PV Yeah.

DV Okay what is Corintha's last name?

PV Sims.

DV Sims?

PV Terinthia Sims.

DV When was the last time you talked to Stacks?

PV (Inaudible). This is June. It had to be like March.

DV March? Was that before you took off to Kansas City or after?

PV I really don't know. I talked to him on the phone. I was (inaudible) one time. He was still here.

DV Okay, he took off out of state too?

PV I had to leave because I had Candy, my girlfriend moved there and then I went over there to visit and see her (inaudible). And when I came back up here, uh (inaudible) nobody'd seen him.

DV Okay. Well here is what's going on. The two of you guys have been involved in some things and right now for as tight as you guys supposedly are…

PV Um hum.

DV You sure are parting your ways after this incident and every one is looking out for themselves.

PV Um hum.

DV Does that make sense?

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PV Not really.

DV It doesn't to me either. For a while there, you know, it seemed like you wanted to go down just to protect him. You were going to take the fall on this here.

PV Why is that? I'm just telling the truth to my best (inaudible).

DV What is the truth?

PV I don't know.

DV What was your involvement? How little was your involvement?

PV I didn't have any involvement. I don't know anything about this.

DV Then why would people tell us you were there?

PV I don't know.

DV Why did you tell people you shot somebody? You know, even if you buy the story that you gave the first time that you did it to get some sympathy from the bartender at the Buttery to get a drink…

PV Yeah.

DV Is one thing. But why did you tell other people you did it? Are you trying to take credit for a crime you didn't do?

PV No.

DV To look tough?

PV No, un huh.

DV Were you doing it to protect Stacks? You were going to take the fall for him?

PV No. I don't know nothing about it. If he would have did something like this he would have told me. And I'm not trying to go to jail for the rest of my life for somebody else.

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DV Here is the paperwork, based on your statements. And the only reason I have that here is it's not as a threat, it's not too con you into anything. It's just to show you that we're very serious.

PV I understand.

DV And sometimes when we talk to you I don't think you get how serious we are.

PV Yeah, at first I didn't. But I've been thinking a lot lately.

DV We're not going away.

PV (Inaudible).

DV I think you figured that part out.

PV Yeah.

TK Here's the thing. And I know you want me to bite my tongue a little bit. We've got things that we look at for you and stuff like that. Like the phone bill stuff, and you know, then we come back in and say, okay, we did the phone bill stuff, you know, and there is all these calls to Hennessy and his girlfriend right around that time. You guys…

PV What I'm saying is I was thinking about that too. I don't know (inaudible).

TK Okay. So it couldn't have been you?

PV No, it couldn't.

TK Okay we go to Stacks with the same stuff and it's his cousin. You know, you think he's closer to his cousin and shit like that. No, it wasn't me. Now is there a ghost in the back fucking seat of the car dialing this damn number or something?

PV No.

TK You see what I'm saying?

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PV It was my - it was my - it was my phone. I don't understand. I didn't - if the number is on there I didn't dial it.

TK What I'm saying is maybe I take my job too personal and I really want to get over on this thing and understand it. Right now we are (inaudible) from the crime to the court house with you guys. The road is kind of like this. Right now I want that line just a straight date and you can do it for me by telling me what happened. Because these phone calls and things that you say are going to help you. Because, okay, they're your tool for telling me what happened. I know that your phone was used to call this guy, three, four times, a couple times right before, a couple times right after, the time of this robbery. At the time he's being called we know that the south, the calls are being made on the south side of St. Paul. We know that they are going right over there too. And that's where they live. They were living right over there by the store. So all this stuff has you connected right in the area right at that time. And we know that they're not your people. They're Stacks people but he's (inaudible), I didn't talk to them.

PV I don't know.

TK And I'm saying you, right, you told me to check the phone.

PV Yeah.

TK I did. And I'm back with you with the phone stuff. Help me out.

PV I'm trying to. But I didn't - I…

TK The reason we got this new information is because Stacks is doing the same thing. I don't work for you guys. I don't give a shit. I want the right guy in jail. Stacks gave me some stuff to work on. We split it up. Some guys checked some things out and here it comes back harder on Stacks with a story that they've heard from Stacks was about him shooting and you were just grabbing the money out of the register.

PV No.

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TK So what I'm saying is that when you give us stuff, yes, we don't throw it in the trash can. You give us something decent I'll go run it down. You know? I do take this personal. So does - so does my boss. He's just not as vocal about it. And at no time, you know, we want this thing straight line to the end. And as hard as it may be for you to believe and, you know, especially when you're in here, because you're going to get all kinds of advice from the guys down here. We know that. It happens. You can't help but talk about what kind of shit you're in when you're down here. I'm telling you, these guys ain't, they're not going to be sitting next to you when you're in front of the judge. They're not. You know? We're at least going to be in the room. Now some of this stuff that you're telling us is believable. Some of this stuff we know is just horse shit. I mean it is. You know. And you're still in this - I think you're still in that spot where you don't know which way to go with this thing. You know, you believe that Stacks is going to hold up. I don't know if he will or not. He's giving me stuff that keeps turning around on him too.

PV I don't see how. (Inaudible) I would remember something like that.

TK How does - how does these guys - how these guys that think they commit the perfect crime always get caught?

PV They (inaudible).

TK I'm telling you on TV, in books, wherever you read it, you know, true life. How do they always get caught? They confide in somebody they think they can trust and they tell us.

DV Why is that, you know, we get a phone call from Colleen.

TK All right.

DV Telling us what you said?

TK Fine.

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DV And a while later we get a phone call from Melissa telling us what you said. And then we talk to the people out on Minnehaha. We talk to friends out that way and they tell us what you said. And none of these people know each other. So they can't - they're not going over and calling someone up and saying hey, here's what I heard. So tell the police this about Florida. Tell the police this about Stacks. It's not happening. These are all independent calls with each other. So you know, even if you buy the theory, which isn't a very good one to get a free drink, but even if you believe that, why would you keep making those statements to everyone? Why would you make the statement to one lady that says yeah, they're investigating me for the murder. They don't have the evidence, they're not going to get me, I'm fine.

PV I don't know. I remember after you all came, when you all came and took me to South St. Paul at first I told you (inaudible) I was like, I ain't going to start no bullshit.

DV Do you think you were that wasted that night that you don't remember?

PV No, I wasn't.

DV So you weren't wasted?

PV No, that's why I…

DV Okay so we take alcohol out of the defense here.

PV No, hell. It's no - it shouldn't even be a defense. I wasn't even drunk.

DV Okay so you weren't drunk on the 22nd?

PV No. That's why I went - I went to the Buttery, to try to get drunk.

DV Okay, why don't you remember being at the Radisson?

PV I don't know. Um…

DV You were with Stacks and John Martin.

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PV We used to go to the Radisson, no, we - us three used to go there all there all the time. But I don't remember that specific day because I went so many times.

DV So the three of you were at the Radisson that day. Do you remember that?

PV I don't remember necessarily (inaudible) John but I know if you said I was there with two other people…

DV You told us before you were there.

TK You told us a guy tried to dump a bad check and bought some drinks for you guys.

DV but now you don't remember it.

PV No, didn't get that, I'm saying if it was a check wrote from John that day somehow you all could find it, then we was there. I don't want to agree to nothing that I ain't (inaudible).

DV Well we have a witness that puts you there too. Besides your other statement that says you were there. You don't remember all the statements you've given us do you?

PV Yeah I do.

DV Pardon me?

PV I'm reading.

DV Are you reading them?

PV Um hum.

DV Do you believe them? Do you believe you said all these things?

PV Not on some stuff.

DV So you were with Stacks. And you were with Stacks at the bar.

PV At the bar. At the Buttery.

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DV At the Buttery. And you were with Stacks before the Buttery.

PV At the Radisson?

DV you left the Radisson a little bit after eight.

PV A little bit after eight.

DV Where did you go?

PV I don't remember.

DV Were you with Stacks?

PV I don't remember. If I left with him, I'm always with them so I'm trying, I don't…

TK And you weren't drunk by the time you got to the Buttery.

PV No.

TK Then you were looking to put a couple of drinks in you.

PV Yeah.

TK Okay. Was the bar empty or just a couple of people or?

PV It was Sunday. It was like kind of empty.

TK Were there other people there or not?

PV There might have been maybe a few people but it wasn't like it usually is. It was on Sunday. Usually it's kind of slow on Sunday.

TK And I think we covered this before. Do you know a dude named Monk?

PV I keep hearing that dude's name. I remember you told me about - you told me Maynard or something.

TK Yeah, Maynard.

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PV Maynard Cross. I've seen thing in the paper.

DV You're saying you don't know him.

PV I don't know him. You asked me about Trevor. I told you I know Trevor.

DV Do you know him?

PV Hell no. I never seen him ever.

DV Never saw him ever?

PV I don't even know who that is. I know who Trevor is.

DV Do you know Trevor?

PV Yeah. That's why when you told me about Monk and Trevor, I know Trevor but I don't know that guy.

DV Where did you see Trevor last at?

PV The last time I saw Trevor was like a couple of days before they came and got me.

DV Okay. Where at?

PV Uh, I seen him downtown once. I seen him downtown. He was getting on the bus. And then I seen him like on the east side off of Payne.

DV Did you see Trevor on the night of the 22nd when you tried to get the drink from Colleen?

PV No.

DV He was there.

PV No he wasn't there.

DV He was at the Buttery.

PV I remember that. Because when I was there that night (inaudible) me and Stacks.

TK All night?

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PV We wasn't there that long. We was only there maybe uh, maybe (inaudible).

DV What time did you leave then?

PV About 11:00. Probably a little after 11:00, or 11:00.

DV Did you tell me 2:00 before?

PV 2:00 what?

DV 2:00 AM before? 1:00 AM?

PV No. I ain't never said…

DV You left at 11:00?

PV Yeah. Went to Vanessa's house. Got in the cab, went to Nikki's house.

TK Did you do anything over at Vanessa's house?

PV No, we (inaudible), we was there just long enough to call a cab.

TK Stacks, Stacks used to see Vanessa.

PV (Inaudible).

TK Does he have a kid with her?

PV No.

TK He doesn't?

PV No.

TK Did he have a problem with her or something? I thought somebody had to climb around trying to break in the place or something, or am I thinking of somebody else?

PV Breaking in there? The police came…

TK Did she ever call the police on one of you guys or a neighbor called the police on you?

PV Yeah, that was (inaudible).

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TK What was that about?

PV That was, uh, that was the day before Christmas.

TK Oh yeah?

PV Yeah, that was, I was, I was - we had got - that's a long story. We was at this like kind of like party and was getting all drunk and shit. And me and Stacks kind of - I got into an argument with some people there. It was Stacks' cousin (inaudible) like his cousin kind of told them (inaudible). I left (inaudible) somewhere and I forgot I left my gifts at Stacks' house. I go over to her house, I knock on the door, beat on the door and nobody comes to the door. So I climbed up to the back and got on the balcony and beat on the door. By this time it was like late, 2, 3 o'clock, thinking maybe Stacks home, I was going to get all my stuff for Christmas, call me a cab and go home. He said he wasn't there and people heard me beating on the thing and called the police.

TK They give you a disorderly or something or did they just get you out of there?

PV No, they just ran my name and uh, they called, they called a cab for me.

TK Okay.

DV What kind of car does Vanessa have?

PV She ain't got one.

DV How about her mom?

PV Her mom ain't got no car.

DV Huh?

PV Her mom ain't got no car.

DV Whose car have you been - whose car do you use then?

PV Whose car do I use?

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DV Did Stacks ever have a car?

PV A long time ago, like three years ago. A little Chevette.

DV What color was that?

PV Blue.

DV Blue?

PV Little blue car.

DV That's the only car he's ever owned in the last three years?

PV Um hum.

DV Why did you tell me he had a maroon car before. You called it a bubble.

PV No it was Bird, Bird dropped us off.

DV Who is Bird?

PV That's when I told you guys (inaudible). That's his cousin, his other cousin.

DV Bird they call them?

PV Yeah.

DV What kind of car does Hennessy have?

PV I don't know. I don't know, Hennessy always have a lot of cars.

DV Does he?

PV Yeah.

DV Name a couple.

PV A lot of different kinds. He had a (inaudible). I think they said he had a (inaudible) but I don't remember what color it was. I seen him get in an Intrepid, Cadillac, he had lots of cars.

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DV What was the car you saw him with last?

PV (Inaudible). Hennessy, what kind of car did he have? I don't know, he had a (inaudible) but I never - I just heard Stacks talking about it. I never seen it. All of his cousins, Stacks' cousins got like different cars.

DV What's your definition of a bubble?

PV Like the kind of car the police drive.

DV The Fords or the Chevys?

PV Yeah, like the ah, like you all squad cars.

DV (Inaudible) Ford cars.

PV Yeah.

DV You're calling that a bubble?

PV Yeah.

DV Okay, what kind of grey car did you have?

PV Grey car? No, one of his - his other cousin had a grey car.

DV Which cousin?

PV Cousin Jack.

DV Cousin Jack?

PV Yeah.

DV What kind of grey car?

PV Um, it's like a Ford, like an Oldsmobile or something.

DV Is that whose car you were in on the 22nd after you left the Buttery? You got in the grey car?

PV No, I didn't get in no grey car. I didn't get no ride that night. I left the Buttery and walked to Vanessa's.

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DV Did you show up at the Buttery in a grey car?

PV No.

DV What's Jay's real name?

PV I thought it was Jackie.

DV Huh?

PV I thought it was Jay.

DV What's Hennessy's real name?

PV I think it's Richard.

DV Richard?

PV Yeah.

DV How do you get along with him?

PV With Hennessy?

DV Yeah.

PV I don't know. I never had no problem. He the only one out of all his cousins I ain't never had no problems with.

TK How does Hennessy or his cousins get so many different cars?

PV I don't know. They all (inaudible) the, I really don't hang out with them too much. I'm always with Stacks. Stacks always want to go hang out with them.

TK They all hang out over there on Como?

PV Oh, yes. (Inaudible) or whatever.

TK Well does Jay live somewhere else?

PV Yeah, that's where Jay stay.

TK what about the other one you mentioned?

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PV Who, Hennessy?

TK No, not him.

PV Bird? I ain't seen him. The last time I seen Bird was the night him and Stacks dropped me off at my house.

TK You see Hennessy's girlfriend around much?

PV I don't know who his girlfriend is.

TK She doesn't come out and party with him, or play or whatever (inaudible).

PV I never even seen his girl.

DV How do you get a hold of Hennessy when you want to talk to him?

PV Uh, I ask Stacks to get a hold of him or he got a - I used to know the number for Jerry's house or I just go over there and (inaudible) the house over there.

DV Well on that night you were calling a number where you could reach him at.

PV I did?

DV And they were calling you.

PV No, they never called me. I'm saying, man I'm trying to figure out. Look, this is what I'm trying to put together, I'm just trying to (inaudible). Uh, that one night - I don't know if this was that same - I don't know. I don't want to be - I don't - one night I left my phone and Bird called. And it was me, Bird and Stacks. I was drunk man. I was out - they dropped me off and I left my phone in his car. And Stacks had my phone. I remember I kept calling Stacks to bring my phone back. And he kept telling me, oh, I'm out too far. I can't bring it, I'm too far (inaudible).

DV When was that?

PV I don't remember. I was thinking it might have been the day before that I was going to try (inaudible).

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That's what I'm thinking. I don't know (inaudible) but you say we were at the Radisson together. Because I remember one day Stacks had my phone all night and all day and I got my phone from him at the Buttery. One day I was pissed off 'cause I couldn't find him and he wouldn't answer my phone. (Inaudible) at the Buttery he gave me my phone.

TK Well did you call those girls down in Eagan before you went down there to say you were coming?

PV Uh, yeah. I think we called. But we - I don't know. We should have, because they knew we was coming.

TK Yeah?

PV Yeah. (Inaudible).

TK Yeah so it's probably not the day he had your phone then?

PV Probably (inaudible).

TK Because that call is on the record, calls down to Amy in Eagan and stuff like that.

PV It should be. (Inaudible).

TK Well they are on there. That's what I'm saying.

PV Yeah. Yeah.

TK So this is - yeah you were at least with them when either you or he was calling down there and (inaudible).

PV With (inaudible)?

TK Yeah.

PV Yeah, I was (inaudible).

TK Okay so the phone wasn't really missing that day. It could be the day before or something.

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PV No. Well I don't know. I know one day I left and he had my phone and I didn't get it to the next day when I was out (inaudible) the Buttery.

DV What kind of car does Bird have?

PV Last time I seen him he had like a maroon, burgundy bubble. That's what (inaudible).

TK One thing that's been bugging me a little bit and the same thing I told you before is, most of the stuff that we're talking about started with what you've been saying, or at least that time. Now the stuff about the four, five shots, south side, Winchester, would you explain that to me one more time so that I'm getting it right?

PV I didn't say that.

TK Well I heard you explained it to - was that when I was in the room or to somebody else?

DV Explained it to me once.

TK What did…

DV What did you say then? If you didn't say that, what did you say?

PV I don't remember honestly. I remember I did a lot of talking in the car with Melissa that night but I don't remember saying no…

DV Were you trying to impress her?

PV Um, maybe, yeah. I was just - I don't know.

DV Why would you say you shot a guy five times in the back on the south side with a Winchester?

PV No I didn't say that.

DV What did you say?

PV I know I told uh, I think I told her I had a couple guns and shit like that. But I didn't say nothing about…

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DV Yeah you did. Where are those guns at?

PV I was bullshitting. I didn't have no guns.

DV How many guns does Stacks have?

PV Well at that time, he didn't have, he didn't have no guns. I - that one gun that I had that was the only gun that I had.

TK Was it - this thing about, what I saw in the one transcript, I don't recall if I was in the room when you explained it to Captain Vujovich, that you were talking about something else when you said four or five on the south side.

PV Oh, no. That was um - it was just like a little thought I had thought about. If there was any way, but I thought about it. I don't know. It was just a kind of funny coincidence.

TK What kind of coincidence?

PV No it was just my sister, her boyfriend or whatever is like I know he stays, he stays on Winchester Street in Chicago on the south side. So I don't know.

TK Have you ever been there?

PV (Inaudible) been there.

TK Have you been to Chicago?

PV I went (inaudible) times.

TK Yeah, you're from Florida. You're not - do you ever go down in Peoria with Stacks?

PV No, I never (inaudible).

TK How many cousins does he have?

PV A whole lot of them.

TK They all come from Peoria up here?

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PV Um hum.

TK He's got more down there I guess. It must be a big family.

PV Yeah.

TK So does - so whatever you said about the Winchester Street and south side of Chicago, that was just…

PV No I'm just saying, if it was even said, that's the only kind of - it was funny because that was a coincidence. But um, I know I didn't say nothing about shooting nobody with a Winchester.

TK Do you know if there is a Winchester Street there for sure?

PV I know that's what she - that's the street he lives on.

TK Because that's what she told you?

PV No, he told me.

TK Your sister.

PV He told me.

TK He told you.

PV Yeah.

TK So you know who the guy is and stuff. It's your sister's husband?

PV Her boyfriend.

TK They been together a while?

PV Yeah, they got a kid together.

TK Okay.

DV What's Dante's street name?

PV Who?

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DV Dante.

PV What about who? Dante?

DV They call him Dante. One of Stacks' cousins.

PV Dante? Who is that? I don't know who that is. He got a nickname?

DV Pardon me?

PV He got a nickname? I don't know none of his cousins named Dante. I know almost all his cousins. I don't know him.

DV Well do you think Stacks is setting you up on this?

PV I don't know what to think honestly. I'm just trying to tell you the truth, honestly.

DV Why would you tell Sonya that don't worry, I have an alibi?

PV Have an alibi?

DV When she asked you if we were investigating you for this robbery homicide, you said don't worry, I already have my alibi.

PV Uh, I don't know. 'Cause I thought - 'cause I'm thinking I was at ah, and still to this day I'm thinking by that time I was over on Minnehaha. I used to go over there every day.

DV So when were you on Minnehaha that night? What time?

PV I'm saying earlier that day. Well uh…

DV Where were you at 9:30 that night? We already know who you had called. Where were you?

PV I don't know.

DV This is the problem.

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PV I know. That's - and I've been trying to think. I've been so hard trying to think. Trying to make (inaudible). I don't know. I thought I was over on Minnehaha. Because I saw (inaudible). That time but, that time I was going over there every day, every day.

DV (Inaudible).

PV I was going over there to see Darlene.

DV Darlene?

PV Yeah.

DV Who is Catrell?

PV That's her cousin.

DV Who is Kenny?

PV Kenny?

DV Kevin.

PV Kevin, that's her little brother. Catrell is her little brother.

DV Her little brother?

PV Yeah.

DV Does he live there too?

PV Uh, yeah I think so. I think so.

DV Who is Regina?

PV Regina? Who is Regina? Regina is my, my girlfriend's brother's girlfriend. That's the only Regina I know.

DV Whose gun do you keep there?

PV Keep where?

DV On Minnehaha.

PV Oh, um, that was Kenny's gun.

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DV Which one?

PV That was Kenny's gun, the gun I got from Kenny.

DV Okay, we want to talk about…

PV (Inaudible).

DV (Inaudible) that gun.

PV All right. That's what you said.

DV That was Kenny's gun?

PV That was the only gun I had, yeah.

TK What about Stacks? You said you knew they didn't have any guns at that time. We heard that he had two guns back around that time that he had hidden. He may not have had them with him but did you know that he had a couple of guns hidden?

PV No, he never told me about no hidden guns.

TK You ever see him hide guns somewhere other than a house?

PV No. I seen him - I seen him before with them (inaudible) it was a long time ago.

TK Did you hear about when he had that beef with the guy in the car and he threw some shots at him?

PV In the car?

TK Do you know if he shot at anybody ever?

PV No.

TK No, you don't know or no you never…

PV No he ain't never, he ain't never told me nothing like that. He tells me a lot of stuff but he ain't told me nothing like that.

TK There is a few things that he hasn't told you about.

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PV It sounds like it.

DV Well what's he saying about this?

PV I (inaudible) talked to him. The last time I talked - we stopped even talking about it. But at first we were kind of like, when I told him he thought it was funny, you know what I'm saying?

DV Sure, he was out walking around the streets at that point.

PV Yeah he thought (inaudible).

DV He was laughing while you're sitting in jail.

PV Yeah, he thought this thing was funny. And then I'm like, I'm like, no hey dude this is serious. You know what I'm saying? He's like man. But I told him shit I ain't, I don't know what the frick happened. I don't know (inaudible). And so, but then when you all came out there to see me at the workhouse and then I got out, he called me at the house and he told me all (inaudible) whatever, he was like uh, he knew I wasn't playing. You know what I'm saying? I wasn't really worried about it because, you know (inaudible) I don't know nothing about it.

TK Well we don't want you to worry about things that you weren't involved in, honestly. And to tell you the truth, I'd rather be sitting here talking to you. I know you may not want to be talking to me, but uh, I sat and talked to Stacks, you know. And I'm tired of this 19 year old I got the world by the balls fucking attitude and that I know everything. You know, because he doesn't. For Christ sake he's sitting his ass in jail. You know? He's not the king of the world. And I don't know - this is another thing that might be getting you confused here. You know, maybe on the streets he's got his shit together and he's, you know, he's smart and he gets around and he knows how to get things done. But he's in a situation where he - he don't know shit. And it's, it's kind of hard for me to sit there and take that from him. Talking to you though, you know, you don't give me that kind of attitude that I'm an asshole all the time. You know, I

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know that I grate on people and I try not to be too offensive all the time. But you're at least trying to tell us what's going on. But I keep coming back, and I know you - that at times you're trying hard to keep us filled in on how you're doing. But we keep coming back to we knew right away that night people were calling us from two different places about this shit.

PV (inaudible).

TK And that stuff came out of your mouth and you can't really even deny it. And what you're telling me about three (inaudbile), I've got to tell you…

PV It's got to be one in a million.

TK I would have dropped a fucking hammer on my foot in front of the bar, maybe said that fucking hurt, I need a drink and I'm broke and I would have gotten a better - I would have done that before I come up with that.

PV I'm not going to deny this. I never had denied that.

TK (Inaudible). Well you started out denying it but you put (inaudible).

PV Saying that I said that.

TK Yeah the first time we… but that's small (inaudbile). We're here now.

PV And I never (inaudible).

TK That's what I keep coming back to. And I appreciate you don't give me all the attitude that you think I'm an idiot and you got the world by the balls. You know you're in a spot.

PV Uh huh.

TK But you're in a spot because of you, not me.

PV Uh huh.

TK I'm just working the job. But (inaudible) I take it kind of personal. I knew this dude. He'd say hi to me. And he always had a smile and a wave. Well he's a

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(inaudible). That's what he is. And he found a niche where he belonged in the middle of his own little store going on. What is your niche going to be man? Wearing this orange fucking shit the rest of your life? You gotta think serious on this shit. You got the time now.

PV I'm trying. I…

TK (Inaudible) like the last time we told you, the paper is there.

PV I understand.

TK Are you going to do it that way or is it going to go closer to what really happened because you told us what really happened?

PV I don't know what happened. I, I promise you. I don't know.

TK Don't be a silly ass in orange the rest of your life.

PV I don't want to be. I'm so tired of sitting in here it's ridiculous. I don't, I don't…

TK (Inaudible) getting long isn't it?

PV I don't know what to say. I'm trying - I'm answering every question I can that you give me to the fullest of my knowledge man. I don't know nothing.

DV Well, were you passed out in the car when it happened? You woke up, they told you what happened, and it's oh shit? Now what? Is that your involvement?

PV No, I don't know what to think. I don't blank out a lot of times but I would have remembered some shit like this.

TK I'm telling you, you tell us that you - that Stacks did it and we already got (inaudible).

PV (Inaudible). I can't sit here and tell you that he did it. I don't know, I don't know.

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TK You tell us that I went in there and ripped off some money out of the register and he was popping away. I didn't look, I didn't want to see it, I got the fuck out of there. We already got that corroborated with somebody else. Somebody else has already told us.

PV I didn't do that. I didn't do none of that. I never even been to that store ever in my life. Ever, ever.

TK And I don't serve up many soft ones. I'm serving one up for you now. I'm telling you if it comes out that way the story is already corroborated, the thing is done. Because somebody that is way on the other side of this thing has that kind of information.

PV I don't know. This is…

TK If that's…

PV If (inaudible) then I don't know who did it. Because (inaudible).

TK You (inaudible).

PV No.

TK Do you know what it takes for a cop in St. Paul working a special detail to call me up the day before Christmas and talk to me about this shit? It has to be some hot fucking news man.

PV Yeah. And you know the (inaudible) messed up (inaudible) Stacks didn't even know I told Colleen that.

TK Well you know the other strange crap?

PV No.

TK Some of these people that you said weren't in the bar…

PV Yeah.

TK They're telling us the same shit.

PV No.

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TK Now, slow down, slow down. Because I'm a skeptical bastard on top of everything else. I don't believe anybody. So somebody comes and tells me this shit. I say, oh fuck, you know, I've heard this. I don't want to hear it again. Why should I listen to you? Where did you get it? How do I know, you could have been there. You talk to Colleen.

PV Who talked to Colleen? They did?

TK They told me to.

PV Oh.

TK And I'm going to believe them when they say Colleen. She doesn't know who (inaudible). He knows he heard it (inaudible). He said he was there with the other guy. The other guy tells us the same shit.

PV (Inaudible). I'm telling you…

TK Now what makes it real is you know, if you said you don't know who he is, but you know what he, what Monks about, right?

PV No, I (inaudible).

TK Do you know where he's at?

PV (Inaudible).

TK (Inaudible).

PV When you told me his name, his name stuck in my head. Then I got my transcripts and I seen his name on there. Then all of a sudden, I read the paper every day. I seen his name in the paper. And I read it.

TK You understand when this guy calls me up and says these guys (inaudible) and I go up to him and I say, hey man, could you possibly tell me that you were in the Buttery that night and you know Vance and that he said this shit? Hell no, I said, what do you got? I was in the Buttery. I was there. I heard it.

PV No, he couldn't have heard shit from me.

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TK How could he get that shit without being there and hearing it and seeing it?

PV I don't know, because when you asked me, who did I tell this to, (inaudible) when I first heard about it, (inaudible) I knew it was real but I'm thinking maybe (inaudible). You know what I'm saying, like you said, you all guys are never going to go away. I mean, I'm thinking you all just going to come at me, maybe, maybe uh, you know what I'm saying, then probably eventually find out somebody else whoever did it. You know what I'm saying? (Inaudible). I remember that I told Stacks about it and then one day me and Stacks when over to Jay's house and we told Jay about it. I told Jay I think it was Hennessey. And Jay told him about it, (inaudible). He told all them about it. We just told him about - I told him what you all told me. You know what I'm saying? That's all I told him.

TK About the Buttery or what?

PV No, about the - what…

TK (Inaudible).

PV Yeah I just told them - I told them that they can't (inaudible) from the ADC, they took me over here and they gave me a test, they asked me questions like this, (inaudible). That's all I told them. I told them that. I never told them nothing like, like put me in a position like I'm telling them like I did it, you know what I'm saying? But, you know what I'm saying? I don't even know (inaudible). I don't know who. Like I said, I know Trevor.

TK Yeah.

PV There's no denying I know him.

TK Was Trevor there?

PV No, hell no. I don't even remember even being in the bar with Trevor ever. I know Trevor from the East side. I know Trevor. I used to work with Trevor. But I would have remembered if he was there.

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TK Well (inaudible) Trevor, just running around or did you work down there with him?

PV Who? Who do I, me?

TK (Inaudible).

PV I'm saying…

TK Yeah.

PV Where did Trevor get (inaudible) from?

TK No, you.

PV Oh, yeah I used to work with him. I used to work with him.

TK Down in Presbyterian home? (Inaudible).

PV Yeah.

TK His girlfriend like your ass?

PV Uh…

TK You said you were drunk and stupid over there. She don't like your shit.

PV Yeah she got pissed off at him.

TK She got a kid by him now.

PV Yeah.

TK That's fairly new isn't it?

PV Yeah, she got, she got real mad at me one night.

TK Over drinking shit or?

PV Yeah, because I came over to his house real late one night. That night that I was (inaudible).

TK Down (inaudible).

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PV To Minnehaha that night when they was following me. And Melissa left.

TK Yeah.

PV Because I told her I don't live there. So when she left, that was, I was going to try to get a ride for them to take me home. And when she left, I ended up leaving. I ended up having to walk up up to Ira's house. You know, like one something in the morning. And she got real pissed off cause I (inaudible) because I was, you know what I'm saying, I was kind of fucked up.

DV (Inaudible) that night?

PV Yeah. Or that night, her grandma, yeah, she didn't want to let me in because Darlene wasn't there.

DV Was Darlene there?

PV No.

DV How long did you stay inside?

PV Uh, about five, ten minutes maybe. (Inaudible). I was trying to go get the thing, and, but I didn't know how to tell her grandma, you know what I'm saying? I didn't want to like, ah, I going to go get this gun I put in here, you know what I'm saying? Because like she didn't even know it was in there. But I was trying to go get it. You know what I'm saying?

DV So you never got it?

PV huh?

DV You never got it that night?

PV Yeah, I got it.

DV How did you get it?

PV I told her grandma.

DV (Inaudible).

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PV I told her grandma that I put something, I put something in the room, I need to go get it. And she was like, she was like, no I'm not going to let you in her room, you know what I'm saying? And I was like, I put something in there but I told her that I just was like, I put something in there I need to go get. I told her that Darlene didn't know I put it in there. And I told her I put it in there and she told me to get it and get out of her house. And I got it and when I came out Melissa was gone.

DV Okay, when you say you're talking about a gun, which gun?

PV Uh, the 22, the gun that I'm here for.

TK Getting back to these, now before you told us that (inaudible). Now you're saying you're not really sure you were at the Radisson but if we had a (inaudible) from John that showed that he was buying drinks there you probably were there.

PV (Inaudible). Yeah.

TK We've got (inaudible).

PV I was there. I was there.

TK Okay. Uh, you left there I think you told us before around 8 o'clock or something.

PV Yeah because I think she said, uh, this is my memory (inaudible). I remember her saying going out of town or something. I think she got off of work early or something.

TK She was having some problems at the house or some shit like that.

PV Something happened. She had to leave early. I know that.

TK Okay. Then before you told us you went outside and you ran into - or was it John's girlfriend or something (inaudible).

PV That wasn't the same day.

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TK That wasn't?

PV No, that was the day - because that was the day I got in the car and went to the liquor store. That wasn't the same.

TK So John didn't have a gal? Because he still - is there a steady girlfriend, John?

PV (Inaudible).

TK She's got a car?

PV No, she ain't got no car. She's a (inaudible).

TK Well who had the car that day that you were thinking of that you took the car?

PV Oh, that was one of Amy's friends. Some girl that Stacks knows.

TK Oh now they're one of Amy's friends?

PV Yeah.

DV Is that Yvonne?

PV No that's not her. But Yvonne was there that day. Yvonne was in the car that day.

TK But you don't think that was that Sunday that the guy was (inaudible)?

PV No, because we went to the liquor store that day.

DV What kind of car was that?

PV Uh, a blue car, a Corsica, dark blue.

TK Now get back to the Buttery. And some of this stuff, we have - some of the people there, you know, are pretty decent people and remember some things and stuff. They weren't (inaudible) and stuff. They said that you guys were getting a ride that night. And it was a decent looking grey car.

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PV A decent looking grey car?

TK Yeah.

PV What's a decent one?

TK Something like a Toyota, not too old or something like that.

PV No.

TK Do you know anybody with anything like that?

PV No.

TK What kind of car does that gal in Maple Grove have?

PV I don't - she's got a Camry.

TK What color is that thing?

PV A gold car.

TK Kind of gold?

PV Yeah.

TK She wasn't down driving you around?

PV (Inaudible).

TK Who would have been giving you a ride that night? Because you guys, like I said, people saw you getting out of that car.

PV Grey car? Jay had a grey car, but I only rode in that car one time.

DV Who is that?

PV Stack's cousin.

DV Which cousin?

PV Jay, the one (inaudible).

TK I mean that night, do you...

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PV I remember, I remember bits and pieces but not (inaudible).

TK (Inaudible) we can figure out who gave you a ride, okay? Then we can work back from that, find out where you were at the time we're interested. Okay?

PV A grey car?

TK And the way you're talking it can't hurt you, right? Because you weren't in South St. Paul robbing the place.

PV No.

TK So we can work back from this car, figure out who was driving it up to the Buttery. Then we can figure out what time frame you were with that person and where you guys were. That's what I want to do. I need your help to do that.

PV I'm trying to. (Inaudible) now. It was hard trying to figure out then when you talked to me. I don't know anybody with a grey car. The only grey car I know is, I remember Bo had a grey car. (inaudible).

DV Who is Bo?

PV (Inaudible).

DV (Inaudible).

PV No, no. Uh, (Inaudible) only person I know with a grey car. And his car is not really that new.

TK I'm not saying exactly new, but it was in good shape.

PV Good shape, oh.

TK Yeah (inaudible).

PV The only friend I know with a nice car, his car…

DV You said Hennessy had one.

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PV He did - it wasn't grey though. A grey car? Who do I know with, I'm trying to figure if (inaudible). I don't remember a grey car. I don't remember getting dropped off. I don't know. I was (inaudible) arrived there in a car but I'm trying to remember what in particular.

TK I mean, if you're riding around in a car, you're just bopping around downtown between the Radisson and the Buttery.

PV No, no. That's what I'm saying. If I was at the Radisson I wouldn't hopped in no car.

TK You were getting out of a car, you must have been coming back from someplace.

PV Yeah, I had to have been there with someone else. Yeah, and I (inaudible) business, yeah.

TK Yeah, a little traveling.

PV Yeah, I had some.

TK Does that help you at all, where you might have been? You know, because before you said you were watching some football.

PV (Inaudible). I never miss football. That's what I'm saying. I don't understand. I wasn't over at Minnehaha, 'cause I watch football every Sunday, never miss.

TK Over at Minnehaha is where you sit to watch it?

PV Wherever I go I always make sure - I want to make sure, that's why I go to the (inaudible) bar. That's when I was in the bar, more than likely I was in the Radisson that night because I always watch football every Sunday. I always go to the bar on Sunday and watch football.

TK Yeah? And you did after that, did you go someplace - well it was around 8 o'clock. That's probably when the afternoon games have ended. I don't know if there was a nighttime game that night.

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PV I'm trying to, Sunday, it's usually boring downtown on Sunday, so. I don't know. I remember going in the bar that night though. But you know what though? I keep trying to (inaudbile), I keep thinking. I keep seeing myself going into the bar without Stacks though.

TK Into which bar?

PV Into the Buttery.

TK Without him?

PV Yeah. Because every time I keep trying to go farther I keep seeing myself coming in the Buttery. I remember walking out, walk past the Buttery and I remember I was looking for him for something. That's why I keep thinking that's the night he had my phone that night because I was looking for him when I come there. But if I was at the Radisson during the day it couldn't have been that day. I remember I came into the Buttery. I did - he wasn't with me that night. He wasn't with me then, after then. Because I remember I came in the Buttery. He was sitting in the booth and he was drinking already. I remember he had some drinks on the table. He was sitting by himself and he was drinking by himself. And I remember I asked him. I said Stacks, buy me a drink. And he goes, he was like, no, like he was pissed off about something. So he was like, no. And when he can't buy me a drink or whatever, he ah, that's when I went over to Colleen and asked Colleen for a drink.

TK Now you're saying, does Stacks have, you know, he's got Dominique that he's got like two kids with her.

PV Yeah, yeah.

TK He got any other kids?

PV Uh, no.

TK He doesn't have a kid, another kid?

PV (Inaudible).

TK Who you got kids with?

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PV I got a kid from TeTe, and I got…

TK Now TeTe is the one…

PV In Kansas City.

TK She went to Kansas City. But she used to live up there also with - wherever it was I seen you up there at the apartment.

PV Oh yeah, (inaudible), yeah, yeah.

TK Her, yeah. Okay, so there's TeTe. Who else is there? Are there other babies out there?

PV Yeah, well I got some from another girl named Terri Lynn. She lives (inaudible), she's over on the East Side.

TK Terri Lynn?

PV Yeah.

TK L Y N N?

PV L Y N N.

TK How many kids you got with here?

PV Just one.

TK Just one? Got any other kids?

PV No.

TK She's on the East Side? Terri Lynn? Are you still in contact with her much?

PV No, I don't go over there, rarely, rarely, rarely, rarely see her.

TK How old is that kid?

PV Uh, two. We don't get along at all so I don't ever even talk to her.

TK What is that baby's name?

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PV Uh, Trey Shawn.

TK Trey Shawn?

PV Yeah.

TK A little boy or girl?

PV A boy.

DV How many kids do you have with Sonya?

PV I ain't got no kids with Sonya. She said she's pregnant or whatever. Um, I ain't seen her in a long time either.

TK Does TeTe got family out in Kansas City or why did she end up out there?

PV (Inaudible) family.

TK But she was up here when you met her?

PV Yeah, she lived up here and then (inaudible).

TK Is she going to stay down there or what?

PV Yeah, she lived here (inaudible) got a house and everything.

TK Oh yeah? That's good. Where abouts does Terri Lynn live? Did you see her at all during this time?

PV All what time?

TK The winter time, last winter?

PV Um...

TK I don't know, how bad is it? You send a Christmas card over there or something for your baby or anything?

PV (Inaudible) I ain't getting (inaudible) in trouble. (Inaudible).

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TK I mean, did you call or see her at all this past winter?

PV Un huh. I think I might have seen her maybe once or twice. I seen her in the summertime though. But I don't' think…

TK Well I mean when you say see her, did you go over there to see her or did you run into her downtown her or?

PV Oh yeah. I haven't seen her, (inaudible) went over there maybe once, maybe once, but that's it. She stay right here on the corner of York and (Berg). She in a big red (inaudible).

DV York and Berg?

PV Yep, right on the corner. You can't miss it. Upstairs. Is this the store here?

TK Yeah.

PV That one? Can I see?

DV Sure.

PV No I don't want to see that. Can I see the store?

DV Now do you remember it? Maybe you just never heard it called that.

PV No it ain't that. I never been there before. I know, and I know (inaudible) for a fact I've never been there.

DV Ever hear of Neiderkorn's?

PV Who?

DV Neiderkorn's store?

PV Neiderkorn? Where is it?

DV Philip, it's getting to the point.

PV I know.

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DV What do you want the attorneys to base their decisions on? Base it on what you're telling us now?

PV I'm telling the truth.

DV Or them to base it on, you know, what's, what they, what we've learned so far.

PV I'm telling you.

DV I don't understand why, you know, why are you so loyal to this guy? Why?

PV I'm not. That's my (inaudible). I'm not going to go to, I don't want to go to jail for murder.

DV Well.

PV And I know because I didn't, you know what I'm saying, I didn't do it. I'm not going to try to protect nobody, you know what I'm saying?

TK Well what we're saying is we'd rather go to bat with you, with your statement, (inaudible) all the rough spots smoothed out, because we've already got it corroborated and this is the fellow that, this was his idea. It's more his nature and in fact he's the one that demonstrated violence that day. We've already got it corroborated for you. We're not manufacturing that.

PV I can't…

TK Like I said, there's some things we got in our pocket that are just going to be there that we are going to pull out in court. This is that soft pitch I'm throwing out to you. We've got your story corroborated. All you have to do is give it to us. If you give us the story we're not going to hammer you and call you a liar and a bum and all that stuff because we know because somebody else already told us.

PV That's all I got.

DV All we're going to be able to say is you ran it out till the end, it got to the point where you were up against a wall and you told the truth.

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PV But I've been telling the truth.

DV How can you be? Because each one of your statements contradict each other. There is inconsistencies in each one of your statements.

PV It can't be. I've been telling you the truth. I been really…

DV Which might go along with what one person was telling us. You were so blasted that night that you were passed out in the car.

PV In the car?

DV Well maybe I shouldn't tell you that part.

PV What car?

DV Maybe I shouldn't tell you that part. You know? So these people are telling - that are telling us and you know, not specifically each one of us but to the other investigators, that Stacks pulled the trigger, that's a lie, right? Is that what you're telling me?

PV I don't know. I - I don't know. I wasn't there. I don't what happened at that store.

DV Then we've got to go back to this one where, you know, that you're saying, "I can't tell you, but man I really did it this time. I really messed up." It goes on, "I didn't mean to do it. It wasn't supposed to go off. I only meant to scare him, but it went off. Did you shoot somebody? Yeah" and then you began to cry.

PV Oh hell no. That's - I don't even (inaudible).

DV Is this what you want (inaudible).

PV Uh huh. I don't want that at all. That, that night…

TK Okay, one other thing to think about. What does that say for a charge here?

PV Second degree.

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DV Second degree.

TK Second degree. You know what that does? Okay, that (inaudible) in Dakota County. You know what they do after they get that?

PV What.

TK Then it's time for the grand jury. Grand jury is the only body that can charge first degree. This is as much as they can charge on a piece of paper without indictment from a grand jury. So after we get this and get you over there, then comes the grand jury and we sit down and we run this in front of them and see if it goes up to a first degree. There isn't, you've got to listen to some of this. Because some of this shit I do know, okay? There is a thing about felony murder, about participating in a felony when a murder occurs whether you knew or intended it to happen, you share all the guilt for that. Do you understand these kind of things?

PV I understand. Can I tell you something?

TK Yeah.

PV If I knew who did this, I would tell you. Because then I wouldn't be here.

TK Well, and what I want you to do is…

PV But I don't know.

TK What I want you to tell me then, and I'm working with your stuff, not mine, is who you were with that may have brought you up to the bar. Because we've got people that said, and you and Stacks did show up at about the same time that you got out of the car. You may have, he may have gone someplace or you may have wandered somewhere. But you showed up and you got out of this decent grey car. Now if you give me something I can work back and talk to the people that (inaudible) around, whether it's a gal or a guy or whatever, I don't, you know, whoever the hell…

PV What kind of car did you say it was? I'm just trying…

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TK A decent looking grey four door, something around the size of a Toyota to - it was, they thought, you know it wasn't like a gigantic Caddy or anything. You know, it was just a full size, not a giant size car. And I will work back. And if it works back to your favor, so be it. And if it works back in my favor, so be it.

PV The only car I can tell you about is, uh, the one, see I don't want to say nothing stupid that don't even make sense, but…

TK Well we're beyond that.

PV The only car that I can even think if I was, was my uh, the car, this car that Bo had. This dude named Bo he let his nephew, my sister used to mess with him. His nephew let him hold his car, or (inaudible). It was a grey car.

DV Who was that?

PV His name T Y.

DV Pardon me?

PV His name T Y.

DV T Y?

PV Yeah.

DV Who is that?

PV This dude my sister used to mess with. His name is, uh, his real name is Sylvester. He got a brother named, um, he be down in South St. Paul named Gee. But I'm not saying he, well whoever did this but I know that's the only person at that time that I knew had a grey car that I be in.

TK Now you said your sister was going out with this guy?

PV Yeah.

TK Messing around, whatever.

PV Yeah.

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TK Your sister, is she still in Birmingham or is she gone?

PV My sister live in Florida.

TK How does your sister know this guy then?

PV Uh, I don't know. I guess she met him, he from Milwaukee. She met him and he uh…

TK Well I mean was your sister up here at the time or what?

PV Oh yeah. She was here.

TK Is this the sister that, what's, which sister is this?

PV I only got one sister.

TK Shauna or something like that?

PV Yeah, Shauna. Yeah.

TK She's back in Florida now?

PV Yeah.

DV And this guy's name is Sylvester?

PV Yeah.

DV Where does he live?

PV All I know is that's the only person I know had a grey car at that time. Because I remember his uncle used to always let him hold his car. He was always driving it.

TK And his uncle's name is Bo?

PV Yeah, they call him Bo.

TK What's his uncle's real name?

PV I don't know. That's all I know.

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TK So the car actually belongs to Bo but Sylvester had it from time to time.

PV Yeah, he used to let him drive around. I know he dropped me off a few times.

TK What kind of car was it?

PV I don't know. It might have been a, I think it was a Cadillac. It was grey.

TK Yeah? Decent car?

PV Yeah, it had duals and stuff.

DV Where does he live, Sylvester?

PV I don't know where. He used to live with us.

DV Where?

PV On Birmingham.

TK How old is Sylvester?

PV He's like (inaudible).

TK How old is Bo?

PV Bo like 30 something.

TK That ain't old.

PV (Inaudible).

TK You're going to - if you're lucky you'll get up there man.

DV Okay so Sylvester used to live on Birmingham?

PV Yeah, he used to stay here at, uh.

DV Okay.

PV He might have been there that night, uh, (inaudible). I think he was there that night.

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DV On Birmingham?

PV Uh huh.

TK And he's about 18?

PV Yeah.

TK Has the cops picked him up ever for anything that you know of?

PV Um, not that I know of.

TK When you drive around with him do you hang out with him or do you…

PV No, I get a ride and that's all. That's what I'm saying. I don't really hang out with nobody else but me and Stacks. That's it.

TK What about, now on Stacks side of this (inaudible). So what you're saying to me, the guys that you know and stuff, you know, you're just not connecting on this car, this ride over to the Buttery or anything. What about on Stacks side of this shit? Did he know anybody that might have a car like that?

PV All Stacks, I told you, all I know, he always, his cousins is like his, everyday that's all he want to do, first (inaudible). Let's go over here with my cousins there. And I was like, man I don't like going over there.

TK Going over where?

PV Over on Como, where all his cousins, he has a lot of cousins.

TK Why did he like to go over there?

PV I don't know. It's his cousins. He liked…

TK Well I've heard there's rock and weed over there and shit like that. Did he go over there to smoke a little weed too?

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PV Probably. (Inaudbile). He drank a little, he smoked some weed. But they smoke weed, so.

TK That's, you guys don't do much other than weed, right?

PV I don't (inaudbile) at all. I drink. I'm the drinker. Stacks will drink too just as much as I do. But he smoke weed and he drink.

TK How many other cousins live over there? You know, you've told us about two or three so far. Are there more?

PV I don't know who, I don't remember 'cause (inaudible) but for what I do know, for the cousins I met up here at Stacks, I'm not saying that they live here, you know what I'm saying, I know Hennessy, Bird, Jay, (Cardale), Crazy, uh, Dee.

TK Any of these guys legit? I mean working and all that shit or are they all scamming shit?

PV Scamming.

TK They're all scamming shit? Get back to that fucking car man. Give me the car, I'll work for you.

PV I'm trying. I'm thinking. I'm thinking a grey car. A grey car. I don't, a grey car. I remember that night. I remember…

TK Any car you got a ride in up there if you remember getting it.

PV I don't think we even got a ride. That's what I don't understand. That night…

TK Well like you said, if you got a ride there you must not have been downtown before that.

PV Yeah. Yeah, that's (inaudible). I'm trying to figure it out.

DV Then it might be that you were passed out in the backseat. Maybe that person is telling us the truth.

PV Passed out in what back seat?

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DV The back seat of the car when the robbery happened. We've got one person telling us you were passed out in the back seat when the robbery happened and Stacks went in and pulled the trigger. Now if that's what happened…

PV I don't know what happened.

DV Well when you woke up you're going to know what happened. Or is that person lying? We're trying to corroborate that person's story.

PV I don't, I don't…

DV You know what corroborate means?

PV Yes.

DV Okay, we're trying to corroborate that person's story.

PV I'm trying.

DV So if you're telling us that you weren't passed out in the back seat of the car, and you're telling us that Stacks was not the shooter and that you didn't grab the money out of the till while Stacks shot the guy, we go back right to this.

PV All right, I didn't…

DV That's what other people are saying.

PV I didn't take no money.

TK You never had any money.

PV Who?

TK You never had any real full money in your pocket this time of year?

PV I was (inaudible).

TK Were you holding any money for Stacks?

PV No, I ain't never been.

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TK Why would he be coming around Minnehaha looking for you and his money?

PV Me and his money? He ain't never gave me no money to hold.

TK Well again, we're getting this (inaudible). People are saying that he's showing up over there, and he's upset that he wants money. And the dollar figures that he's mentioned that he's after, then again we're hitting one of these coincidence god damn things that keep falling here. That's how much money got taken that night.

PV No, he ain't never (inaudible). He ain't looking for me for no money. That time I was (inaudible).

TK Did you ever put anything else…

PV Over there?

TK Over there to leave it? Any clothes, a bag?

PV I never brought anything.

TK Do you hang out in the basement when you're drinking over there?

PV Yeah.

TK Go downstairs there? I've been down there. It's kind of dank.

PV Yeah. It's dirty.

TK Is that where you hide shit when you hide it over there?

PV No, no, no. I ain't never hid nothing.

TK Which room is hers? You said you hid the (inaudible), something.

PV Like when you come through the first section, there's the living room. It's that first little room right there.

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TK On the left?

PV Kind of look like it's like out on a porch.

TK There's the, oh, the one in the front?

PV Yeah.

TK The front of the house?

PV Yeah.

TK What kind of stuff is in that room? I mean for just regular shit?

PV Um, some (inaudible) and stuff. She don't even live there no more.

TK Where does she live then?

PV Uh, she was living with her aunt on (inaudible) now.

TK Yeah.

DV She's living with her other aunt?

TK Do you think she talks to her aunt a little?

PV Who (inaudible)?

TK Yeah.

PV I don't know.

DV How would I know she's living with her aunt?

PV I don't know. I don't understand how you all found out where I was at.

DV See that's just it. You're trying to figure out how we know so much about what's going on. And we're not going to sit here and play the games.

PV I know.

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DV Listen, we're not going to sit here and play the games. We've proven to you that we've done our homework and we've got people that are talking to us. If you want to talk it's up to you. If you want to tell us your side of the story it's up to you. If you want us to listen to everybody else and just only take their side of the story that's a choice you're making too.

PV (Inaudible).

TK Part of reason we keep coming back and talking to you is we hear through the grapevine and talk to people that are here and there that at different times stuff comes out of you. You know about Colleen and this and that and some others. And what we keep hearing when we hear this stuff, because we hear it from other people now too and that some of the information is coming back for you to talk to us about. If we hold out this does bug you. Every time you see Colleen's picture it bothers you.

PV Colleen's picture? Oh that picture?

TK The deceased.

PV Oh man. (Inaudible).

TK That's why you talk sometimes. When you did go to the bar you were upset. And you did talk to Colleen I that way. That's why we keep talking, coming back to talk to you. Because we're holding out that inside you are this guy that values life and this was bullshit and you know it. You just know the way to get it off your chest and get it done with.

PV I - I don't know nothing about this. I don't. I'm trying to figure out where I was at.

TK What we keep…

PV That's all I need to figure out.

TK That's called trying to figure out the alibi, okay?

PV Because I don't, when you - the first time you guys came and talked to me I got arrested that night, I

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think (inaudbile), that was like two weeks after the 22nd. I don't know.

TK Yeah, (inaudible).

PV I don't know. I don't remember that.

TK I told you…

PV Maybe somebody, maybe somebody that I know did it. I don't know. And I don't know why it's so close to me.

TK Then they are really shitting in your boots then. I mean they would have to be living right with you 24 hours a day to be doing this shit because it's all (inaudbile), I mean every where you go we get little tidbits. Yeah, we're just getting a thread here and a thread here and a thread there. But they are all falling out where you are. And I'm telling you…

PV (Inaudible) I'm trying to figure out (inaudible). I'm trying to see why I know that dude.

TK That's why we keep coming back to you. You keep calling us back because you talk to people here and there. That's why we keep coming back. It's going to come out of you. I don't know if it's going to come out to a priest or whatever. But you're going to confess to it and ask for forgiveness to somebody.

PV I'm not going to confess to nothing I didn't do. (Inaudible). If I knew who did this I told you last time I would tell you.

TK (Inaudible) you'd have to for your own good.

PV I don't…

TK It has to come out.

PV I don't know. I want to get out of here. I don't want to (inaudible).

TK You're just worried about where you're going to be for the next 20 years?

PV Yeah.

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TK There's more to worry about than that and you know. I don't know. Maybe you think that this is it.

PV No.

TK That this is (inaudible) and that's it. The lights are out.

PV Man I don't even want to (inaudible).

DV What does that say?

PV Forty years.

DV Zero to forty. That's why I came back up here. I talked to Tom. I said, Tom, we've got to go talk to Florida again. If he's - if Stacks did the shooting and Florida was passed out in the car…

PV What car?

DV We've got to hear that from him because that's going to change this. So what you're telling us is that these other people don't know what they're talking about.

PV I don't know what car.

DV This is your statement.

PV If I don't…

DV And what you're telling us today, is everything truthful and that Stacks didn't (inaudible).

PV I'm saying, you're saying somebody (inaudible) in a car passed out, you (inaudible). I don't know.

DV This is the guy you're protecting, right?

PV I'm not protecting nobody. I'm trying to protect myself. I don't know. (Inaudible).

DV That's what one person tells us.

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PV I mean I was passed out in a car with Hennessy that one night. Uh…

DV That's what one person told us.

PV (Inaudible) crashed in the car.

DV Who is that? You passed out in a car with who?

PV I was in the car with Stacks. It was me, Stacks, it was me, Stacks, (inaudible), Hennessy and Jay.

DV Okay, wait a minute now. You're in a car with you, Stacks…

PV Uh huh.

DV Hennessy.

PV Yeah.

DV And who else?

PV A1

DV Who is A1?

PV Stack's other cousin.

DV What's his real name?

PV (Inaudible).

DV Pardon me?

PV A1's name?

DV Yeah.

PV Terrance.

DV Pardon me?

PV Terrance.

DV Terrance?

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PV Yeah.

DV What's the last name, do you know?

PV I don't know.

DV Okay, and who else were you with?

PV He got the same last name as (inaudible).

DV And who else were you with?

PV And Jay.

DV Who?

PV Jay.

DV And what's Jay's last name?

PV I don't know.

DV So you're passed out in a car with these guys?

PV No. I was riding one day. It was when I was riding.

DV Okay you're riding in the car with these guys?

PV Yeah.

DV Who is driving?

PV Jay.

DV Jay is driving?

PV Yeah. Stacks was in front. Me, Hennessey and A1 was in the back.

DV Okay.

PV And Stacks and his cousin was playing back and forth (inaudible). And I don't know, Stacks did something and the car, we was drunk. And the car crashed. Totally crashed.

DV Where was - where did it crash at?

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PV Uh, it was on East 7th street.

DV East 7th Street?

PV Yeah.

DV What did you do with the car?

PV I remember the car - I remember I felt the car when it crashed. All right. It was spinned out like in the middle of the street and boom, hit something. And all I remember I kind of like blanked out. And when I kind of like came too there was nobody in the car. And I remember I got out of the car. I climbed out the window and I ended up walking. I don't know how it happened. I just know (inaudible). I remember getting out of the car but then I just blanked out again. And then I remember I was at home.

DV You were where?

PV I was back at home.

DV Where is home?

PV On Birmingham.

DV On Birmingham that night?

PV I remember Stacks came and knocked on the door and I opened the door. And he was like what's up? He was like, what's up? And I was (inaudible) I'm like what's up. He was like, uh.

DV Maybe it was that night. Maybe it was the 22nd.

PV No it wasn't the 22nd. I was home that night.

DV What kind of car was that?

PV That was a grey car.

DV This one?

PV Yeah. It was a grey car that Jay had.

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TK It was Jay's car?

PV Yeah.

TK And Jay is the cousin of Hennessey?

PV Yeah. They're all cousins.

DV How old is Jay?

PV How old is he? Um, he's probably about - he might be about a year younger than me.

DV Okay. What kind of grey car? Do you remember?

PV It was like an Oldsmobile, maybe four door. Was it four or two? I think it might have been four.

DV Beater, decent shape?

PV Yeah it was in all right shape.

DV Okay. And so you woke up at home?

PV No, I just remember, I don't remember, I don't remember how I even got home. 'Cause the car crashed. And I got home before Stacks did. Because Stacks stayed up the street with his girlfriend. He came over to the house and I was (inaudible) up. And he goes (inaudible). And I'm like what. And he goes, we just crashed. You don't remember? And I was like, oh man, we did crash. (Inaudible) crash. And he said…

DV Maybe that was the night of this.

PV And to this day I still don't remember how I got home.

DV Maybe that was this night when this happened. And then you guys took off and then you went over to Amy's.

PV No.

DV You're sure?

PV I'm positive. Because that was the night Stacks got out of jail.

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DV This was the night Stacks got out of jail.

TK You mean after Christmas?

PV Yep.

TK What did they - so everybody just left the car in the middle of the street?

PV I guess so. I don't remember what happened. I remember I got out of the car. And I just remember being home. Somehow, I don't know how I got home at all.

DV Where abouts on East Seventh?

PV Like uh, near Holt Street.

DV Pardon me?

PV Near Holt Street.

DV Near Holt Street?

PV Yeah.

DV Do you know what you hit?

PV I don't know. I know the car was spinning out of control. But we all were drunk. I was in the back seat. And I remember that, boom, we hit and I remember I kind of like looked around and the car was just sitting there and there was nobody in the car. Everybody was gone. And I got out of the car and started walking.

TK Did it look like you hit another car?

PV I don't even remember looking at nothing. I remember just getting out of the car and walking.

TK I mean could there be another car and a driver, a hurt driver or something?

PV No, there wasn't no other person. I think we hit like a tree. Probably a building or something. Because I (inaudible).

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DV How long did Jay have that car before the accident?

PV I don't know. I think he probably had that car a while.

DV What's that a month, two months?

PV Two months maybe.

DV A couple of months?

TK And this part we want to be fair with you. And we want to be fair with Stacks too. We, you know, (inaudible). I don't want to hear later, you know, that we didn't give you an opportunity to tell your tale and that we didn't impress you with how earnest we were about pursuing the investigation and anything that you might have for us.

PV All right.

TK So is there anything else you have for us now that I can check out? I know you're game to figure out whose car it might have been. Is there a chance…

PV You think (inaudible).

TK Is it possible that this is - might be the grey car you guys were riding around in that night?

PV (Inaudible) ride in. I want you to check out and see if that's the car that you're looking for.

TK Well where can I find that car now?

PV I don't know. (Inaudible).

TK It might be junked out.

PV Yeah, (inaudible) be junked out.

TK (Inaudible) it's Jay's car. It's one of his cousins so he's still around.

PV He didn't care, I guess he didn't even care about it. He just left it.

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TK He just left it, the cops took it and it went to impound or something and never got it out.

PV No, I think Hennessey got caught though.

TK Hennessey got caught for what?

PV For (inaudible).

DV For that car?

PV Yeah.

DV For driving it or what?

PV No, I guess the police must have came and they seen him and arrested him.

DV That night?

PV Yeah.

TK Well I thought you said you were alone when you came to.

PV I was. This was after (inaudible). This was like two, three days later. Because Stacks called me. He called Jay's house from my house and we didn't (inaudible) so the next day we went over there. We went over to Jay's house and everybody was cool. A1 was cool, Hennessey was cool, I was cool, Stacks was cool. They say Hennessey had got - the police took him.

DV This was after Christmas?

PV Yeah.

DV Before New Years or after New Years?

PV This was after New Years.

DV After New Years?

PV Stacks (inaudbile), no I think he was still in jail. Maybe it was after that. Because I got out of jail before he did. Yeah, this was after that. This was when he got out - you all, I went to jail on a

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Saturday. You all came to see me on the 16th. I got out, he was in the workhouse still. Then he got out. That was the night that he got out, 'cause…

TK When he got out of the workhouse.

PV Yeah.

TK Like two weeks or something he had to go do.

PV Yeah, yeah. That was (inaudbile) that night.

DV Let me ask you this. Let me just throw this out there.

PV All right.

DV You're in a car.

PV Uh huh.

DV You're driving with these guys. You crack it up. Not you personally, but the car gets cracked up.

PV Yeah.

DV You don't remember much of it because you're passed out.

PV What you mean cracked up?

DV The car is smashed up, right?

PV Oh, yeah.

DV You went home, you don't remember how you got home, right? Is that what you're telling me?

PV Yeah.

DV You were drunk that night.

PV Yeah.

DV Is it possible on this night then that you were passed out in the back seat like someone is telling us and you don't remember it?

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PV I don't know. I don't remember what car it could have been.

DV No I'm talking just - is it possible that you were passed out in the car that night when the robbery happened?

PV Shit, that night (Inaudible) passed out and don't remember shit. I don't remember (inaudible). And that's another thing I think about. Because I swear to this day I still don't know how I got home.

DV Okay. But then why is it not maybe on that night that you were passed out in the car that you don't remember it? Or am I just missing something here?

PV I don't know. Because I don't think I would remember that…

DV You told us you weren't that drunk.

PV (Inaudible).

DV You know so what is going to happen is that when this all goes out, and this goes to court, that it's going to come up and say, you know, maybe, I don't remember some of this because I'd been drinking that night. And they are going to go right back to this statement and another statement that says no, I wasn't drunk. I remembered everything that night. And then in court you're going to say, well I was too drunk I don't remember it. Who is the court going to believe? The two statements over here or you saying then that you were too drunk?

PV I do - I don't remember, okay that was the accident (inaudible).

DV I'm asking you the same question and you give us different answers.

PV Well all I do remember is from that day is being at - I remember the Buttery and (inaudible) and that's all I remember. I don't remember being at the Radisson. I was just - I honestly don't even remember that.

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DV Were you maybe at the Radisson before you went to the Buttery passed out in the car?

PV I don't know. I don't remember that. I don't remember (inaudible). I don't remember nothing before the Buttery. That's all I remember. I remember coming in the Buttery.

DV Were you with Hennessey that night?

PV No.

DV How about one of Stacks' other cousins?

PV No I don't hang out with them like this. The only time I hang out with them is when I'm with Stack's. Never my own (inaudible). That's why I'm saying, when I came in the Buttery that night, Stacks was already in there.

DV How many times did Stacks throw up that night?

PV I didn't see him throw up. I'm trying to figure out. I remember I came in the bar and Stacks was in there. He was already in the bar when I came in. That's what I don't get. I'm trying to figure out what (inaudible).

TK Well I don't know. You've had six months to think about this stuff and we're still at the same fuzzy spots and things like that.

PV I only tell you what I remember about what happened. I don't want to make up nothing and say nothing that ain't true.

TK Well, like I said, we want to be fair and make sure that we're understanding this right. You weren't wasted and you weren't passed out. You were fairly sober when you went in there and you made up a story to try to get free drinks at the Buttery.

PV Yeah.

TK And if we can prove that you were at the Radisson then you were at the Radisson but you don't remember anything. What we're saying is that we know you were

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at the Radisson for a couple of reason, with John and with…

PV Stacks.

TK Stacks.

PV Okay.

TK Okay you were drinking. And what - and you were bragging that you were getting a plan together to make some money and you were going to be back later with some money. Because you didn't have money (inaudible) so John laid this stupid check down.

PV No, no.

TK And in between there some time you went someplace because you came back to the Buttery in a car. Right after this thing happened you were some place because you came out of a car. And you're in and the first thing that you're talking about is shooting somebody. That's what the short and the ugly of what we're looking at on this thing. You're in one place just before and you're talking about a plan with making some money and having money. There's a gap. You're making phone calls to people that live a block away from where this robbery happens. Or your phone is making the calls. And then you show up at the Buttery right after this happens saying that I just shot somebody. Again we get back to the odds and the coincidences in this thing. You know, you hear there's 87 million in the Power ball you should buy some of those tickets right now. Because this is where that complaint came from. These things, and these are things that you did, came out of your mouth and that's why we're back with you. And again, we wouldn't be back with you except these threads keep coming out from things that you say that lead us to believe that eventually you're going to want to talk to somebody about this. Maybe it'll be just a family member. I don't know. But we've got these steps that lead us right to you on this thing. And I think, you know, okay if this car thing is part of it, let me go back from it. Give me somebody to go talk to.

PV All right. All right, I'm (inaudible).

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TK And go ahead, go ahead.

PV I don't mean to quiz you or nothing, but I'm still questionable about this dude who said he was in the bar that night with us, that guy, Monk.

TK Monk?

PV Yeah. I don't remember. I don't remember. I'm seeing if I remember. I remember at the bar, I remember the bar and every (inaudible).

TK Let's throw Monk's ass out of the equation. He's just corroborating what we've heard from other people.

PV I'm saying, why would he even, I don't get why (inaudible) say that I said that if he wasn't even in the bar that night?

DV How do you know?

PV Because…

DV How do you know if you don't know him?

PV I'm…

DV How do you know (inaudible).

PV I know Trevor.

DV Pardon me?

PV I know Trevor. I'm telling you, I know Trevor.

TK Trevor was in the bar?

PV No I didn't say that. I'm saying…

TK You know Trevor.

PV Yeah I know Trevor.

TK Was Trevor in the bar?

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PV No. It was me, Stacks. There wasn't that many people in there that night.

TK Okay, how can those morons come up with this stuff that happened in the bar that night? I guarantee you I didn't tell him to say it. Neither did he, neither did anybody else. I'm saying, throw that shit out. We still got Colleen. She's going to sit up there all sweet and caring and she's still going to be shedding a tear over this crap. And you can't deny it. You said it to her.

PV I said it. I never denied that. I never denied that. That's the whole thing that helped me remember the bar.

TK And the things that you said over at the Radisson were enough for the person over there to make a call also. Independent of these two. We're right before and we're right after. I mean not minutes. But we're an hour before and we're half hour after..

PV Yeah.

TK And we've got this little bit of a gap here.

PV Yeah, I don't remember. Dang.

TK And you got to admit that if you were sitting in my pants right now…

PV I, I, I (inaudible).

TK You'd be (inaudbile) all over you.

PV I know, I sit in the (inaudible). I'm fucking up. Man.

TK There is no way I can't look at you. And I say, give me a reason not to. I'll scratch you off the damn list. Give me a reason to believe you about how the thing happened.

PV I might have been drunk that night. I don't know.

TK Give me a reason to believe what somebody else has already told me. And we've got two independent people telling us that. And what this other person is saying

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is that we've got somebody else as the main actor and you just tripped along to grab the money.

PV No, I know I didn't do that. I'm telling you. The, the…

TK You don't like the sound of you not being hands on murdering this guy?

PV No, hell no I don't like the sound of that.

TK Well that sounds better than the first time we came up with, you know, when you're - on your own statement that you did the shooting. Doesn't it?

PV Yeah, but I didn't have…

TK I mean I'm not stupid.

PV I (inaudible) involved in this. I don't - I didn't plan it. I ain't never planned nothing like this. I didn't have no involvement.

TK I've got…

PV The day you came - when you guys came and talked to me that first day in ADC that was the first time I ever had any knowledge about this ever.

TK Okay, then I'm going to have to be my simple old self here a little bit here. I don't believe you on it. I can't. I've got too much stuff leading right up to you and I don't believe in those kind of odds. You're not that unlucky. (Inaudible).

DV Here is your name. This is information coming in pointing that it's you. We talked - this is information coming in that it's Stacks.

PV All right.

DV We talked to Stacks. We tell him that we thought he was along for the ride, that you're saying all this that you pulled the trigger. Stacks sits back and says, okay, let's let those guys believe that. Let's let everybody think that (inaudible) pulled the trigger. We're coming to you and saying, we have two

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people that told us that Stacks pulled the trigger. It's up to you if you want to tip the scale to go back (inaudible).

PV If I knew he did it I would tell you he did it.

DV Do you understand that? It's up to you. If you tell us that this was all bullshit, I was just braggin' it up and Stacks pulled the trigger, that tips the scale back that way. Or are you going to just let that sit, sit there and take it all and let Stacks sit back and let everybody put the blame on you? What do you want to do?

PV I don't want to - I don't want to blame nobody that I don't know, you know what I'm saying? I (inaudible).

DV Were you passed out in the car that you don't remember it?

PV I don't know. I don't remember being drunk.

TK What don't you remember?

PV I don't remember being in the car passed out. Because even when I told you about the wreck that happened, I remember I passed out there. I remember getting out of the car but I don't remember…

DV I can see waking up being passed out and Stacks says, hey, this is what happened, and oh my God. Holy shit. Now what do we do?

PV No, he never told me no shit like that.

DV Well, you're right in the middle of it.

PV I'm telling you, if I knew something that could get me off I would man. I wouldn't be here if I knew what happened. I'd tell you and I'd fucking be gone. I'd be back (inaudible). I don't know. I don't remember getting in no car. More than likely I probably was drunk that night, but I don't know.

DV Why don't you think about it some more.

PV I told you I was thinking about it.

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DV Well, we gave you some more things to think about.

PV Dang.

DV Do you want to think about it and then come back up and talk to you one day?

TK I mean, what you've got to do, here's some things that, this is…

PV I don't remember though. I'm saying it was so long ago.

TK Here's the deal. This is America so I can only throw these out as suggestions. Now, and you know you give us something we run it down. We ran down the phone things and other things. Think about that car. You know, who knows? Maybe it'll come to you when you're taking a shower or rap, I don't know.

PV A grey car.

TK A grey car, running around a little bit. Think - here's how I remember some things sometimes that are hard for me. I start with a point where I do remember things and I go back, okay? You know, that's how - I'm always leaving shit around. Where, okay, where was I and I went back from that. Try doing that. We know - here's some things we know and that we're working off of and that may help.

PV All right.

TK You did arrive in this kind of a car. It was a decent looking car and it wasn't a giant car but it wasn't a shrimp car. It wasn't a small - it was a four door.

PV All right.

TK You were with Stacks.

PV Okay.

TK You had been at the Radisson with John not that long before. We know that. You guys had something going on that you were going to do together from what you told

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people at the Radisson. When you showed up at the Buttery things appeared different to people that knew you. And that's when you made those statements. They also said Stacks was moody and not himself too. So if it wasn't what we're talking about, you guys went and did something together that didn't go quite right or however you want it. Maybe you had a deal going. Maybe you were going to chump somebody off. I don't know. You guys were about doing things on the street your own way. I don't know. That's the time frame you've got to think about if you want to help yourself out on this thing. Because I'm telling you, the shit before and right after and the phone and what other people are telling us, you know, subsequent to the robbery about money and guns are damning for you. So if you've got something to fill in that area, believe me I want to know about it.

PV All right. Can I say something? I'm trying to think about you talking about the phone call. Can you find out who called them numbers? Or you said you don't know.

TK Well we talked to some people about it.

PV Because I never called (inaudible). I never called no one. I don't even know anybody that called, I don't know how you can get in contact with Hennessy.

TK Yeah but it's your phone and you're always with the guy that was using it, right?

PV Yeah, correct.

TK Why is he calling Hennessy right around the time of the robbery?

PV I don't know. I tell you…

TK Was he looking for a ride maybe?

PV I don't know.

TK Hennessy's always got access to cars, you said, right?

PV Yeah.

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TK Were you guys looking for a ride?

PV No.

TK This is the stuff you've got to think about and maybe we'll just stop back in in a while and talk to you one more time. Would that be okay?

PV That's cool.

TK I mean we're not busting anybody's bones here or nothing right?

PV That's cool, yeah.

TK But these are some things that you can help yourself out with that kind of shit. That's where we want, if he's calling Hennessy for rides or something, you know, we'd like to know and we can run down some of that. If it's you guys had a plan and went and did something, even if it wasn't such a great thing to go do, we want to know about that. We'll run it down.

PV Yeah, because if them numbers on there Stacks called them then.

TK Because if you're plan was just chumping somebody off on some more checks or some silly weed or something like that, that's a lot different thing than going up for what this (inaudbile).

PV Yeah.

TK Right?

PV For sure.

TK Okay.

DV Okay, I want you to think hard about it. We're not putting any type of pressure on you.

PV No.

DV But as we talked a long time ago that the process has started and things just happen in its own timely fashion along this process line. So the sooner you

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think of it and the sooner you call us the more time we're going to have to work on this. Because once, you know, we can't stop the process at this point.

PV All right.

DV It's going forward.

PV All right.

DV There's other people that are making decisions along the way.

PV All right. Can you guys please try extra hard to find out, please? Man I want to (inaudible).

DV We're not here to talk anything about the other case.

PV No, I'm talking about - I didn't say. I'm talking about this.

DV Oh, okay.

PV Yeah.

DV Okay, I'm sorry. I misunderstood you.

PV Yeah, I want this to be (inaudbile).

DV Yep, all right. We're going to stop the tape now. And it's 4:55 PM. And you've got our numbers to give us a call any time. Just tell the jailers to…

PV I will.

DV Get a hold of us.

PV All right.

DV Okay? Okay thanks.

END
DV/TK
kp

MINNESOTA JUDICIAL BRANCH

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DATE: January 23, 2003

CASE #: 02018427

INTERVIEW: Corporal Tom Kreager

SUBJECT: Philip Randal Vance

TK Investigation, Kreager.

PV What's up Kreager?

TK Who is this?

PV This is Vance.

TK Oh. How you doing?

PV What's up man? What's happening?

TK Well, you tell me.

PV Nothing man, I been, I called and left messages and shit which there ain't nobody, you all got to know you got to get in contact with me. I just, I walked to the bar today and the lady told me ah, the police come through like 4 times a day looking for me. Shit, I'm like for what? I ain't went nowhere. I'm still here.

TK Through what bar?

PV I walked through the Buttery.

TK Yeah?

PV Yeah.

TK Well, I got your message. I wasn't sure which phone to call you back at.

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PV Oh, I'm sorry. What's going on? I asked, ah, saw, I called Sonja, she told me I had, I got to call her today about them ah, about the phone records and I talked to John, had John the other day. He was waiting when I called and left a message. He told me ah, ah, he wanted to, I, they wanted John Martin. I was with him, he told me if anything you all wanted to discuss with him about he would be willing to discuss and everything and he gave me information that night about where I was that day earlier I was with him. I was with him.

TK John Martin?

PV Yeah.

TK Where were you guys?

PV No, we early had ah, we were at ah, at the bar, the Capitol Bar.

TK Yeah.

PV And then we left from there. We left from there and we was walking around through downtown. He met up with his girlfriend. We was bullshitting outside and shit with some girls. I ended up hopping in the car, me Stacks, we hop, we did hop in the car. We got in the car. It was a white girl and we rode around and we got some liquor and was riding around and shit. They were smoking the shit. We went a couple places and then they dropped us back off downtown that night.

TK And

PV He the one who told me about it cuz he called me the next day on my phone trying to get us to come back to Saint Paul cuz I did go to ah, I did go to ah, ah, what was it, Edina, where did I say I went? The ah, what the hell's that fucking place again? We went out, we got stranded out there. Was that Edina? Something like, (inaudible).

TK So you, you and John hooked up with a couple of girls?

PV No. Me and Stacks did. Me, Stacks, John was with for a minute. His girlfriend came.

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TK Yeah.

PV And we was all together for a minute. And then we, these girls rode up on us, the girls who house we went out to. They rode up on us. Ah,

TK Yeah.

PV We hopped in the car with them. John left with his girl and we was in the car with them.

TK Do you know these girls?

PV Them the same girls who house we was at.

TK What, yeah, what are their names?

PV Man, I told you one of them name's is Amy. That's the one whose house it is. She wasn't in the car with us. The other one named Veronica or whatever, the one who Stacks was messing with, she was in the car and then eventually after we were all around they were smoking, we were drinking and shit. They dropped us off back downtown. That's when we came to the Buttery and no (inaudible) came here. That's when we came to the buttery. That's when he say, he say

TK Are you talking about the girls from Eagan that you were talking about?

PV Eagan. Eagan. That's who I was in the car with them.

TK What kind of car they got?

PV A blue Corsica. It's like a dark blue Corsica.

TK You got any of those girl's phone numbers or anything?

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DATE: **January 15, 2003**

CASE #: **02018427**

INTERVIEW: **Captain Daniel Vujovich**
Detective Corporal Tom Kreager

SUBJECT: **PHILIP RANDALL VANCE, JR./DOB 10-20-80**

DV I have to record this. You ready now?

PV Yeah, yeah.

DV Okay.

PV Go ahead.

DV Today's date is January 15. The time now is 1416 p.m. This is an interview being conducted for South St. Paul case number 02018427. The interview is being conducted at the Ramsey County Adult, Adult Detention Center and is being conducted by myself, Captain Daniel Vujovich and Detective Corporal Tom Kreager. Present at this time is Philip Randall Vance. Philip, for the audio recording would you please state your full name and spell your last name.

PV Philip Randall Vance, Jr., V-a-n-c-e.

DV Okay, would you just speak up a little bit for audio recording, Philip. What is your date of birth?

PV Ah, 10-20-80.

DV What year?

PV 10-20-80.

DV Oh, I'm sorry. Okay. And where do you currently live at?

PV Ah, I've been moving around living at different places.

DV Okay, so where would be an address where you could be located at? Your mother's, girlfriend

PV Ah, I've been, usually I get my mail sent to my mom's house.

DV Okay.

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PV My girlfriend she, she, she, my friend need to stay the night there she'll let me stay the night there but I just be moving around.

DV Meaning at your mom's?

PV No. I ain't been over there.

DV Well where do you get your legal mail at?

PV My mom's.

DV Pardon me?

PV At my mom's.

DV Okay. And why don't you give me that address then.

PV Ah, 290, no 978 Front.

DV So 291 Birmingham is your girlfriend's place?

PV Yeah, yeah. Yeah.

DV Okay. Alright. Ah, because we want to talk to you about this specific crime I'm going to read you your rights per the Miranda Warning. I want you to listen carefully because at the conclusion I'm going to ask you a couple questions and you're going to have to make some decisions. Okay?

PV Alright.

DV You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to a lawyer and have him present with you while you are being questioned. If you cannot afford to hire a lawyer one will be appointed to represent you before any questioning if you wish. You can decide at any time to exercise these rights and not answer any questions or make any statements. Do you understand each of these rights I've explained to you?

PV Yes sir.

DV Okay, you'll have to speak up.

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PV Yes sir.

DV Having these rights in mind do you wish to talk to us now?

PV Sure.

DV Philip we want to talk to you about an incident that happened in South St. Paul, it's a robbery.

PV Alright.

DV Why don't you tell me what you know of it.

PV I don't know anything about it. I haven't been to South St. Paul in a long time.

TK Okay I told you we were doing this kind of a thing. What, I told you before we did our homework on this thing. We didn't pick your name out of a hat and come visit you for our own health, you know.

PV (Inaudible.)

TK We're ready to rock on this thing. What we've got is all this stuff that we've collected from the store, all this, you drink too much man. Jesus. When you do these kinds of things and you walk away maybe you don't understand some of the impact that this has. Have you heard some of the stories on the news? The guy that died down there?

PV Down where?

TK In South St. Paul during the robbery. He's a good guy. He's got a fiancé waiting for him. He's going to get married. When you run out of these things you don't see the back end of what we get left with, you know. You're telling us you don't know everything but you're shooting your mouth off all over St. Paul about it. You drink too much. What do you think, this is the inside of the store where the robbery happened. Big stinking surveillance system right there, you know. And when you run out you leave the guy in one, you didn't even check the guy for Christ sake. What's this, what kind of, this thing can be written up a couple of ways. As a full blooded execution which is what the facts look like and that's what everything supports or it can come out as something happened, went wrong when somebody was just

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looking for some money. Now I'm, I think it was an execution from the start. Premeditated from the start.

PV Premeditated what?

TK The whole plan on the robbery was to kill the guy from the start is the way it looks. Now if you got, you know, some of this stuff we're hearing you're telling a lot of different people different things. We got cops all over the place in St. Paul that have been talking to people that you, overheard you talk to you and you've just been blabbing about this thing.

PV I drink a lot but I never, I ain't never robbed nobody.

TK Okay, do you know when this happened?

PV No.

TK It was the Sunday before Christmas. Where were you?

PV Sunday before Christmas.

DV On December 22nd.

PV Sunday before Christmas.

TK Two days before Christmas.

PV Two days before Christmas I was in Maple Grove.

TK Doing what?

PV I was at this girl's house.

TK What girl?

PV This girl named Sonya.

DV What's her name?

PV Sonya.

DV Okay, what's, what's her last name? Clark?

PV Clark.

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DV Oh okay. What time did you leave there?

PV I don't know. I was staying over there but I went shopping for Christmas for her.

DV Okay, where did you go shopping for Christmas?

PV At Walmart.

DV Walmart?

PV Target.

DV Target?

PV Yeah.

DV What time did you leave Sonya's house?

PV It was that evening.

DV That evening? About what time?

PV I, it was sometime, it had to be in the evening, maybe like 3:00, 4:00, she brought me back to St. Paul.

DV Okay. About 3:00 or 4:00 you got back to St. Paul?

PV Yeah.

DV Where in St. Paul?

PV She brought me over to my, ah, friend's house over here on Forbes.

DV Franco's?

PV Yeah.

DV Okay. That's not your sister is it?

PV No.

DV Just close friends aren't you?

PV Yeah I just know her.

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DV How come you listed her as your sister on the booking sheets sometimes?

PV I ain't never listed her. I ain't never used her address or nothing.

DV Okay. I'm not going to get into that.

PV I'm not going

DV Okay.

PV I know her but I never called her my sister.

DV How long have you known Vanessa?

PV Ah, maybe like a year and a half. Maybe close to two years.

DV So how did you get from Maple Grove to Vanessa's house?

PV Sonya drove.

DV Sonya drove. Okay what kind of car does she have?

PV A gold Camry.

DV A gold Camry?

PV Yeah.

DV Okay, what year?

PV Ah, it was a newer model maybe a '98.

DV Do you ever drive that car?

PV Ah, I drove it before (inaudible).

DV How long have you been boyfriend/girlfriend with her?

PV No she not my girlfriend. I just know her.

DV Okay. Alright. Well you've got a few girls around from what we hear. That's okay. That's alright. Okay, so you're over at Franco's

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PV Mmm, hmm.

DV now what? He's got a

PV (Inaudible.)

TK Go ahead talk to him. Talk to him.

DV So now you're over at Vanessa's at 3:00 to 4:00?

PV Mmm, hmm.

DV Okay, how long are you staying there?

PV Oh, I wasn't there long 'cuz I bought my, ah, this, she bought some stuff, Sonya bought some stuff for my kids and I left it over there. And then I left.

DV Okay who's your baby's mom?

PV Tishia.

DV Tishia is. Over on Birmingham right?

PV Yeah.

DV Okay. Alright. So what time did you leave Vanessa's house?

PV It wasn't too long after that.

DV What's too long? Hour? Half hour? 10 minutes?

PV Maybe, it might have been like an hour. I was there for like an hour.

DV Then where did you go?

PV Downtown.

DV Pardon me?

PV Downtown. More than likely downtown.

DV Okay. Who did you hook up with downtown?

PV Hooked up with my homey Stacks.

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DV Who's that?

PV Stacks.

DV Stacks?

PV That's my homey, yeah.

DV Who else?

PV That's it. I don't hang around with nobody else but him.

DV Just the two of you?

PV Mmm, hmm.

DV Okay, where were you at downtown?

PV Just hanging out, well we probably went downtown. Lately I ain't been downtown. I've been over here on the East Side.

DV Okay.

PV Where this one girl is supposed to meet.

DV Who's that?

PV Her name Darlene.

DV Pardon me?

PV I said her name Darlene.

DV Darlene?

PV Yeah.

DV Okay, lives over on Burns, huh?

PV No that ain't Burns. It's off, off of Minnehaha.

DV Okay. Oh okay. I know where you're talking about.

PV Yeah.

DV 956.

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PV No not there.

DV (Inaudible)?

PV No, ah, Minnehaha and like 6, ah, close to 7th Street.

DV Okay, alright. So you and Stacks are downtown on the 22nd at about 5:00 o'clock, right?

PV I think it was the day before Christmas.

DV Two days before, the 22nd. Three days before Christmas.

PV No, no, no. Wrong, what happened, I'm thinking you said the day before Christmas.

DV Sunday, Sunday, December 22nd.

PV No. I don't remember. I don't even remember. I can't really remember what I was doing. You said the day before Christmas. That's when I did

TK You're telling him what he said? He told you that. I told you the Sunday before Christmas is what we're talking about.

PV I thought you said the day before Christmas.

DV No the Sunday before Christmas. Sunday during the day who were you with?

PV Sunday.

DV Who were you with?

PV I was home with Stacks. I'm always home, I don't hang with nobody.

DV Okay, you and Stacks are where on Sunday?

PV More than likely on Sunday.

DV Okay, let me ask you this, do you not remember because you drink so much or you're doing drugs?

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PV No I don't do drugs. I don't, no I just, I don't remember 'cuz I can't, you know what I'm saying, I just can't remember like

DV Okay.

PV That was so long ago.

DV This is Sunday, December 22nd.

PV Okay. Sunday, Sunday. I do not remember. I don't know.

DV Okay.

PV I know what I did the day before Christmas 'cuz I remember (inaudible).

TK You don't remember going to South St. Paul?

PV I, man, I ain't been to South St. Paul in so long.

TK Who do you know in South St. Paul that you went to visit before?

PV Honestly, I know this girl that's there.

TK What's her name?

PV Ah, I think it's, it's been so long since I've been there

TK Stacks know anybody out in South St. Paul?

PV He know the girl that I know that's there out there.

TK Who's that? What's her name?

PV This one girl he used to, I brought him out there 'cuz I met the girl and then I introduced, I brought him out there introduced me to her then I started messing with the girl but he still was going out there.

DV Okay what's her name?

PV Ah, I'm trying to remember. I don't remember her name. I know she stayed off, ah, (inaudible), it's the street after Homer Street. You know where Homer at?

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TK Yeah.

PV It's the street you go up this hill and it's like a dead end street. I don't remember her name. It's been so long since I been with Stacks in South St. Paul. It been a long time. But my girl used to have a, we used to have a car we paid at the car credit place.

TK Here's the thing. I, I think you were in South St. Paul about three weeks ago on a Sunday.

PV I swear I haven't

TK We wouldn't be down here if we didn't believe that.

PV I, I understand that.

TK You know, do you believe that we found enough to cause us to come here and talk to you?

PV It's honestly got to be important or, I promise I won't, I haven't been to South St. Paul. It been a long time.

TK My problems this, I don't know, we have to go look at guys like this every once in awhile and we're stuck with solving these kind of crimes.

PV I don't shoot nobody.

TK This, this guy's only crime is that he was a nice guy and he let anybody into the store and he, he dealt with them fairly. Ah, he was just executed for no reason. No reason at all. He would have given up the money without a fight at all. We know that because his brother runs the store with him and they've talked about it many times. There's not enough money there to worry about. Say give it up. There's no reason for this thing. That's why initially we thought that this was an accident. Went for the money and something happened. But the more we look at it when the facts come in from the crime lab and everything how it happened, what happened to this guy, it goes down as it was cold blooded chicken shit murder. Now if there's another version we got to hear about it. We're talking to other people too. You got an idea who else we're talking to right?

PV I ain't heard nothing. I can't even call nobody.

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DV Here's the deal though. You know how many houses we've done search warrants on.

PV I heard.

DV Okay. So you know that we've been talking to everybody.

PV Yeah.

DV The different is, is that if somebody walks in and I'll try to explain it better than him, if somebody walks in and they're going, let him, let him hear me out.

TK He heard what I said.

DV Walk on in, trying to rob the place and the gun goes off by accident that's different than you walk on in and say hey I'm going to cap the dude no matter what. There's a difference. If you've been drinking and you don't remember at all just tell me the parts that you remember.

PV No I drink a lot and I know for a fact I didn't do none of it. I know honest to God I didn't do none of that. I haven't been to South St. Paul so, in so long. When I get real drunk I, I go home. I don't do stuff like that.

DV Well you didn't go home the night you got picked up to come in here.

PV I was trying to go home. I was just real drunk. I couldn't do nothing like that even if I was drunk.

DV How about the guys you were with that night?

PV What, what night?

DV Maybe they're the ones that pulled the trigger.

PV What, what night?

DV Sunday, the 22nd.

PV I ain't be with no guys.

TK You don't have no guns?

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PV No I ain't got no guns.

DV Never had a gun in your life?

PV No.

TK You ever have, have any dope in the last month?

PV You mean smoke dope?

TK No.

PV Do dope?

TK Physically have any dope in your possession in the last month?

PV No. I don't sell drugs.

TK You don't?

PV No.

TK You're lying. I mean Jesus Christ you sit here and lie to us about it. This guy's nice enough to offer you an out on this thing and try and get you, you know what you get when they put this down as a cold blooded execution, an assassination for no God damn reason that's life without a chance. No chance, (inaudible). He's trying to offer you something better here.

PV But I didn't do nothing.

TK Then why are you telling other people you are and why are the stuff that we're (inaudible) talk to you you, you say no I never, I haven't had any dope with me. That's bull shit. We know that you've been having dope with you. Whether you're selling it or smoking it that's your business as far as I'm concerned.

PV I didn't do that. I swear to God on my life.

TK Who did it then?

PV I don't know what everybody's saying

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DV Who did it?

TK You did it because the things you're talking about are, the things that you've been blabbing down at the Lab and places like that

PV At the Lab.

TK At the Lab.

DV Do you know where the Lab is?

PV Yeah I know exactly where the Lab is.

TK Have you been shit faced down there in the last couple of weeks?

PV Yeah.

TK Yeah. Think hard. A few different times.

PV No. I remember one time for real and I was with Stacks.

DV Okay. Do you know how many people hang out at the Lab?

PV Yeah.

TK Do you know what kind of bar it used to be? It was a cop bar.

DV Okay. Here's, here's the deal, Philip.

PV I

DV Okay, if you know tell us what you know about this.

PV I don't, look, I don't even think that was before Christmas. It had to be after. It had to be after Christmas. Last time 'cuz I really don't, I really can't, 'cuz I lost my I.D. and I can't get into the Lab without and I.D. unless Maggie or Jossie are working and usually I go down to the Buttery and drink. But I say in the last month I only been to the Lab two times. Three times. I've been there three times and I remember one time I went, I was fucked up. I was so fucked up I couldn't even walk. I was laying on the ground in the, ah, I was laying on the floor and

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DV Yeah.

PV Stacks picked me up.

DV Who do you think you were talking to that night?

PV Man I don't even remember that night. I was fucked up. I remember he picked me up and he told me to come on and I remember the next morning I woke up and he told me, man you were so fucked up last night. You was laying on the floor, doing this and doing that. You was talking crazy and doing this and doing that. (Inaudible.)

DV Well that's what I'm thinking is that you were pretty well tuned up that night when this happened. That's my thought. He's got a different thought. My thought

PV That was after Christmas.

DV Okay I'm talking about this night now okay. I know that you've been tuned up at the Lab.

PV (Inaudible.)

DV I do.

PV Yeah I understand. I think I seen you here before. I look at you I think I have seen you here before.

DV Yep, yep. So, you know, I know what was being said. And that's why I have a different opinion than he has. I think you were tuned up that night and you guys went into South St. Paul. This thing happened and that's what happened. It was an accident. And that's what I need to know.

PV I didn't do it.

DV I want to know what your thoughts were when you guys went in to rob the place.

PV I didn't rob no place. I promise. I promise I didn't rob no place. I don't have no guns. I don't shoot nobody. I don't rob nobody.

TK Why are we supposed to believe you?

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PV I might shoot some dice but I don't rob nobody. I don't shoot nobody. Why should you believe me?

TK Yeah. 'Cuz what you're telling me is different than my whole investigation to this damn point. It's different than your own words when you're out partying.

PV So each of them said I said I did this?

DV I'm not going to tell you everything you said. And I ain't, and you can tell I'm not playing no scam. You saw me down at the bar and you know what you saw.

PV I swear to God

DV You know what you saw.

PV On my door I swear to God I, I, I believe I have seen you there numerous occasions.

DV Okay. Alright. 'Cuz you, you know, you're going by what your eyes are saying. You saw me. Alright.

PV I know I've seen you before.

DV Alright. So, here's the deal if I heard things and I verify that to other people then that's becomes what you said and I think that you were so tuned up that you don't remember everything that happened this night but I want to know exactly what you remember because it does make a difference when it goes to the County Attorney's office. And you know it's going to go to the County Attorney's office

PV I didn't do nothing.

DV we did four search warrants. We got property all over the place that we've taken. We've talked to witnesses. We've talked to people that have talked to you. You know, and your own thing is saying that you saw me down there.

PV No I said I think I seen you down there before. I said that.

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DV So here's the deal. Now is your chance. This, wait, just hear me out a second okay. Here's your chance to get off your chest and to get out your side of the story. Other than that the only thing that's going to be presented to the County Attorney's office is going to be other side of the story and you could bet, you could bet as sure as we're sitting here that everyone else that's talking to us is trying to save their own ass. And you know that for a fact. You've been arrested enough, you've been hanging around with those that have been arrested enough. When it comes on down to it you got to save your ass. I'm giving you an opportunity to save yours.

PV I'm just going to tell the truth. I didn't do that. I wouldn't do nothing like that. I don't care how drunk I got I wouldn't do no shit like that. When I get drunk I can't hardly fucking walk let alone rob a place and shoot somebody.

DV I don't think you were that tuned up that night. You were on, you were on your way to getting tuned up. You guys went and did it.

PV No I didn't

TK How many babies do you got out going? How many kids?

PV I got two.

TK How old are they?

PV 4 and 1.

TK And they're both with, ah, TT?

PV Yeah.

TK How about your ma? Are you close with your ma still?

PV Ah, we cool.

TK You cool with TT and the kids? Are you taking care of them?

PV Yeah I do what I can.

TK What does that mean? You love them?

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PV Of course.

TK Do you want to know them?

PV Yeah.

TK Or do you want, want them to know you through glass the rest of your damn life? This is what he's talking about. The only thing I can talk to you about other than the facts are I know what it's like to go into a place all excited. I know what's it like when you got your gun.

PV I don't have one.

TK I know what it's like when something happens and the guns going off and you hardly even know it. I know what that's like. And if you want to tell him that that's the only part I'll understand. You don't even feel it. It's just going off. You see a little flash. You hardly hear it. It's done before you even know it and it still takes like 5 minutes in front of your eyes when it happens. I know that. You know that. Don't you? This will never leave. You know that don't you? This will never leave. It happens like that. But it keeps coming back. It won't go away. Not this way. It won't go away. I'm the only one that understands that with you right now. You know that. It's never going to leave you this way. Do the right thing. Talk to this man about it.

PV I'm trying to. I didn't do nothing. If I was so drunk

TK Put this fucker away the rest of his life then.

PV I wouldn't even do that.

TK You got no feelings for a guy that this happened to.

PV I didn't do it. I never even seen that dude in my life. I haven't been to South St. Paul in so long.

TK Then how come you're bull shitting the bar. You're a big tough guy talking about this.

PV Talking about what?

TK Talking about shooting people.

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PV I ain't talking about shooting

TK Is that just your rap on the street to stay hard that you're a blaster?

PV I'm cool to everybody (inaudible). That's how I am.

TK Bull shit.

DV I got to tell you, man, let me tell you this okay.

PV I'm not the person who did (inaudible).

DV Okay, let me tell you this. Not everybody is on your side that's

PV I know I believe.

DV Right now you are so (inaudible) out that they don't even want you at their places. And I'm sure you could figure that out.

PV They don't have (inaudible).

DV Huh?

PV They don't even want me at their places.

DV (Inaudible.)

PV They're so heated up.

DV Well people had their doors kicked in because of this. They don't want you around.

TK People are going to lose their apartments.

PV I heard.

TK You know.

PV Yeah.

TK You think it's going to stop just 'cuz you say it wasn't me?

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PV No I understand you guys got to pursue your investigation but if I didn't do it I have nothing to worry about.

TK Sit back and say prove it and you're going to be gone the rest of your life. You're proving out everything I was talking to my boss about before we came down here.

PV (Inaudible.)

DV Huh?

TK That, that we're going to get a stroke job from you that you're some fucking angel. You're not an angel.

PV No I'm not an angel but I wouldn't do that. I, I never did that. I, I just came this (inaudible). I didn't do it.

DV I don't think you did it intentionally. That's why

PV I didn't do it at all. I didn't even attempt to do nothing like this. I don't rob people. I don't shoot people.

DV Well, no we're not going to play it for him. No. There's no sense playing it for him at this point. You know, you don't think anybody else is trying to save their ass right now by talking to us. Everybody's trying to save their ass on this because it does make a difference how it happened.

PV I understand but I

DV I don't know if you do understand.

PV Ah, this is a serious situation.

DV Yes it is.

PV This is like the most serious shit I ever had to deal with in my life.

DV Yes it is.

PV And

DV And I think you got a couple big decisions to make here Philip.

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PV No but what I'm saying it's hard because I didn't do nothing.

DV Well let me just go back. It's hard for me to believe what you're telling us here today, okay. I've been there. I've been listening to what's been said. I've done interviews with, ah, people. I've heard what you said. I've heard what you said with my own ears and, you know, you're telling me shit here today that I know is not true. So I'm having a hard time believing some of the credibility that you didn't do it. I think you did. I think you need to get it off your chest.

PV I didn't do it. I swear to God on my daughter's life I didn't do it.

TK You know how bad we can make this look? We could throw in the gang enhancement too. We'll throw in your gang association. That building before it got robbed has been tagged several times. We'll make this a thing between G.D.'s, whoever the hell it is and the owner of the store and you'll go down on the gang enhancement too. We'll get the Feds involved. You want to stroke around with the Feds the rest of your life?

PV I'm not no gang member.

TK You run the gang all the time, right?

PV I didn't do this.

TK You didn't do this.

PV I didn't, I didn't do none of that. I didn't rob nobody. I haven't been to South St. Paul. The only way I get money

TK You see this, you see this guy, this guy was saying take the money I don't care. I'll do whatever you want and he got blasted for it.

PV I didn't shoot him. I swear to God on my daughter's life I didn't.

DV Who did then?

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PV I didn't, I don't know. I don't know. I didn't do it. I don't know. I ain't ever seen the dude a day in my life.

DV Is the lady lying that saw the, walked into the place when this was all happening? Is she lying?

PV She got to be lying. You put her in front of my face. She can look at my face behind a glass, glass and she can verify that she didn't see me.

DV You want to take that chance?

PV I'll take that chance. I swear to God it wasn't me. I know I get drunk as hell but I don't get drunk and do no shit like that.

TK What do you do for money?

PV Honestly.

TK Honestly what do you do for money?

PV I ain't been doing, I've been trying to get me a job 'cuz it violating my probation but I've been, Sonya been giving me money.

DV Who has?

PV Sonya.

TK How much money has she given you in the last month?

PV In the month of December? I don't know. She, she just give me like maybe 40 bucks here, $40 here, $50

DV You can't

PV But she buy me everything I

TK What's Sonya (inaudible). What's, what's her phone number?

PV 763-(End of Side 1 of Tape). I, I can't

DV No you can't.

PV No.

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DV I've been there.

PV 'Cuz people buy me drinks. A lot of people just buy me drinks 'cuz

DV Yeah people flip you money when they see you too.

TK What was her phone number? 763-300?

PV This is crazy.

DV It is man. Like I said I'm not, you know, I'm coming in here thinking that there's a chance.

PV How do you know people flip me money?

DV What did you say 5 minutes ago?

PV I said

DV You seen me. Alright.

PV No it ain't, no it's funny though 'cuz some, that happened, that happened real recently when one person was with me and that happened.

DV What, one person flipped you money?

PV No. It, yeah, recently. Explain what you seen there 'cuz I was just recently with somebody 'when somebody did that to me and that didn't, ain't never happened like that before. Crazy.

TK So what are you saying?

PV Nothing. I'm just, it's funny

TK What's this Sonya's phone number again? I didn't get it written down.

PV 763-???-256?. I promise I didn't do it.

TK Then what are you talking about? What have you been talking about downtown?

PV Nothing. I probably been drunk and said some shit.

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TK You're saying shit that fits this thing though.

PV No I ain't never did that.

TK You're saying shit that fits this thing. That nobody else knows about.

PV I swear to God.

TK I wouldn't be wasting my fucking time

PV I understand.

TK on this unless I (inaudible) on this mother fucker.

PV I understand 'cuz it was a large, didn't you say a large door has been kicked in and honestly (inaudible) was just a mistake or some shit but when you caught me you all are carrying on like damn. This shit's serious (inaudible).

DV (Inaudible). Do I look like a guy that enjoys hanging

PV No.

DV Huh?

PV No you don't but I

TK And do you think the guys involved in this that aren't the ones pointed out as the shooter or claiming to be the shooter are going to want to stand and take the same fall that's coming to the shooter? Hell no they're going to cop out.

PV I'm just (inaudible). Ain't nobody, anybody

TK No they're lining up.

PV They're lining up? Pick their line ups.

TK You're sitting back saying I've got the game covered.

PV No.

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TK Is all you're doing. Oh I got slipped me money. Bull shit. I know what's going on. Fuck you do. You don't know a thing about what we've been doing for the last three weeks. This shit don't go away. If it goes out of your head then you are a cold blooded fucking assassin that I think. If you can look at this and say no I ain't got nothing. Fuck it. You guys prove it.

PV I'm saying I'm not going to admit to nothing I didn't do. I didn't do it. I wasn't there

TK Then why are you running your mouth if you're some bad ass popping caps? Huh?

PV I don't know. I was just talking shit probably.

DV You have a choice to make Philip. A choice and unfortunately you got to make that choice now.

PV Choice of what?

DV We walk out of here we're going with everybody else's story.

PV I'm saying what can everybody else tell you? I didn't do nothing. I might have got drunk and been talking shit, you know what I'm saying. I ain't never shot nobody. I ain't never robbed nobody. I'll probably get drunk and get to talking to shit or have some bull shit but I ain't never did no shit. That's the truth. I can't sit here and bull shit and lie about this here so that's the best I can give you. I get drunk. I run my mouth. I talk shit. I probably said some shit so, so I don't know, said some old bull shit. Some bull shit was heard and now I'm getting questioned about some shit I didn't do. That's the best I can give you.

DV Well you know there's people that sit at the bar that just don't have anything, anything else to do but than to listen to someone else's conversations. And, you know, I mean with, with our deal is that there is reward money out there that if you're sitting at a bar and somebody's talking to someone else and you hear this stuff what an easy way to make a few bucks.

PV That's true.

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DV Right?

TK Do you know how many people called just 'cuz they liked this guy? Fuck they don't want the reward money.

PV I believe you. I don't know this guy. I never seen him in my life.

DV I don't think you did. I think you just walked in and that's what happened.

PV I didn't, I didn't, I promise you I didn't.

DV And if you're trying to save Stacks that's

PV I'm not trying to save

DV pretty noble. That's pretty noble man.

PV Man I'm trying to save, I'm trying to save my ass.

DV I don't know if I would, I don't know if I'd be doing that if I was in your position.

PV Man I'm trying to save my ass.

DV Mmm, hmm. I would be if I were you.

PV I'm

DV You just aren't doing a very good job my friend. You know, that's the deal. And, ah, if we would have sent anybody else in here to talk to you that probably would have flown but, ah, we got three weeks of, ah, night and day working on this thing. I know the place inside and out. You know, how did I know who you were talking to out in Maple Grove? Right? That's pretty far fetched out there. How would I know that if I don't know what's going on?

PV I don't know

DV You know, I started, you know, if you weren't the one that had the gun when it went off you better damn well say so now.

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PV I wasn't with nobody when no shit like this happened. If I were ever in some shit ever a predicament like this I wouldn't even fucking be here. I swear to God.

TK Where would you go?

PV I wouldn't be here. I wouldn't be in no shit like this. I'd be walking around and going and living shit like I usually do. I ain't did no shit like this. I promise you.

TK That's bull shit. That's a lie.

PV I swear.

TK Half the shit you told us here has been a lie. Do you think we come here and say geez did you do this and when you say no we say oh we must have bad info. No we took our time, we verified everything that we came here to talk to you about. Not just one person. Two people telling us things. Two people don't even know each other. Three people come in. Something else will feed us something else that falls right into place. You match the description. The witness walked in and saw you guys in there. Saw you run out of the store and back to the alley. She walked right in. You guys scared the living shit out of her after you killed this guy.

PV That wasn't me. It wasn't me. I didn't do it. If I was so drunk I couldn't run. I couldn't shoot nobody. I couldn't rob nobody. I couldn't run up no alley. When I get drunk I can barely even walk.

TK Well I'm not buying a black out drunk that you did this in. I think you went in there for some money and you just got chicken shit and started blasting.

PV No. You know, if I need some money I just call up Sonya.

TK What does Sonya do that she can give you money all the time?

PV Her grandma is rich.

TK Her what?

PV Her grandma is rich. She just, she give me whatever (inaudible).

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TK Does she live with her grandma?

PV No. She got her own house.

TK So you're just using her?

PV No I ain't using her. I, I just know she cool.

TK How many people are that cool in your life?

PV What you mean?

TK Give you money when you need it. Let's, let's go the other way, when's the last time you worked?

PV About a year ago.

TK So you've been floating for a year without a job and we're supposed to think that you wouldn't be up for a little money like this?

PV No it's, it's not no shit. I've been trying to get a job.

TK For a whole year?

PV My baby mama she work.

TK Yeah. She give you money?

PV Yeah.

TK Right out of your baby's mouths you take the money?

PV No it ain't like that.

TK Well it sounds like.

PV My

TK How much money does she got that she can be supporting you and the kids?

PV No she just helps me out when I need her to help me out.

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TK Well I don't think she's helping out on this one. Do you think you're going to stroke your way out of this thing this way?

PV No sir. I just know, I know for a fact I didn't do this. I, I honestly look at this and tell you I didn't do this.

TK You can look at all of them and it doesn't phase you? That's how you left him. It ain't so bad.

PV No I didn't do that.

TK This side you see what happens. Then right there. Right above the register what is that?

PV It's a camera.

TK It's the monitor but you got the idea.

DV In case we go back to it Philip

PV Go back

DV You're going to make a lot of choices right now. If we walk out of here we're listening to other people. We're here now to listen to your side.

PV I'm

DV Think about it. Think about it before you say anything. This is your chance.

PV Ask me what you want to ask me and I'll give you a straight out answer. Just ask me.

DV Well you haven't been giving them to me so far.

PV Just, I'm going to give you a straight out answer. Honest and true answer. It might sound like bull shit but it's the truth.

TK Okay then where were you the Sunday before Christmas?

PV The Sunday before Christmas. The Sunday before Christmas Day. Let me think. The Sunday before Christmas. More than likely I was at the bar.

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DV Which bar?

PV The Buttery 'cuz that's the bar we usually go to. That's the, the bar go to. When I'm trying to get away from all the people that's in the Buttery I go to the Lab. I only go to the Lab like when I'm with a female and I want to get away from everybody and I

DV Do you meet females there?

PV Where?

DV At the Lab?

PV No. I go there to socialize. I'll tell you, I only took like one or two females there ever, you know what I'm saying. There just be so many people in the Buttery that the females I be with all they do is they trying to talk to them while I'm there and I just, I go over to the, to the Lab. Plus the Buttery don't have a pool table. I shoot pool a lot.

DV Where's the Buttery? Across from the bus stop?

PV Ah, no it's across from the Commerce. Yeah, yeah it's the bus stop this way but the Commerce Building on the other side.

DV Okay. That's, that's not too far from the Lab though right?

PV No it's like maybe like three blocks.

DV Well maybe I screwed up. Maybe I should have been hanging out at the Buttery. That's where the females are that you, you know, (inaudible).

PV (Inaudible.)

TK Oh fuck this shit. You don't think we've gone back, back tracked where you were Sunday and Saturday before that?

PV I don't know.

DV We got people that don't even know you that you just show a picture and say yeah I don't know this guy's name but he was here.

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PV Was that at a bar? 'Cuz if it was at a bar more than likely yeah. I drink a lot 'cuz the liquor store, usually I don't go to, I don't go to no bar unless the liquor store is usually closed. I will buy my own, you know what I'm saying. So it was either after 8:00 or 9:00.

DV Let's talk about Sunday. You were at the bar

PV The 20, the 22nd. I was trying to think where was I. Alright let me think of Sunday, I got to think of something I can remember then I can maybe remember what I did 'cuz most days I do the same shit so. 22nd it was on a Sunday. A week before... Well more than likely I even went, I went to the bar and left and went to my baby's mama house 'cuz she go to work. She off on the weekend. I've been trying to get back with her. (Inaudible.)

TK Well, you know, we know where you were and this guy's offering you a way out. I even tried to go at it a nice way but this is just crap. Do you think we, we put the charge on you and take you down to Hastings and put you in front of a jury and you say yeah, maybe I was in the bar. You think that's going to fly?

PV I, I, I know, I swear to God.

TK It ain't, it ain't. It doesn't fly with us either. You went in there, the gun starts popping and you come back and start your two week binge.

PV 22nd.

DV I can tell you this in the past few weeks you've been drinking more than you were in early December. True?

PV (Inaudible.)

DV That's true.

PV I've been having a lot of problems lately.

DV I know you are.

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TK Actually there are some people that are concerned about your welfare. That's amazing and he's, he's the one that's one of them. I could care less. Part, part of the thing that fit in this was all the sudden you're, you're drunk. I mean a snot slinging, fallen down drunk. Trying to fuck everybody up drunk. Some people think that this thing bothers you and you want to get it off your chest.

PV Oh my God. I swear to God, oh my goodness.

TK He's one of them right here.

PV No. I just thought about some shit.

TK Well you think your fucking ass off. God I'm tired of you sitting back smirking about this bull shit.

PV Okay. Okay. Alright I'm going to tell you something. I swear to God. I swear to God it just came to me. I'm going to put this on record and I know this where you got this from 'cuz I remember this I was fucked up one night and I was talking to Carlene. Oh shit why did I say that.

DV Who's this now?

PV Oh Carlene, Carlene is the lady in the bar. In the Buttery. Man. I was fucked up and she told me, she had kicked me out the bar. She kicked me out the bar that week before but she told me I couldn't come in. Then I went down to the Lab and I told you I don't have no I.D. so they wont let me drink unless it's a certain person in there. So I came back to the Buttery and I told her I had a problem. I swear to God it's like it was clear as day. I told her I had a problem and she said what's the problem you look sad like something's wrong with you and I told her, oh my God, why did I tell her this shit. I told her I made a mistake and shot somebody. I swear to God I told her that. I remember that as clear as day. I told her that. And she told me am I alright and I said, and I told her I was, I don't remember I told her I was scared or something. I said that and she said, she asked me did I need a drink and I said yeah and I was in there drinking and I drunk and I dropped a couple shots and I left. And I remember I gave her my cell phone number that night and I remember that next day she called me on my cell phone she asked me was I alright. I was in Eagan. That's where I was at.

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DV You were where?

PV I was in Eagan.

DV Where at in Eagan?

PV I was over at these girls house with Stacks. It was me and Stacks.

TK So again why are you telling people that you are a shooter?

PV I was fucked up. I swear to God that's the only shit I told the mother fucker. That's it. That's it. I told Carlene that that one night but I was, I was fucking lying my ass off 'cuz I was trying to get in the bar so I could get fucked up.

TK So the best line you come up with to get a free drink is that you just capped somebody?

PV No I didn't see I just capped somebody. I told her I made a mistake and did it. That's what I told her.

TK But that's a lie. This ain't a mistake is what I'm saying.

PV No I swear to God on my

TK No this ain't a mistake.

PV Whoever did that I don't know. I didn't do it. I swear to God I didn't. Damn this is fucked up. I (inaudible).

TK (Inaudible.)

PV And that's the truth.

TK So everybody's a toy. You fuck with everybody. Play head games with them. Is that the deal? That's, that's your alibi? I'm just playing head games.

PV No sir.

TK I like to trip through bars and see if I can freak people out?

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PV No sir. I'm (inaudible). I honestly remember I said that that night I told her.

DV Who else heard it then?

PV I don't know. Whoever she told. I was talking, I was just, it was just me and her talking.

DV Who else heard it then?

PV It was her (inaudible). I don't know it was just her. Me and her was talking.

TK I'll tell you right now it's more than one conversation that's been overheard about you talking about his funeral.

PV No. That's it

TK Are you telling me I'm a liar now? For Christ sake. How many times do we got to go over this thing? I'm not coming to you with some bull shit that some goof ball some place tells me. I'm taking any piece of information and I'm weighing it, verifying it before I'm putting it down in this damn paper. And it all starts out as a pile of shit like this and it all funnels up to a point and who the hell is at the top of the point? You.

PV I didn't do it sir.

TK And you're thinking just well I was just bull shitting this one person in one bar one night. Bull shit.

PV I said that I would admit too. I swear to God. I admit to saying that. I did say that. And I was bull shitting trying to get a drink. Trying to get in a bar and get a drink. I got a problem with drinking. And she kicked me out and she wouldn't let me in. And I came in there (inaudible) problem like some girl fucked (inaudible).

TK And I'm telling you there's more conversations with people in the bars downtown that have been overheard

PV I don't talk to nobody.

TK by different people.

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PV I don't talk to nobody.

DV Do you remember what you were talking to the cop you got arrested that night? About a week ago when you got arrested?

PV I remember I was talking shit. I don't remember what I said.

DV Well that, that's exactly what was going on was that, you know, you don't remember what happened a week ago.

PV No I remember getting arrested. The whole procedure. I just don't remember what the fuck I said.

DV Well that's just it. You're saying a lot of stuff to a lot of people down in the bars. You don't even know who you've been talking to.

PV (Inaudible) I know, I remember exactly what I was arrested for. Exactly what happened. I told, I, I, black out, you know what I'm saying, but, I black out but, you know what I'm saying. I don't black out long enough to do no shit like that. Hell no.

DV How do you know when you're blacked out?

PV What you mean?

DV How do you know how long you black out for?

PV I ain't did no shit like that 'cuz when I black out it'll only be for, if I black out I go to sleep. That's what end up happening.

DV Yeah. You talk a lot too. If I had to buy a drink for everybody I've talked to I would be broke that hears you talking stuff. And I hear things with my own ears. You know, and that's why I'm sitting here and not getting to the point I'm starting to go more along with what Tom was saying. I argued all the way up here with him whether we should talk to you or not talk to you. But I'm sitting here and you're telling me things that I know are not true. You know, so I

PV What did I say that's not true?

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TK You don't ask the fucking questions (inaudible).

PV (Inaudible.)

TK I'm really tired of you sitting back smirking oh I think I know now. You don't know shit.

PV (Inaudible.)

DV You tell me you never took anything from anybody right?

PV No.

DV Why do your friends tell me that you have? How do I know that? How do I know that?

PV I don't take nothing. I, 'cuz I ain't like that.

DV Yeah well you have. Okay.

PV I'm not like that.

DV Let's just leave it at that. You have taken some property from another person without their permission. Okay. You might have been a punk but you took it from them. That's just the way it goes. Now here's your chance Philip. We need to talk about this. We need to get it done. We need to move on. Your choices are how it's being presented. If you want to talk about it we're here to listen. If you want to go with the B.S. quite honestly it's time for me to get up and walk out 'cuz I got other things to do. I might as well listen to everybody else that wants to, you know, they maybe want to save your ass but at least they're giving me the truth.

PV How come I'm not giving the truth? I'm sorry (inaudible). I know what you want me to say. I'm saying I told you I bull shitted and told Carlene some bull shit one night. I get fucked up. I never, I never robbed nobody or shot nobody. I swear to God. Never.

TK Boy this is going to be a bad set of coincidence for you that an hour after something like this happens you're dumb enough to say shit like this in the bars downtown so that everybody in the world looks at you, aren't you? I mean what are the odds of that happening that way? A million to

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one.

PV I'm sure.

TK And I don't buy it for a second. I, I know you know about this robbery.

PV No I don't. I promise. I promise I don't. I promise you I don't.

TK Then tell me something I don't know about anybody.

PV About anybody, what do you mean?

TK Tell me something I don't know. You know, you know lots of dirt balls, don't you? Tell me something I don't know.

PV I don't hang out with nobody but Stacks.

TK What's Stacks about then?

PV What you mean (inaudible).

TK He taking money from women too to get off?

PV No he just be with his girlfriend. Me, you know, his girlfriend and my girlfriend (inaudible). (Inaudible) we get fucked up.

TK So he don't work either?

PV No.

TK Whose girl is his girlfriend?

PV Darlene.

TK Is that the one he has his babies with?

PV Yeah.

TK So how does he get money?

PV His girl give him money. She's (inaudible) check (inaudible).

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TK So he's taking money out of his kid's mouth too? And he's your alibi witness here huh? You were with him?

PV Obviously.

TK What was he doing that night? Was he with you or not?

PV (Inaudible) with me that night (inaudible). He was with me the night we went to, how the fuck did we get to Eagan.

TK And why don't you just run bamboo under my fucking finger

PV No, this, I'm trying to think. I'm trying to tell you. How the fuck did we get to Eagan. Oh we rode in the cab.

TK you took a cab from downtown out to Eagan? Who paid for that?

PV Stacks paid for it.

TK So he's got 30 bucks for a cab ride?

PV It was damn near 30, like 25 bucks.

TK You're fucking A right I'm not an idiot. I got an idea how much it cost.

PV Yeah, yeah. Trouble was that we was stranded the next

TK So who are these girls down there?

PV Ah, some girls Stacks had met when he was locked up in the workhouse. Some dude gave him a number and he called her and she was writing him. He was writing her. And when he got out he hooked up with her.

TK What's her name?

PV I know one's name is Amy. And the other's name is, the one Stacks messing with her name is something. And there was another girl over there that he brought me over there to talk to but when I got over there I was like no I'm cool. And we stayed there that night. We was

TK Stayed where, an apartment, a house?

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PV Yeah an apartment. Ah, I'm going to tell you the street name too. (Inaudible) 'cuz I wasn't fucked up 'cuz I remember we went over there I was like man I ain't even fucked up. We could have kept that money and gotten drunk with 'cuz we

DV You're only getting 40 bucks from Sonya. You guys spent 30 on a cab.

PV No this wasn't, no this wasn't the same night. It was on, ah, what's the name of the street. Ron(sp?)

DV (Inaudible.)

PV Yeah it was on that street 'cuz we

TK That wasn't that night now you're saying?

PV It could have been though 'cuz, man I don't know.

TK So you were broke at the Buttery that night?

PV Yeah. And she gave me a free drink. She gave me free drinks.

TK And you didn't have no money in your pocket?

PV No. No.

TK Did Stacks pay for his drinks?

PV I think 'cuz he had, he had some money but I told you, I couldn't even get in the Buttery. He was already in there, you know what I'm saying.

TK I'm asking about money.

PV Oh yeah I guess he did 'cuz he was in there drinking but I can't I didn't have no money. And then he asked me did I want to go out and see these bitches (inaudible) and I'm like shit I ain't got no where to go. Yeah I could go. Fuck it. And he called the cab. We hopped in the cab. No we went back to Vanessa house. That's

TK (Inaudible.)

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PV No I'm telling you 'cuz we got the cab from Vanessa house.

TK And then Santa Claus flew by

PV No, no, no

TK and you can ride with him. Fuck this bull shit.

DV What kind of jacket do you have?

PV I got a brown, a brown like kind of like leather, beige.

DV Where's that at now?

PV In my apartment.

DV Okay what jacket did you give Stacks?

PV Which jacket did I give

DV Did you borrow Stacks a jacket?

PV Un uh. He got the jacket from, ah, this girl gave him a coat. The black coat he got.

DV Okay so the dope in it is his (inaudible).

PV Shit I don't got no dope. It's his coat.

DV The dope from down on Forbes. Is that his or is it yours?

PV There ain't no dope in my (inaudible).

DV It's the jacket that you loaned Stacks.

PV No I ain't loaned Stacks no jacket.

DV Okay so then that should be Stacks' dope?

PV Shit if it's in his jacket

DV Stacks' is looking at 10 years just for that dope that's hanging on him, right?

PV Man, shit, I guess he is 'cuz it ain't my jacket. (End of Side 2 of Tape 1.)

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DV ...want to walk for about 15 minutes now. I'm ready to walk. Do you want to rebuttal or do you want it to go down the way it's going?

PV I want to get this shit over with man. I want to, shit, I want to, man. I want my friends to know that I didn't do shit and believe me.

TK Well we can't believe you because we know you're lying about some things and you can't be (inaudible).

PV (Inaudible).

TK No. That isn't how it goes because you know some of the things you lied to us about. That ain't how it goes. You tell us and we give you information.

PV Oh man.

TK We know you're lying about some stuff. What he's saying and I'll say it as clear as I can without offending you is for this thing to inch off the direction that we've got it as a planned assassination if the middle of a robbery is 100% complete cooperation about everything you know about it. And that is the only way.

PV Alright, alright, alright. Go ahead. Go ahead.

TK No.

DV You go ahead.

PV No I can't tell you, I didn't, I didn't coop, I didn't do nothing. That's what I'm trying to say to you is any question you want to ask I can just answer 'cuz I can't say nothing if I didn't do nothing.

DV Did you know the gun went off the first time?

PV No I wasn't there. I wasn't, I don't even know about no robbery. I swear to God.

TK Okay.

PV Come on keep asking me questions I'll answer them. I'm saying I don't know

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TK No I get the feeling that we're entertaining you now. And that's not what I'm about. I get paid to solve these crimes. I think I've got this thing solved. And I think I know how to write it up. And your attitude and the way we're talking to you now we know you're giving us bull shit.

PV I (inaudible) bull shit on my life. I swear to God I would.

DV You know, I would think that you'd want to right now.

PV I would

DV There's a lot riding on this right now.

PV I know, (inaudible).

DV When we get up and walk, when we get up and walk

TK Right now you're just thinking about your ass, you're not thinking about your mama, your kids, I don't know if you got any feelings

PV (Inaudible.)

TK the way you fuck around with all the women in the universe. I don't know if you have true feelings for anybody. So I don't know if you, if there's any voice inside of you saying man I shouldn't have done this. This wasn't right.

PV I didn't do it. I swear to God. I didn't do it. I wasn't there. I don't even know, I haven't been to South St. Paul in so long. I don't even remember the girl name who live out there the last time I went there. I don't even remember her name.

TK So you're just some drunken chicken shit that brags himself up about being a shooter?

PV I did it once, I lied that one time.

DV One time in your life you lied besides today.

PV I'm not lying sir.

DV Okay. Should I offer him the VST test or not?

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PV What's the

DV You want to take the lie detector test?

PV I'll take a lie detector test.

DV You will huh?

PV Yep. I sure will.

DV Give me a number where you're going to be at.

PV I can give you a couple numbers where you can find me at.

DV Locally?

PV Yeah I ain't going nowhere.

DV Or are you heading out of here when you get out?

PV Man I, I was born and raised in Florida. Daytona Beach, Florida. I ain't going nowhere 'cuz I didn't do nothing. That's why I said if I, some shit like this happened I wouldn't even have been here. I would have (inaudible).

DV Okay, what's the number?

PV Ah, 763- well you got that one. 300-

DV 300?

PV Yeah. That's the 300-2569.

TK Is that a cell or a house?

PV That's a cell. No I'm going to give you a house number too. 763-

DV Okay.

PV 416-0860.

DV 08 what?

PV 60. Six zero.

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DV Who's this number?

PV Ah, that's this Sonya's cell number, that's her house number.

TK Whose?

PV Sonya.

DV Okay. What about (inaudible) aren't you going back with her?

PV No. Shit. (Inaudible) my baby mama is at her door kick in, um, I'm going to give you my mom's number too.

DV Okay, what's that?

PV 651-487-9729.

DV 972 what?

PV 29. That's my mom's number. That's (inaudible) her house number. You want TT's number?

DV Sure.

PV 3, 340-8154. And I only knows, only know that's only place I'll be.

DV You're going to give these numbers to your P.O. right?

PV Yeah.

DV How much time do you got hanging on you for probation?

PV Over my head, I don't know. I ain't, I got a year probation. (inaudible)

DV You about ready to walk?

TK What's Stacks jacket look like?

PV He got a black, a black, a big black, ah, I don't know the name of it, but it's like a big warm coat. It's got a hood on it. It's all black.

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TK Has it got any writing on it?

PV No. It's just plain.

TK Solid black?

PV Yeah.

TK Does he got any other coats?

PV No. The coat I got (inaudible) she got me a (inaudible) coat (inaudible) have it.

DV What kind of guns does he have?

PV Huh?

DV What kind of guns does he have?

PV Stacks?

DV Yeah.

PV He ain't got no guns.

DV He doesn't have any guns.

PV Hell no.

DV You're sure.

PV I swear.

?? (inaudible)

PV Cuz he told me to borrow one.

DV What kind do you have?

PV I don't know what it is.

DV What's your definition of ownership?

PV Like not, not, like, it's mine.

DV As in you bought it, or as in you took it.

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PV As in mine. Like, it's mine. Like if I can go and get to it.

DV Okay.

PV I don't, I don't own ah,

TK When's the last time you had a gun? It ain't a joke. You're trying to impress us with how honest you're being

PV No. I'm not.

TK and I'm asking a tough question to see if you want to be honest.

PV About to be honest. I'm about to be honest. The last time I touched a gun, (sigh) probably like at the beginning of the year. (inaudible) maybe like right by New Years.

DV About when?

PV Like close to New Years. Maybe, after maybe a little bit before. But I know it was after Christmas.

TK Was it your gun?

PV Nope.

DV Where were you at with it?

PV I was at the bar.

TK With the gun?

PV No. I wasn't with the gun somebody else had the gun. And he showed it to me.

DV What did he show you at?

PV (inaudible) .22.

DV What's his name?

PV We call him G.

DV Who?

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PV We call him G.

DV You call him Z?

PV G.

DV Oh, G.

PV Yeah.

DV What does G look like?

PV Huh?

DV What does he look like?

PV Tall, got braids in his hair.

DV How old?

PV Say, he got to be younger than me. He younger than me.

DV Okay.

PV Might be 18 actually.

DV And he's in there drinking?

PV No. He wasn't in there drinking. Me and Stacks was in there drinking.

DV Okay.

PV And I seen him. He came in there and he sat at the table and he just, alright man, I got this (inaudible) I got me the heat. And I was like, let me see it. (inaudible) here and went in the back for me to show it to us. (inaudible)

DV Okay. And what kind was it?

PV About .22.

DV How big?

PV (inaudible) little gun. About this big.

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DV Revolver?

PV No.

DV (inaudible)

PV Yeah. He ain't have a clip in it so.

DV Where did he get it from?

PV I haven't seen him, that's why he came in there cuz he said he walked past and he seen us. He used to hang out downtown a lot when I stopped seeing him and he walked in and he came in there and he just (inaudible) and then he was telling us that he had a gun and shit.

DV His name was G?

PV Yeah.

DV What's his real name?

PV I don't know his real name. There's a lot of people I don't know their real name. I just know by alias'.

DV So G hangs out at the Buttery?

PV No. He don't, he not even old enough to be in the Buttery. He just seen us walk, when he was walking past. We was in the Buttery and he came in there.

DV Okay.

PV It was late and shit so.

DV Okay. So you see G at the Buttery sometime after New Years with a .22.

PV Yep.

DV Who does he hang with?

PV I don't know. He don't even being out there. I don't know where the fuck he be at.

DV What kind of car does he have?

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PV He don't even got a car. He's young. He's like 18 years old.

DV What did he do with the gun after he showed it to you?

PV He put it in his coat and (inaudible) left.

DV What kind of fool would carry a gun without a clip?

PV I don't know. Who knows. He had one.

DV And that's the last gun that you've touched.

PV That's the last gun I touched. Shit I got arrested with (inaudible) Like a week, a week before I got arrested.

DV So if we go down to the Buttery, we'll be able to find out who G is.

PV No. He, he don't even come in there. That's what I'm saying. He don't even be downtown. He used to head downtown all the time but, you know, (inaudible). And I remember that night I called Sonya, she came to pick me up from the Buttery cuz I, that's what I usually do, I get real fucked up. And I'll just go call her. She'll come get me any time.

TK How old is Sonya?

PV He turned 22 day before yesterday.

DV Is this the story you want us to present to the County Attorney?

PV That's the story you got.

DV This is your statement. This is your statement.

PV Right here on tape?

DV Yes. This is your statement about December 22, 2002. Is this your statement?

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PV I don't, I'm trying to tell you. What I told you about Colleen, that, when I said that, I meant that by, that's, that's the only time I remember saying something to somebody about shooting somebody. That's it. That's the, that's the only time I said something to somebody about shooting somebody. December 22

DV Who besides Colleen did you say it to that night?

PV No. I didn't say I to anybody. Cuz I remember after that night I left.

DV Okay. Who else overheard it though?

PV Didn't nobody overhear cuz it was just me and her. She was talking to me. She was talking something, it was just me and her.

DV Well,

PV Damn. Cuz really I only have one (inaudible) all in my business. I don't be with nobody but just me and Stacks.

DV Well, think it's people that have heard stuff really.

PV They ain't (inaudible)

DV Colleen's a girl right?

PV Yeah. She's a lady.

DV Right.

PV Her brother's, fuck, (inaudible) police. (Sigh)

DV Well, talking to a guy that's why, you know, if there was another street name or whatever the hell it is.

PV No.

DV Okay. So this is the statement you want us to

PV No.

DV go to our County Attorney.

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TK Do you, maybe, maybe, maybe I got too excited. Do you know the difference between and assassination, a pre-meditated, pre-planned, cold blooded, wacking somebody, shooting them and going to do something and it goes bad and the guy ends up dead? Do you know the legal difference between the two? Between murdering people in cold blood?

PV (inaudible)

DV Okay.

TK You know one's a lot worse than the other.

PV Yeah.

TK That's the basic idea.

PV Yeah.

TK And you weren't willing to throw the dice right now and say,

PV Hell no.

TK say go ahead and write it up however you want

PV No.

TK because I'm sticking to this.

PV No. No. No. I ain't sticking to shit. I didn't do nothing. Man,

TK And I'm telling

PV why can't you believe me that I don't

TK you, I don't know exactly was said at the Buttery. I do know some of the things that was said in other places at other times

PV Man, I ain't said shit.

TK that puts you with specific knowledge of this deal. And that's where you're going to get screwed on your story here.

PV I don't remember. Man.

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TK Because we're going to line up the cops and the witnesses and they're all going to say, he said this. And this was not in the paper. This was not on TV. This is stuff only the cops know. That's where you're going to get screwed on this plan. And what I'm telling you is, it's going to come down that way if you've got something to say about, my intentions were never to get somebody hurt at all.

PV I, I didn't do anything.

TK And I'm telling you your own mouth is going to slam you shut on that one. Because, it's, it's too late now. You talked about it already.

PV I didn't talk about nothing. I didn't tell her, man.

TK Then I've got half of fucking Saint Paul lying to me. And I don't think I've got that many people are going to lie to me and other cops. It's just not me running around investigating this thing. This ain't LA. Somebody gets capped around here all the cops light up on it. It's a big deal. Your mouth has already screwed you. I am not bull shitting you one second on that. And now you turn around and saying no, I' ain't part of it.

PV I'm not.

TK It's not going to wash because your mouth, things that came out of your mouth are things that only the person that was there would know.

PV No.

TK So you at least have to be there when it happened. That is the least. We wouldn't be down here if we weren't sure of this.

PV I thought you, didn't you say I could take a lie detector test?

TK You want a wack at the, the voice stress thing?

PV Hell yeah. I didn't do nothing.

TK And what are you going to do when you fail that with this bull shit?

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PV I won't fail. I won't fail. I'm

TK No. That's, that's a valid question. Because I've had other guys ask for it and it's just another waste of my time. It thought it was a waste coming down here. I got in an argument with my boss, he's probably already going to get, mark me down on my review for the last 6 months, on my performance, but I don't care. I feel strongly on this. I don't like guys jerking me off for another 2 days on this kind of crap.

PV (inaudible) sir. I promise you.

TK You'll take the voice stress and it will give me

PV I'll take, I'll take whatever.

TK what, what is going to happen if you fail that voice stress?

PV I

TK if it says you're lying about it.

PV I'm 100 percent sure I will not fail it.

TK What happens if you don't?

PV If I don't.

TK If you fail it.

PV I won't fail it. I won't fail it. I promise you. I'll go down and get

DV Is this your statement? Today is this your statement? Yes or no.

PV No, I'm trying to

DV Is this your statement? Here's we got people that want this room. I've sat here, I've listened to I don't know how

PV This is my statement.

DV This is your statement.

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PV I said some (inaudible)

DV This is your statement.

PV I'm going to speak right now. This is my statement. I've been drunk and I been trying to, like you said, maybe tried to shoot my mouth off in front of girl and look hard and whatever the fuck. I probably said a lot of bull shit. I said some bull shit to Colleen that night. And I was bull shitting. But this is my statement. I would take the lie detector test or whatever test I got to take. But I swear to God on my life and my sole, I did not rob nobody and I didn't shoot nobody.

DV And everything you've told me today is the truth.

PV And I've told you the honest God's truth.

DV And there's no lies in it.

PV I have told you the honest to God truth.

DV And you, and you swear on everything you said.

PV I swear to God on my life it's the truth.

DV Okay. And how is that going to sit when we know some of what you told us is already false?

PV Look, I'm telling you the truth.

DV I'm just telling you too okay?

PV How do you know (inaudible) on me.

TK You know what he was telling me when we were on the way down here. I, I'll get this out quick. Because, you know, my ass is falling asleep probably here as well. He's saying, how old are you 21, 22?

PV 22.

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TK We're talking about how long do you think you're going to live? 75 years or something? Another 15 fucking years. That's what he's telling me. We're talking about 50 years of a guys life. He deserves a couple of hours from us. I'm wearing to the point were that's about it for me man.

PV I'm not, fuck man, I'm not trying to fuck with my life. This is my life. And I wouldn't lie the fuck (inaudible)

TK And you think, you think, ah, ah, TT's got the kids? Is that the, who's got your kids TT?

PV Yeah.

TK You think she's going to trot out to Stillwater with the kids forever. Fuck you won't know your kids. That's what he's telling me. That's why I know for a fact, I mean, (sound) human nature. Move on. That guy's dead. Behind prison for life is dead. He's offering you a little life.

PV I'm trying to get my life.

TK Okay.

PV I didn't do it. I told you.

TK That's fine.

DV Where do we get a hold of Colleen?

PV She work at the Buttery.

DV Okay. So now Colleen's going to say that you were bull shit ting. You're going to say that you were bull shit ting.

PV I'll tell

DV And then 4 others are lying. Right?

PV I don't know no 4 others is.

DV Okay.

PV I promise to God I told

DV You don't know. You don't know.

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PV I don't talk to nobody I don't know.

DV I'm not saying you talked to him. You didn't listen to anything I said. People overheard your conversations alright? So everybody else is lying. I want to get this straight cuz I want it on tape. Everybody else is lying.

PV I swear to God

DV Is that what you're telling me?

PV I didn't do nothing.

DV Okay. You're telling me you and Colleen, whoever she is are the ones telling the truth and the other 4 are lying.

PV No. I told

DV Yes or no.

PV I told Colleen it ain't lying. They is lying. I told you the truth what I told Colleen. That's what I told her. And I was lying to her. That's bull shit. Geez.

DV And this is your statement. This is what, this is what goes down the official record today.

PV No. This is, don't sound right.

DV This is the official record right now. This is your last chance.

PV I'm trying to

DV Everybody else is saying what they have to say to take care of themselves. And this is what you're coming up with to take care of yourself.

PV I don't know what to say. It's hard to say something when you ain't did nothing. Fuck man. It's bull shit.

DV Yeah. It is.

PV Fucking hard too.

DV It is (inaudible)

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TK Don't talk to us about you being the victim. I'll remind you one more time. This is the victim in all of this. This is the only fuck, not at the only one. He has friends and family here. The whole community made a shrine to this guy in the corner of this store. These are the victims. You're ass isn't a victim right now. Nobody's feeling sorry for your poor ass right at this second. Especially your buddies. You think it was choices made they're going to stand for you?

PV No.

TK I still make you as the damn shooter on the damn thing and if you want to stick with this, that's fine. I'll write it up assassination right at the top.

PV Don't write that up. Cuz I didn't do

TK That's the way it's going probably.

PV I didn't shoot nobody. I didn't shoot nobody.

TK If you want me to set up a VST, I'll do it but God damn it that's it. I mean, I'm

PV I want your card.

TK I want (inaudible) again. Huh?

PV Could I get your card? Please.

TK I don't know. You got one?

DV Yeah.

TK Here's mine. If you want to reach me the office line, the 3315. But I'm telling you if we do the PFC and there's some bad vibes on that

PV I promise you.

TK I don't care what you do we're not going to go there and say that you cooperated fully.

PV Okay. I'll be honest

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TK We are not going to tell the attorney that you cooperated fully beyond this point.

PV I promise you. Whenever you ready, I'll do it. I'll promise you. I can go whenever you all want. Anytime.

DV Okay. We're going to stop the tape now. It is ah, 3:35.

END

DV,TK/jdc

MINNESOTA JUDICIAL BRANCH

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DATE: February 27, 2003

CASE #: 02018427

INTERVIEW: Captain Daniel Vujovich

SUBJECT: Colleen Mary McManus DOB: 12/12/54

DV Testing 1, 2, 3, 4. Today's date is February 27, 2003. The time is 1600 hours. This interview for case number 020018247. The interview is being conducted by myself, or is being conducted by myself, Captain Daniel Vujovich and present with me is Colleen McManus. Colleen for the audio recording would you please state your full name and spell your last name.

CM Colleen Mary McManus, M-c-M-a-n-u-s.

DV Colleen, what is your date of birth?

CM 12/12/1954.

DV Okay. For the purposes of this audio recording we are going to leave your home address and home phone numbers off the ah, statement. Okay.

CM that's fine with me.

DV Okay. Ah, Colleen ah, on December 22 of 2002 we had a robbery homicide that occurred at Sabreen's Market in South Saint Paul. Do you recall that night? December 22nd?

CM December 22nd. Yes, I do.

DV Okay. Ah,

CM I didn't know about the incident until the following day.

DV Okay. And earlier in this investigation you spoke with investigators from our office, the Dakota County Sheriff's office and Minnesota Gang Strike Force. Correct?

CM That is correct.

DV Okay. And today we have you here because ah, throughout the investigation we've developed some additional information and we wanted to verify that with you today.

CM Okay.

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DV Okay. Ah, we, earlier on you spoke of ah, you were working at the Buttery Bar and you spoke of ah, some individuals and you identified them by street names only. And one of the individuals that you had made a comment that was there, ah, was by a street name of Q. Is that correct?

CM That is correct.

DV Okay. And that is the reason why you're here today. Ah, is, is that we're trying to identify Q and we learned ah, from another individual possible what his real name is. Today we showed you a photograph and ah, you identified ah, picture number 3 out of a line up that was made up by the Minnesota Gang Strike Force. Line up ID 11568. Is that correct?

CM That is correct.

DV Okay. And what do you know that person by?

CM I know him by the name of Q. I also know his first name is Maynard.

DV Okay.

CM I do not recall his last name. I know his first name because I ID'd him when he was in the bar to make sure he was of legal age.

DV Okay. Going back to December 22nd, we already took a statement from you, or one of the officers did about ah, some ah, statements that were made to you by ah, a Philip Vance and a Dominic Johnson. Their street names are Florida and Stacks. So on that night do you recall if Q, ah, who has now been identified as Maynard Cross, was he at the Buttery Bar that night?

CM Yes, yes, he was.

DV Okay. About what time did you get to the bar that night?

CM Between 10:15 and 10:30 p.m.

DV Okay. Did you see the 3 of them together?

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CM I saw them together and in a larger group with another individual named Rooster, who's Antonio Williams and ah, St. Louis, who's name is Eric. I don't know his last name. And another individual joined him is Shine, who's name is Edward. And I don't recall his last name.

DV Okay. Were they all together or, this whole time or were they in separate groups ah, earlier, or how do you describe that?

CM They were, when I came in ah, Florida and Stacks were, were to the right of the bar and Q, Rooster and St. Louis were over on the left side. Florida and Stacks approached the, Q, St. Louis and Rooster. They had a few words ah, essentially telling Florida to chill out and he needs to get his head together and, and then Florida and Stacks left the bar. About 10, 15 minutes after Florida and Stacks left, Q, Rooster and St. Louis left and Shine stayed in the bar.

DV When you said that they had some words about Florida chilling out, earlier, you on the other statement ah, Florida was ah, acting nervous and had made some other comments. And you don't need to go over those. We have those in the other statement. Ah, do you think that's what they were referring to when they were telling him to settle down?

CM Oh, yes. Cuz he was just bouncing off the walls that night. And, you know, he's, he's kind of extreme in his behavior sometimes, but I mean, there was quite a bit of tension, you know, directed at him. Especially, you know, by Q and Rooster, you know that, you know, what he was, how he was acting was not, not cool with them. And, you know, he just needed to take a time out and get him mind right.

DV That night did you see Q, Florida and Stacks together, just the 3 of them or were they always in this larger group.

CM They were always in the, that larger group. The had been together, I found out from the bartender working, um, from 5 until 1 a.m. that they had been together earlier in the bar.

DV Who was?

CM Florida, Stacks and Q.

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DV Okay. Do you know about what time that was?

CM At 8, between 8 and 10. Between the time I, right before I got there. About an hour, hour and a half before I got there.

DV Okay. Who was that bartender that was working?

CM That was Chris Coske (sp?).

DV Okay. Did she happen to say what time they arrived there?

CM No. She didn't know that.

DV Okay. Prior to December 22nd, did you ever see Florida, Stacks and Q together?

CM Yes. Quite a few times.

DV Okay. I'm purposely using their street names so we don't confuse you because that's what you know these individuals as. Um, and what time did Florida and Stacks leave the bar that night. Do you recall?

CM It was about 11, about 11 p.m. and then they returned to the bar about 12:30.

DV Okay.

CM 12:30, 20 to 1 and

DV Was Q with them at that point?

CM No.

DV Okay.

CM Q left the bar at 11, about, probably between 11:15 and 11:20 or so and did not return that night.

DV Okay.

CM In fact, did not return for a couple nights until after Christmas.

DV How as Q's behavior that night?

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CM He, they were all on edge. I mean, he wasn't quite as off the wall as Stacks and Florida but, you know, he was a, he, he has a real cool demeanor, but, I mean, he was just jumping on everybody. It's word and, and

DV Do you know him to do any drugs at all, Q?

CM I know that he deals crack.

DV Okay.

CM And I know he drinks (laughing). But what, what his recreational use of ah, drugs, although his is the person who told me that Stacks likes to do Ecstasy.

DV Okay. When was the last time you saw Q at the bar?

CM January 15.

DV Okay.

CM Ah, 2003.

DV And how do you remember that date?

CM Because that was the last day of my employment there.

DV Alright. After the 22nd of December, did you ah, see Florida, Stacks and Q together at all?

CM On one occasion, it was the 26th of December, see the day or 2 after Christmas, because Q I hadn't seen for a while and I thought he might have gone out of town. And Stacks and Florida had come in and Stacks, that's the night Stacks told me that he had to turn himself in, in like a week to do some time for a probation violation.

DV Okay. The 3 of them were together then?

CM The 3 of them were together again. Along with Q's brother. A guy named Jay Rock and this Candy person.

DV Do you know who Candy is?

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CM Candy, I've seen her on multiple occasions. She's a patron at the bar. I don't know her last name. I know what kind of car. It's got those little bullet hole things in her car.

DV Is that a girlfriend of any of these guys?

CM Of, started out, she started talking to Q but ended up going out with Q's brother.

DV Okay. Then from the 22nd, you said that you saw Florida, Stacks and Q together shortly after. From then until the 15th did you see them together at all anymore? No. Stacks turned himself in like the 6th of January. Ah, Florida had been buzzing in and out but you know, he would, he would just be so off the wall that we usually had to end up having, asking him to leave. And on those occasions, you know, Q just gave him the, gave him the sign like don't even come by me. You know, put up his hand and (inaudible) this other guy names Rooster run interference between the two.

DV Okay. But Q was frequenting the bar after Christmas then until the 15th?

CM Ah huh.

DV About how many times a week do you think Q would come into the bar?

CM Oh, 3 to 4 times a week.

DV Okay.

CM I became their regular hangout.

DV Okay. Rooster is, is he affiliated with the gang at all that you know of?

CM Yeah. He's a G.D.

DV G.D.'s. Okay. And you said his name was Antonio Williams?

CM Yeah. Antonio Mongrel Williams.

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DV Okay. Alright. And that's who we have him identified by a Saint Paul officer ah, one of the nights we were down there working surveillance we had him stop him. You said,

CM And Stacks is a Vice Lord.

DV Stacks.

CM Stacks is a Vice Lord.

DV Okay.

CM Florida is a G.D.

DV Florida is a G.D.? Okay. And Stacks is a Vice Lord.

CM That's how I initially identified them. He had his little Vice Lord tatoo on his arm.

DV Okay. On one occasion one night, there was a vehicle that was stopped out front of the bar.

CM Did it

DV Whose car was that?

CM That was Stack's baby's mama. The mother of Stack's child. And in that car was also her cousin who is an ex-girlfriend of Q. And also a former liaison of Florida.

DV Okay, and that was, was that the same night that we had the St. Paul officer identify Rooster?

CM Correct.

DV Or was that another night?

CM No. That was the same night that they identified Rooster and Black.

DV Okay. Did you ever see Stacks, Florida or Q in that car?

CM I'd seen Florida in that car.

DV Okay.

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CM And on one occasion a long time before that, Stacks, ah, had come in and he was passed out. I mean, he didn't even drink anything in our bar, but he came in and he just put his down and he sort of passed out. And somebody called her to come and pick him up. She gave him a ride home.

DV On another occasion when we were working surveillance, there, there was another car that was stopped out in front of the bar, do you remember that night?

CM In front of the bar, or on 6th and Minnesota?

DV I think it would be 6th and Minnesota. Probably would be what you would consider the side of the bar. Between there and ah, the insurance company across the street.

CM That is the car that I've seen ah, Q in numerous times with St. Louis and Shine.

DV Okay. Did you know whose car that is?

CM No.

DV Okay.

CM I've seen Q drive it. I've also seen St. Louis drive it.

DV Okay.

CM But those 3 would hang together, after Christmas, those 3 hung together frequently.

DV Okay. Is there anything else you can think of that I should ask you that I may not have about the relationship between Q, Florida and Stacks?

CM Well, they were once really tight. And then after, something happened, on or about, you know, the 22nd, 23rd of December that changed the dynamics of that group. Um, where, I mean, Q was always the much more level headed even tempered of the 3. And he, you know, he just took a big step back from those 2. You know.

DV Okay.

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CM It had Rooster, in fact there were several people who had Rooster, try to keep Florida in check.

DV What gang is Rooster affiliated with?

CM He's a G.D. out of Chicago.

DV Okay. Do you know what gang Q is affiliated with?

CM No.

DV Do you think he is with a gang or not with a gang or you don't know?

CM No, he doesn't wear, he doesn't support colors like they do, but, I mean, the guys, everybody he hangs around with is a G.D.

DV Okay.

CM Not too many of the Vice Lords that used to hang down at the bar. That sounds terrible.

DV Okay.

CM You know. I mean, it wasn't a gang bar, but it turned out to be like a gang hang out.

DV Okay.

CM You know, um, he really, you know, didn't have too much to do with the Vice, I mean, they all seemed to know each other but,

DV Okay.

CM they didn't hang around with the guys that I know that are Vice Lords. In fact, Stacks is the only Vice Lord I ever knew that really hang with the Gds.

DV Okay. I think we'll stop the audio recording right now. It is 1617 hours.

END

DV/jdc

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DATE: January 8, 2004

KASE NO: 02018427

INTERVIEW: Captain Daniel Vujovich

Kentrell Latasa Anthony DOB/10-28-83
956 E. Minnehaha
St. Paul, MN
651-772-8334

KA Well he couldn't, he don't know how Florida's story is going so…

DV Today's date is January 8, 2004. The time now is 4:57 PM. This interview being conducted at the South St. Paul Police Department by myself, Captain Daniel Vujovich for case number 02018247. The interview is with Cantrell Latecia?

KA Latasa.

DV Latasa Anthony. Cantrell, for the audio recording would you please state your full name and spell your last name?

KA Kentrell Latasa Anthony, I'm sorry.

DV How do you spell your last name?

KA A N T H O N Y.

DV What is your date of birth?

KA 10-28-83.

DV What is your home address?

KA 956 East Minnehaha.

DV And what is your home telephone number?

KA 651-772-8334.

DV Okay Cantrell, we've already talked to you about a case that we're investigating, a robbery homicide that occurred in South St. Paul. And previous to today you

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gave us a statement with some information that you had that's helping us with the investigation. Today we called you to your office to see if you'd heard any other things and through a brief discussion prior to going on tape you did have some additional information. Is that correct?

KA Yes.

DV And the reason that you didn't come forward with that information is why?

KA I don't know you all number.

DV Okay. I think you also said that you…

KA It just was told to me. And I was just like I ain't trying to be involved in it.

DV Okay.

KA And I really didn't - I told my grand dad about it though. I thought he would have told you all. Because he talks to you.

DV Okay. Why don't you tell me, you said that you had a conversation with a lady by the name of Vanessa Franco.

KA Vanessa, yes.

DV Okay, how long have you known Vanessa?

KA For about two, three years.

DV Okay. And where did this conversation take place?

KA Downtown St. Paul on Fifth and Minnesota.

DV Okay, and do you recall about when it took place?

KA It was in the daytime. I just don't remember what day it was. It was about two months, a month ago, two months ago. It was about a month ago.

DV About a month ago?

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KA Yeah.

DV First part of December or mid-December?

KA First part.

DV Before or after Thanksgiving.

KA After.

DV Okay, so it occurred sometime in December?

KA Yeah.

DV During the daytime hours?

KA Yeah.

DV Okay. And what were you doing downtown, do you recall?

KA Going home from school.

DV Okay, and were you meeting up with her on purpose?

KA Un huh. I just seen her down there.

DV Okay. Can you tell me what took place during that conversation?

KA Um, we started talking about the murder and what happened. And she told me that the police had picked her up and made her take a DNA test on her son and made her um, look at some - they had photos of the man and they made her take a lie detector test. And she told me that Stacks got - she talked to somebody with Stacks and they told her that the - Nicole pulled the trigger. But Stacks don't want nobody to snitch on him. And I was like, I don't know. I'm not trying to be involved in it. It's crazy. I ain't trying to get all, un huh. I'm (inaudible). Now it's like, well I know I wasn't there when all of that happened. I was at the Economy Inn. I was at the hotel. So, and we was just talking about what was going on with all of it.

DV Okay. So Vanessa told you that she got a call from home?

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KA From somebody with Stacks.

DV With Stacks?

KA Yeah. Like somebody telling her about what's going on.

DV Okay. Did she say who that person was?

KA No, she didn't tell me who it was.

DV Did she say if that person was acting under the - or at the direction of Stacks to make that phone call?

KA Yeah she - the phone call was made to tell her not to snitch.

DV Okay, all right. I just want to kind of clarify that. Do you know about when she got that call?

KA No, she didn't tell me what day she got that call. She just told me what - that she had got that phone call not to snitch and Nicole pulled the trigger. And I was like, that's crazy. Why would Nicole pull that trigger. I ain't never think of her to be somebody to just sit there and shoot somebody. And she says that it was like she hesitated and the gun went off. And I was like, you can't just hesitate and shoot somebody in the head. That's not - I don't understand that. That's not hesitation. You could have hesitated and walked up out of that door and put that gun down. And she's like, that's what went on. And she didn't want to get Stacks in trouble. And I was like, I ain't got nothing to do with it. I'm, man that's crazy. And we were talking about how the police has been talking to us and stuff. And I was like, and the police officer I guess there was a fat guy and another guy. And they were like Stacks, her son is Stacks, and one of her sons is Stack's son and one of them is Florida's son. And she was like, no, my son ain't Florida's son, but the other one is Stack's son, because she took the DNA test.

DV Okay, when did she take the DNA test for that, do you know?

KA No. All I know is she took a DNA test.

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DV Okay, do you know how old that son is?

KA He's probably on his way to being two.

DV Two?

KA Yeah, he's going to be two.

DV And that's Stack's son?

KA Yeah.

DV Do you know what that son's name is?

KA I forgot his name. Um, Savian.

DV Fabian?

KA Savian.

DV Savian, all right. Did she tell you anything else during that conversation?

KA I'm trying to think. No, not that I remember. No we was talking about our baby dads and what happened.

DV Okay, why would the conversation of the murder come up?

KA We always just sit back and talk about Stacks and - because she know that I used to mess with him.

DV With Stacks?

KA Yeah.

DV Okay.

KA And then all of a sudden she had a baby by him. So the conversation got brought up about him being all the - conversation got really (inaudible) into what happened with the murder and stuff and what the police been saying and stuff. I told her I don't know. I ain't got nothing to do with all of that. I'm not trying to be all up in it or whatever. But she was telling me about it and then I talked to John. He said he knew where the gun was at or whatever.

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DV Who is John now?

KA Big Lip John, this boy that we hang with.

DV Okay, do you know what his last name is?

KA Un huh. All I know is we call him Big Lip John.

DV Okay. And he said what?

KA He knew where the gun was.

DV And when did you talk to him?

KA Downtown like two months ago. I was arguing with my baby's dad. And he was down there and we were talking about what happened. He said he had to take a lie detector test too. And I was like, they didn't make me take no lie detector test because I ain't got no reason to lie about it, you know. And he was like, well I don't know. But he was you know, John is a (inaudible) so he like, he (inaudible) with the gun. He was trying to do it on the (inaudible) but I'm like, I don't know all about what (inaudible) said. Don't tell me, I thought it was in the river. 'Cause I was told that it was in the river.

DV Okay, what did John say to that?

KA He was like, no, it ain't there. And I was just like, oh well I don't know and I don't need to know it.

DV And what - John told you that when?

KA About two months ago.

DV Before you talked to Vanessa or after?

KA After.

DV Okay, that wouldn't be right though.

KA No. It was - it was before I talked to Vanessa. I'm trying to think of that. Because I seen John downtown. And I seen Vanessa. Okay I got the dates mixed up.

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Because Vanessa, I talked to Vanessa after I talked to John.

DV Okay.

KA Because I remember talking to Vanessa about John. Yeah, it was after I talked to Vanessa. Before - damn I'm getting confused.

DV Okay. So you talked to John first or second?

KA Yeah, I talked to John first.

DV Okay.

KA And then I talked to Vanessa.

DV Okay. When you talked to Vanessa, what did you tell her about John?

KA That he said he knew where the gun was at and she was like, oh, and I was like you say he had to take a lie detectors test too. She said yeah, I had to take one too. I was like, they ain't making me take one, but if they did…

DV So Vanessa knows that you've talked to us?

KA Yeah.

DV And John knows that you've talked to us?

KA No. John don't know that. He knows that - he talked to me about it. He don't know that I talked to you all.

DV Okay.

KA I never told John that I talked to you. I just told John I'd been hearing about it.

DV Okay. I thought you told John you had to - they didn't have you take a lie detector test.

KA Right. I told him they didn't make me take a lie detector test.

DV Okay but that would infer that…

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KA But John don't think like that.

DV Okay.

KA John don't think like that. And I didn't tell him that I talked to you all.

DV Okay. What else did John say during that conversation?

KA He was just like, I know where the gun is at. And I was like, well I don't need to know all of that. He was like, I don't know what's going on in all of this but I'm not trying to be involved. They had me come down there and they took - you all took his DNA. He said that you all took his DNA off some gum. I remember him saying that, somebody took some DNA off some gum.

DV All right.

KA And I was like I don't know what all about that. I don't even remember, I don't know about no DNA. He says the gum got left there. And I was like… I was stuck like I don't know. They ain't never tell me about no gum.

DV Okay.

KA So.

DV And that conversation was when?

KA With John downtown.

DV Before Thanksgiving, after Thanksgiving?

KA It was before Thanksgiving.

DV Okay. And then about a month later after Thanksgiving…

KA I talked to Vanessa.

DV Okay, what did she say about that information you told her about John?

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KA Nothing. She just got to telling me about what she was going through.

DV Okay.

KA Because she - because I always like John, you know, John be lying. So I don't kind of believe him in certain things, you know, so I'm like.

DV Okay, so did she tell you who that person was that she got the call from?

KA No.

DV Was Stacks on the other line?

KA Yeah, It was like, you know how you can place a three way call through the jail, but you can't pick up the phone. You can't like, you can place the call, you can click over, and the line was - the jail call will stay on the line.

DV Right.

KA But you have to wait until the person picks up their phone.

DV Okay.

KA In order to click back in with that person.

DV Okay.

KA That's how the phone call…

DV So Stacks was actually talking to her at that point?

KA Yeah, that's - didn't I tell you that?

DV No. It sounded like Stacks was telling someone else to tell Vanessa this.

KA No, it was like, it was a three way call.

DV Okay.

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KA It was him and somebody else. They was saying, don't snitch on me, I didn't pull the trigger, the white girl did. You know, they call her the white girl. They don't call her Nicole. They call her the white girl.

DV So Stacks actually said that?

KA Yeah, from what I was told from Vanessa.

DV Okay. And when did that - Vanessa get that call?

KA I don't remember when she got that call. She didn't tell me when she got that call. She just said she talked to them. And I was like, I don't want to be involved in it. But I was already - I'm already involved in all of it, you know, somebody start saying my name and I was like, I don't know how my name got put in here. And then I - when I came and talked to you all it was like, Nicole said she don't - she didn't know who Stacks and Florida was. And she actually did. Because that's how I met her, through them, so.

DV Can you think of anything else that Vanessa told you at that - during that conversation?

KA Um, no. I can't. She probably did say some more stuff but I don't remember it. It would probably come back to me after my mind is off of it.

DV Okay, why don't you think about it a little bit and then, you know, either today or tomorrow we'll talk again. How is that?

KA Yeah.

DV Okay, I've got a couple other questions here. Is that, when was the last time you saw Nicole?

KA Ooh, last year in about right after we came from Chicago. Like January, the end of January.

DV January?

KA Yeah, January 20th, something like that.

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DV Has she ever told you about Stacks and Florida being jammed up on this case?

KA Un huh. No, I never talk to her about this.

DV And you haven't seen her since?

KA Because I didn't know she was involved in it until you guys told me.

DV And that was well after January?

KA Yeah.

DV Okay, so the last time you saw her was January 20th?

KA Yes. And she was in a suburban, a big car. And I tried to get her to stop but she didn't stop, because she had my stuff.

DV Okay, when was that?

KA In January.

DV In January, in the suburban?

KA Yeah, yeah.

DV Okay, all right.

KA She wouldn't stop the car though, because, I don't know. She was telling, it was me, my baby's father and his cousin. And she was supposed to - she was saying she was going to stop the car. She was like - I was like pull over or whatever. And she was like - and she never stopped. So I was like, okay. But she was telling people that she was pregnant by him and he was mad at her, and he told me about it. I remember him telling me about that. He was mad at her and he was telling her, don't be lying on him saying he's sleeping with her like that.

DV Okay.

KA But.

DV Who was that now?

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KA My baby's father's cousin.

DV Okay, but who is talking - referring to?

KA Nicole.

DV Nicole?

KA Yeah.

DV Okay. Now Vanessa has a child by Stacks?

KA Yeah.

DV Is that proven?

KA Yeah, she said she took a DNA test and it came back to be her son.

DV Okay.

KA And then the police officer said that it was Stack's son. And then they say there was Florida's - the other little boy was Florida's son. And she said, no, that's not Florida's son. I'm sorry. This is crazy.

DV Okay, does she - but we heard she doesn't like Florida.

KA She messed with Florida.

DV Okay, all right.

KA So I don't understand where she coming with that at.

DV Okay.

KA She messed with him.

DV Okay. Earlier you also talked about back in December 2002.

KA Yeah. About the um, phone call from Stacks?

DV Yes. Can you tell me about that phone call?

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KA Yeah, when he told me he was in Chicago?

DV Yeah, what happened there?

KA Yeah, he told me that he was in Chicago. But he wasn't, he was in South St. Paul with Florida and them girls, and Nicole. And he kept telling me that he was in Chicago. And I was like, no you're not. And he finally was like, no I'm in South St. Paul. And Florida got on the phone and Nicole got on the phone, you know. Then he was talking and I was just like well, call me back. Because Stacks and Florida were drunk. And I - he kept telling me I'm in Chicago. And he was like, I'm going to come and pick you up and come and kick it with you and stuff. And I was like, yeah, okay whatever. But he never came. And he - I just was like - blew it off like okay, whatever.

DV Do you remember when that call was?

KA It was like right before Christmas, like probably - December, I say from December 20th from sometime December 20th to right before Christmas.

DV Okay.

KA Because after Christmas, like December 23 and stuff I never heard from Stacks no more. From like - from until I came back from Chicago.

DV Okay, when did you go to Chicago?

KA Um, January - December 27th. December 27th or December 26th, one of those days.

DV Did you hear from Stacks after Christmas?

KA No, because I was in Chicago.

DV What about Florida?

KA No, I didn't hear from neither one of them. I was in Chicago.

DV Okay. Where was that call placed to?

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KA The call was placed to my house or to my cell phone. I think it was to my house.

DV Okay, what was your cell phone number at that time?

KA Um, 651-587-1823.

DV 1823?

KA Yeah.

DV Do you still have that cell phone?

KA Un huh. It's broke.

DV Okay, but that was the cell phone you had back then?

KA Yeah, I had a whole bunch of different cell phones. I had 612-396…

DV 39 what?

KA 396, um, 1735. I had a lot of different cell phones at that time.

DV Did you have another one?

KA Yeah, I think I did.

DV Do you remember what that is?

KA 612-206-4530.

DV What was it?

KA It was - (inaudible) it was a T-Mobile phone, 4530.

DV Okay. Any other ones? So you were talking to Stacks and Florida pretty regular in December 2002?

KA Yeah. I talked - I used to mess with Stacks.

DV Okay.

KA And we used to always talk to each other and stuff.

DV Even after you went your own ways?

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KA Yeah.

DV Okay, you said that you were at the Economy Inn.

KA Um hum.

DV When was that?

KA It was like - I was there for a week. It was like during that time.

DV During what time?

KA Like right before Christmas.

DV Before Christmas.

KA Yeah, because I went home for Christmas to see my - I brought my momma some Christmas presents. And I went home for Christmas. And then I met back up with my baby's father.

DV Okay, so you were staying at the Economy Inn (inaudible) December 20th?

KA Yeah.

DV Until you went to Chicago?

KA Yeah.

DV Okay. Did you ever call Stacks from there?

KA No, I wouldn't call him while my baby's daddy was around. I ain't never do that. Because then there would be a lot of arguing with me and my baby's father, just to be on the phone with Stacks, no. But I remember Florida's cell phone number was like 763-222-222 something. 'Cause he had got it from Amy, the girl he was messing with. Whichever one that he was messing with, she got him a cell phone.

DV Okay. Are you sure that wasn't Sonya. Do you know who she is?

KA No. I don't know who she is.

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DV That's another girl he's got.

KA I don't know who she is. But I remember him getting that phone. And that was the number that they called me from.

DV Are you sure, 763?

KA Yeah. It was a 763 phone. I remember that. Because it was a funny number to me. And I was like, that number is real funny. You know, and it was all twos for the first three, three digits and then I don't remember the rest though.

DV Does your baby's father know Florida and Stacks?

KA No, (inaudible)

DV Okay, would he call them at all?

KA No.

DV Okay, whose name did you register under at the Economy Inn?

KA Uh, a friend of my baby's father's.

DV And what is that name?

KA I don't know his name.

DV Pardon me?

KA I don't know his name.

DV What would - well we got a couple phone calls that came from the Economy Inn to Florida's cell phone on December 22nd. And I'm wondering if you talked to him. Or who would have talked to him at the Economy Inn.

KA I'm trying to think. I probably did talk to Florida.

DV Okay.

KA From the Economy. I probably did. If my baby daddy wasn't around. I'd probably would call for Stacks.

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DV Okay.

KA But I'm trying to think on - I'm trying to think back to…

DV And I understand it's a year ago.

KA Yeah. You know what? I did talk to Florida. I don't remember what day it was. But I talked to him, because I asked him where Nicole was.

DV Okay.

KA Because Nicole was missing in action and I hadn't seen her. And I talked to him. And my baby's dad wasn't around. I remember he wasn't around because…

DV Okay.

KA He went outside. And I had the room with me and my cousin Tenecia. So I remember talking to him. But I don't remember what day it was.

DV Okay, so that might explain those calls coming from the Economy Inn.

KA Yeah.

DV Do you remember what room number you were in?

KA Un huh, no. I mean we had so many different rooms there.

DV Okay.

KA Probably 207.

DV When they called - when you talked to them when you were on Minnehaha…

KA Yeah I talked to him from the cell phone. He was on the cell phone.

DV Okay. But it went to the Minnehaha house address right?

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KA Yeah.

DV And that's when he told you he was in Chicago?

KA Yeah.

DV And then you said…

KA Yeah, because my mom was sitting there and I kept telling him he was lying. But I could check my phone records.

DV Do you have those still?

KA Yeah, we keep all our phone records.

DV Where are those at, your house?

KA Yes.

DV Okay, so we'll take a look at those later on okay? And Florida told you at that - or Stacks told you or Florida told you they were in South St. Paul?

KA Stacks. Stacks. And then he was with Nicole so I knew he wasn't in Chicago.

DV Okay. Did Nicole get on the phone then?

KA Yeah. And I asked her why hasn't she been around.

DV Okay.

KA And where she been at.

DV Okay, all right. Here's what we're going to do. We have a little problem here is that you've got your child here. We can continue this conversation at another time, okay?

KA Yes.

DV And it's 5:20 PM and we'll stop the tape.

END
DV:kp

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DATE: June 9, 2003

CASE #: 02018427

INTERVIEW: Captain Daniel Vujovich
Andy Schumaker, Gang Strike Force
John McManus,

SUBJECT: Jacqueline (NMN) Ezell DOB: 2/20/46
956 East Minnehaha
776-4241

DV (inaudible) is your granddaughter?

JO Cantrell, yeah.

DV Cantrell. And she lives upstairs.

JO Yes.

DV Okay. And this is where most of the information is coming from right?

JO Yeah. It's like we sit up there talking

DV Yeah.

JO and we just be talking.

DV That's okay. But she won't talk to us. Why doesn't she like us?

JO (laughing) Cuz you all. (inaudible) kid. You know, I, I

DV How old is she?

JO She's a, she just turned 19.

DV Oh. Still in the teenage with the attitude (inaudible)

JO Yeah. Yeah. Oh, definitely.

DV And who's her mother then?

JO (inaudible) Delores.

DV Delores. Jones?

JO No. Ezell.

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DV Ezell. Okay. I'm just going over a couple of things until they get in here.

JO No problem.

DV And then ah, the car that she, Cantrell is getting the information from who?

JO The car?

DV No. Cantrell is getting the information from who? Who is she hearing it from?

JO She, people she socialize with or talk with.

DV Okay.

JO I don't know they ah, she, she don't give names.

DV I thought she got some of it while she was in the welfare line with

JO Well, that was supposed to have been Stack's mother.

DV Stacks?

JO His baby's, I'm sorry, Stack's girlfriend.

DV Okay. Do you know which girlfriend?

JO The one, the one that had the

DV Baby with?

JO The kids (inaudible)

DV Okay. That's Dominique.

JO Yeah.

DV Okay.

JO She, she was in there, she was talking saying that he was, from the way I got it from her conversation that he was an informant and he had ah, they had picked him up.

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DV He was where? In Peoria?

JO (inaudible) Peoria. I'm sorry.

DV Okay.

JO I ain't too familiar with all these (inaudible)

DV Okay.

JO So. And ah, they picked him up. She turned him in. Now this is what the conversation was, she turned him in and she, I don't know if she went down there or took where he was at. Cuz he was from these, with his relatives down there. Somebody broke his vehicle some during the conversation this all came up.

DV (inaudible)

JO Well.

DV Yeah, no. That's fine.

JO And um, she said that um, she went down there and (inaudible) turned him in.

DV Okay. Those guys will be coming in in a second so. I wondering, I'm just kind of going over this so I know where to go (inaudible) too. And Cantrell was saying that the car they used

JO No. Cuz (inaudible) didn't say anything about a car. They use (inaudible)

DV Okay. What did you

JO Okay. This is the way it happened. Florida boy came to the house.

DV Do you remember when that was?

JO Okay. I don't know. I'm not, it was (inaudible) it had to be in December. (inaudible)

DV After Christmas?

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JO It was, I don't know if it was before Christmas or, I know it was before you all raided my house.

DV Okay. Do you remember what that date was?

JO It was ah, I know it was um, like on either a Friday or a Saturday.

DV Okay.

JO Cuz it was, it was about, it was after 12 o'clock at night.

DV Okay.

JO Okay. Florida boy knocked on the door. So I answered the door. (inaudible) so late I was (inaudible)

DV (inaudible)

JO At my house. (inaudible) my granddaughter (inaudible) the one that Florida boy came to see.

DV And who is that?

JO Her name is Darlene.

DV Darlene. Okay.

JO Okay. Well, she, now her name is Darlene Jones.

DV Okay. That's where I got that then. Alright.

JO Okay. Well, she says Grandma, she looked out the window. She peeped out the window from the room. She said well that, that's Florida boy. I don't want to be bothered with him. Tell him I'm not here cuz he's drunk. So I said, okay. So I open, I answer (inaudible) he said, he told me. So I opened the door. I said, Darlene's not here. So he says she's not here. I said, no, she's not here. You sure she's not here? I said, no she's not here. So he say, can I come in? I was like, no. You can't come in. What would you want to come in here for? She's not here. He said he had to get something out of the room. So I said, what you got to get out of the room? So he (inaudible) I left my sweater in the room. I said, what color is it? I'll go in there and get it for you. So, cuz I knew Darlene was still

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in the room and she didn't want to be bothered. So he said, no, you can't, I know where I left it. I said, well, if you can't tell me ah, ah, you ain't coming in here. So then he said, well, if I tell you what I want you're going to be mad. So I said, well, you ain't coming in unless you tell me what you want. He said, well, he pleaded, just let me in, just let me in. I said, you better (inaudible) cuz by then I knew he had been drinking. And is said, well, you're not coming in here. So he said, would you go, if I tell you please don't be mad that Darlene put out. So I said, (inaudible) in my head I'm thinking that he's got drug in my house or something. (inaudible) so I said, um, you better tell me what it is or you're not getting in. So he said, would you go through and under the mattress in there and see if you see a gun. I said, excuse me, I said, I know God damn well you ain't got no gun in my damn house. He said, please don't get mad at me. So I said, I know there ain't no damn gun in my house. So then he said, would you go check and see. So I went in the room. I shut the door. I wouldn't let him in my house. I shut the door, went into the room and I told Darlene. I say, he said there's a gun in here under this mattress. She said, Granny I don't know nothing about no gun. Ain't no gun in here. I said, he told me to feel, if, if this was the mattress, he would say feel it, the, the bottom of it. So when I went to feel I didn't see nothing. I didn't feel nothing or see nothing. So then I went back to the door. I said look, quit playing games. Ain't nothing in that room under the mattress. He said, go back, it is under that. I go back in there look under the mattress, feel around. Then I just push my hands a little farther up and the fist thing I felt it. I said, well, I feel, excuse my, I say, what the fuck was that? I pulled it out. I say, you see this? This mother fucker has this in my house. She said, Granny, I swear I don't know nothing about it. So I took (inaudible) in the palm of my hand. I took it to the door and I gave it to him. Asked him (inaudible) don't come back to my house. I said, I'm afraid (inaudible). There ain't nothing in my house no good, no nothing. Don't be bringing shit to my house. He took it. He left. (inaudible) half an hour later. Stacks shows up. (inaudible) so I answered the door cuz Darlene went back and got in bed. I answered the door. I said, what the hell is this? I said, who is it? Stacks. So I open the door cuz I knew his name and I knew him. So I say, yeah, what? He said, Florida boy been here yet? I said, yeah he just left not too long ago. And what's his problem