BEFORE THE GOVERNOR OF THE STATE OF TEXAS
AND
THE TEXAS BOARD OF PARDONS AND PAROLES

In re:

Richard Allen Masterson,

Petitioner.

AMENDED APPLICATION FOR COMMUTATION OF SENTENCE OR, IN THE ALTERNATIVE, A REPRIEVE

AND

REQUEST FOR HEARING

Under 37 Texas Administrative Code § 143.43(f)(3) and Administrative Procedures Act § 2001.001 et seq.

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INTRODUCTION

Richard Allen Masterson is factually and legally innocent. He did not murder the decedent, Darrin Honeycutt. Mr. Honeycutt died of a heart attack, not strangulation as the State theorized at trial. The State's medical examiner, Paul Shrode, lied on his application for employment. Mr. Shrode lied about his qualifications when he took the stand in Richard's case. Mr. Shrode's lack of education caused him to miss elementary cardiology principles and incorrectly determine the cause of death. Mr. Shrode was not exposed as a fraud until after Richard was convicted of capital murder and sentenced to death.

But Mr. Shrode's testimony is not the only problem with Richard's case. Richard's case was also a perfect storm of uninterested and underqualified defense lawyers. Richard's state-habeas lawyer, J. Sidney Crowley, is widely regarded as the worst capital defense lawyer Texas. He lived up to his billing when representing Richard. Richard's federal habeas lawyer started strong, but he lost interest at the crucial moment. Before this lawyer filed Richard's federal habeas petition, Mr. Shrode's fraud had been exposed, a death row prisoner in Ohio had been granted clemency on the basis of Mr. Shrode's fraudulent testimony, and Shrode had been fired from his post. Richard's petition contained nothing about this issue.

Because Richard's lawyers failed him at every stage, the court system will not provide relief to him based on insurmountable procedural obstacles. His last chance is executive clemency. The Governor is the last line of defense to stop the execution of an innocent, severely mentally ill man.

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HISTORY OF RICHARD'S LITIGATION

I. Richard's trial lawyers failed to recognize and investigate the primary defenses to capital murder.

For Richard's trial before the 176th Judicial District Court for Harris County, Texas, the court appointed two familiar lawyers, Robert K. Loper and Layton W. Duer. These attorneys had previously represented Richard's brother, Joe Masterson, in a burglary case. Joe was found guilty and sentenced to twenty-five years. The Masterson family felt that Messrs. Loper and Duer did a poor job defending Joe. Richard felt a sense of dread when he discovered they would be the thin line of defense between him and a death verdict.

Richard's fears about Messrs. Loper and Duer were well founded. Any hope to which Richard clung evaporated when Mr. Loper visited Richard in the county jail. When the two sat down to talk about Richard's case, Mr. Loper immediately asked Richard how many people Richard had killed. Richard was appalled. He had killed no one. But Mr. Loper, Richard's defender, did not believe him. He tried to cajole Richard into confessing to more murders and seemed disappointed when Richard maintained that he was not a serial killer. This introduction certainly did not inspire confidence that Mr. Loper would zealously defend Richard.

And Messrs. Loper and Duer did not zealously defend Richard. First, they did not consult an expert medical examiner to counter the State's fraudulent cause-of-death determination. Had they consulted an actual expert, they would have discovered that Mr. Honeycutt died from a heart attack and not from strangulation. Two expert pathologists who have looked at Mr. Honeycutt's autopsy results have reached this conclusion, which is consistent with Richard's testimony at trial. Had trial counsel consulted an expert, they

would have possessed compelling evidence that Richard was actually innocent of the capital murder of Mr. Honeycutt, bolstering their trial defense and preventing an innocent man from being sent to death row.

If Messrs. Loper and Duer had exerted more effort in Richard's case, they would have noticed, investigated, and presented evidence of Richard's severe mental illness. They would have investigated the biological causes of his suicidal behavior, and explained it to the jury when Richard stood before them and requested a death sentence. If they had used more care with Richard's case, the jury would have understood why Richard behaved the way that he did. Instead, the jury just saw a suicidal, homicidally dangerous man. And it granted Richard his impaired wish: a death verdict.

II. The State's expert medical examiner, Paul Shrode, lied about his qualification to get his job, lied on the stand to qualify as an expert witness, botched Mr. Honeycutt's autopsy, and sent an innocent man to death row.

The State's expert witness, Paul Shrode, is a fraud. He conned the State of Texas into giving him a job as an Assistant Medical Examiner, lying about his background to qualify for the position. Exh. 13. Then, without the necessary qualifications, he performed autopsies and testified about expert matters. After Richard's trial, the Harris County Medical Examiner's Office reprimanded Mr. Shrode for his deficient work in another case, specifically for a "wrong determination of cause of death," Exh. 14, the same mistake he made in Richard's case, Exh. 9.

In Richard's case, Mr. Shrode bungled Mr. Honeycutt's autopsy. He rendered an expert opinion that Mr. Honeycutt died from strangulation, most likely simply conforming his opinions to the prosecution's theory of the case. But Richard's qualified medical expert has now exposed Mr. Shrode's shoddy work product and erroneous

conclusions. Exh. 7. In particular, Dr. Christina Roberts reviewed Mr. Honeycutt's autopsy records and concluded, in pertinent part, that "[t]he pathologist [Mr. Shrode] in this case inaccurately ruled out that Darrin Honeycutt died from an acute ischemic event of the heart followed by a lethal arrhythmia based on the absence of hemorrhaging in the heart muscle. As noted above there would be no visual findings in the heart tissue if one died immediately from that event." Exh. 7. She further opined that, "[t]he pathologist appears to have relied on the 'confession' and not any independent scientific observation," and that "[t]here is no accurate scientific method to distinguish between" the State's theory of Mr. Honeycutt's cause of death and Richard's testimony related to Mr. Honeycutt's cause of death. *Id*. In other words, Mr. Shrode made up his "expert" testimony.

Richard's case is not the first that Mr. Shrode's fraud affected. In Ohio, Mr. Shrode helped send another man to death row with his fraudulent expert opinion. Richard Nields petitioned the Ohio Governor for clemency. Ohio granted that clemency request based on Mr. Shrode's misconduct. Exh. 15. The fraud committed in Mr. Nields' case is disturbingly similar to that committed in Richard's case. Although the parole board in Mr. Nields' case found that Mr. Shrode's autopsy results were sound, it took issue with the dramatic conclusions Mr. Shrode drew related to the victim's cause of the death. In granting commutation of Mr. Nields' sentence to life without parole, the parole board relied principally on Mr. Shrode's dishonest testimony:

> Parole Board Members found the following factors pivotal in making a recommendation to commute Nields' sentence to life without the possibility of parole:
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> - Those voting to commute Nields' sentence to life without the possibility of parole are concerned with the medical evidence that

> was testified to at the time of trial by Dr. Shrode and has since been called into question by his former superviser Dr. Pfalzgraf. While Dr. Pfalzgraf does not question the accuracy of the autopsy resulted completed by Dr. Shrode, he does question the lack of scientifically-supported conclusions that he testified to at the time of trial.
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> - Specifically, the Board was concerned that Dr. Shrode testified to the fact that the two attacks on Ms[.] Newsome were separated by a minimum of 15 minutes to a maximum of six hours. However, Dr. Pfalzgraf pointed that that there was no scientific evidence available to support the age of the bruises on the victim in that there was no evidence of healing. In fact, the bruising could have occurred within seconds and last up to a day or more.
>
> …
>
> - Upon examining Judge Nurre's rationale for his decision to impose the ultimate sentence of death, it is clear that he did factor Dr. Shrode's medical conclusions into his decision to impose the death sentence. Judge Nurre cites the following: "The uncontroverted facts and exhibits reveal that the defendant first brutally beat the decedent, and at some time at least fifteen minutes later, the defendant returned to strangel Patricia Newsome to death." While this is not the only factor he lists, it is clear that it was considered.
> - Finally, prosecutors relied on the timing of the victim's death throughout the guilt phase of the trial. They made references to this timing during opening and closing statements.
> - In conclusions, members voting favorable are concerned about the medical evidence that has been called into question and not refused by the State during their clemency presentation. . . .

Exh. 15.

Perhaps most disturbing, the State filed its motion for summary judgment in Richard's federal habeas case after it had learned that Mr. Shrode had falsified his credentials and made a wrong determination of cause of death in at least two other capital cases. Nonetheless, the State never informed Richard's counsel or the courts of Mr. Shrode's fraud on the trial court and the jury. Instead, the State artfully anticipated and attempted to avoid a challenge to Mr. Shrode's expertise and credibility, which federal habeas counsel never made, by arguing in the motion for summary judgment that, "Dr.

Shrode's conclusion [related to cause of death] was premised more on logic than medical opinion: Honeycutt would have passed out quickly from autoerotic asphyxiation." *Masterson v. Thaler*, Respondent's Thaler's Answer and Motion for Summary Judgment with Brief in Support, case no. 4:09-cv-02731 at p. 18 (S.D. Tex. Oct. 12, 2010). Of course, Mr. Shrode testified as an expert pathologist who conducted the autopsy on Mr. Honeycutt. He was not called, or presented to the jury, as a layperson drawing common sense conclusions from the evidence.

The State committed a *Brady* violation when it allowed Dr. Shrode to testify to expert conclusions that were scientifically unsupported, and which he had no expertise to make in the first place, and failed to inform defense counsel of his lack of qualification. It is unconscionable that the State made no effort to remedy that violation when it learned of it, at the very least by the time the motion for summary judgment was filed in federal proceedings. Federal habeas counsel's failure to uncover this information – since a significant amount of it was publicly available by the time the amended federal petition was filed – only furthers the injustice imposed on Richard Masterson. The combined impact of Mr. Shrode's false testimony, and two expert opinions that it is impossible to rule out a fatal heart attack as cause of death, is that no reasonable jury could now find Richard guilty of capital murder beyond a reasonable doubt. However, because of the State's dishonest litigation tactics, and federal counsel's failure to diligently investigate Richard's case, this issue has never been, and cannot now be, litigated.

Darrin Honeycutt did not die from strangulation; he died from a heart attack. Richard Masterson did not kill him. His execution would be a grievous miscarriage of justice.

III. Richard's state-habeas lawyer performed below any acceptable professional level, as he repeatedly does.

The *Guidelines and Standards for Texas Capital Counsel* set forth the professional norms that post-conviction habeas counsel must meet, and Richard's state-habeas lawyer, J. Sidney Crowley, has repeatedly failed to meet these standards. As with so many other clients, he failed Richard because he does not adhere to even the basic professional standards for post-conviction habeas counsel. In 1995, the Texas Legislature enacted the Habeas Corpus Reform Act of 1995, which provided for appointment of counsel to represent all those convicted of capital murder and sentenced to death in their habeas petitions. *See Ex Parte Kerr*, 64 S.W.3d 414, 418 (Tex. Crim. App. 2002). Then Congress passed the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), which granted federal courts authority to grant habeas relief if the state court's adjudication "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 . . . ." 28 U.S.C. § 2254(d)(1) (April 24, 1996). Under the Texas Act of 1995, state appellate counsel must immediately request the appellate record from the convicting court clerk under Texas Rules of Appellate Procedure 34.5 and 34.6. The professional norm for state-habeas lawyers is to investigate the factual and legal grounds for filing an application for a writ of habeas corpus and to timely apply in the convicting court. *See* Tex. Code Crim. P. art. 11.071, § 3(a).

In Richard's case, Mr. Crowley failed to meet the professional norms for state-habeas counsel. He did not even request the complete record for review. Moreover, he did not timely file Richard's application for a writ of habeas corpus, and the meager nineteen-page, thinly supported application failed to meet professional standards for writs

of habeas corpus because "the highly technical law applicable to habeas litigation dictates [that the writs] be lengthy." *Lethal Indifference: The Fatal Combination of Incompetent Attorneys and Unaccountable Courts in Texas Death Penalty Appeals*, The Texas Defender Service, 2002, *available at* http://texasdefender.org/wp-content/uploads/Lethal-Indiff_web.pdf.

As discussed in more detail below, Mr. Crowley's negligent representation left significant evidence that Richard is innocent of capital murder and of the death penalty undiscovered, causing compelling post-conviction claims to go unadjudicated in both the state and federal habeas courts.

For these reasons and those set forth below, Richard should be granted clemency because he is innocent of murder and certainly not worthy of a death sentence.

a. J. Sidney Crowley is an incompetent capital defense attorney who has been found ineffective for similar poor performances and who has a disciplinary history with the State Bar of Texas for neglecting his clients.

Mr. Crowley neglects his duties to the court and his clients and has a troubling history of procrastination that is not unique to Richard's case. On May 5, 2005, Mr. Crowley was appointed as lead counsel to represent Francisco Castellano, who was indicted for capital murder. Mr. Crowley neglected his duty when, on December 15, 2005, the 130th Judicial District Court of Matagorda County, Texas found that *prior* to trial, Mr. Crowley provided ineffective assistance of counsel to Mr. Castellano. *State v. Francisco Castellano*, Trial Cause No. 05-138, 130th Judicial Dist. Court of Matagorda County, Texas. For nearly seven months after his appointment, Mr. Crowley did not file a single motion. Mr. Crowley did not seek funds for investigation, mitigation, or experts. Mr. Crowley visited Mr. Castellano only once in seven months. Mr. Crowley did not

examine the evidence nor did anyone else on his defense team. Mr. Crowley did not even ask Mr. Castellano for records releases to do so. And Mr. Crowley interviewed no state witnesses.

Yet on November 23, 2005, Mr. Crowley represented to the court that he would be prepared to proceed to trial on March 6, 2006. The court ordered Mr. Crowley to appear on December 15, 2005, to demonstrate that Mr. Castellano's case would be ready for trial or to show cause why he should not be found ineffective. That same day, December 15, 2005, Mr. Crowley refused to join his second chair's, Tommy James Stickler, motion to continue, in which Mr. Stickler concluded that the defense could not be prepared to effectively represent Mr. Castellano in a capital trial.

Finally, after an *ex parte* proceeding with Mr. Stickler and Mr. Crowley on December 15, 2005, the court found that, "as a matter of Federal constitutional law," Mr. Crowley provided ineffective assistance of counsel to Mr. Castellano. *Id.* at 10-16. The court immediately removed Mr. Crowley as first chair counsel and found that he exhibited serious contempt for the court and for the legal system. Because Mr. Crowley, as the court ruled from the bench, neglected his obligations to a "defendant charged with capital murder and who [stood] trial with his life at stake," the court, in the administration of justice, continued Mr. Castellano's trial. *Id.* at 10-13. And notably, after new counsel reached a plea agreement with the State in November 2007, the State waived the death penalty for Mr. Castellano.

In addition to Mr. Crowley's ineffective assistance in Castellano, the Commission for Lawyer Discipline of the State Bar of Texas sued him for mishandling George S. Guo's appeal in *State of Texas v. George S. Guo*, Trial Cause No. 0032362, 240th

Judicial District Court of Fort Bend County, Texas. Exh. 11 (Petitioner's Original Disciplinary Petition *Commissioner for Lawyer Discipline v. James S. Crowley*, Cause No. 05-CV-140898, 240th Judicial District Court of Fort Bend County, Texas). Mr. Crowley was appointed to handle Mr. Guo's appeal on September 5, 2003, and the appellant's brief was due on October 6, 2003. *Id.* at 2. Mr. Crowley failed to timely file the brief because he "was occupied with several other matters." *Id.* He further failed to move to extend time to file the brief before October 21, 2003, and he did not notify Mr. Guo of the status of his appeal or that he missed the filing deadline. *Id.* at 2-3. Mr. Crowley did not file a Motion to Extend Time until March 12, 2004, after receiving two letters from Mr. Guo demanding that he file a brief. *Id.* The 13th Court of Appeals extended the time to file until April 8, 2004, but still Mr. Crowley did not file the appellant's brief until April 29, 2004—six months overdue. *See id.*

On May 26, 2006, the 240th Judicial District Court of Fort Bend County, Texas issued a public reprimand finding that Mr. Crowley had committed professional misconduct in his representation of Mr. Guo. Exh. 11 (Agreed Judgment of Public Reprimand, Cause No. 05-CV-140898, 240th Judicial District Court of Fort Bend County, Texas). The court found that Mr. Crowley had violated Rules 1.01(b)(1) (neglecting his client), 1.01(b)(2) (frequently failing to fulfill obligations to a client), and 1.03(a) (failing to keep a client informed about the status of the case) of the Texas Disciplinary Rules of Professional Conduct. *Id.* at 2.

Moreover, Mr. Crowley's lack of diligence is widely known among Texas capital counsel because he has been named as one of the worst capital defense attorneys in Texas. *See Lethal Indifference: The Fatal Combination of Incompetent Attorneys and*

Unaccountable Courts in Texas Death Penalty Appeals, The Texas Defender Service, 2002. In *Ex Parte Nenno*, Mr. Crowley filed a state-habeas petition consisting of only eight pages in which he made only two record-based claims. *See Ex Parte Nenno*, Writ No. 50, 598 (Tex. Crim. App. Nov. 14, 2001). In *Ex Parte Rousseau*, Mr. Crowley swore that when the court appointed him, he "did not know how to litigate a capital habeas corpus case and was not aware of the need to investigate facts outside of the trial record." Affidavit of CCA Appointed State Habeas Counsel, *Rousseau v. Johnson*, No. 00-CV-2588 (S.D. Tex. July 25, 2000). Mr. Crowley also showed his gross lack of diligence when he filed a nine-page petition in *Ex Parte Villareal*, a fourteen-page writ with no exhibits in *Ex Parte Arthur*, and a nine-page writ in *Ex Parte Smith*. *See Ex Parte Villareal*, Writ No. 50, 599 (Tex. Crim. App. Oct. 31, 2001); *Ex Parte Arthur*, Application for Writ of Habeas Corpus, No. 763189 (Tex. Dist. Ct. 180th Jud. Dist. Nov. 17, 1999); *Ex Parte Smith*, Writ No. 48, 130 (Tex. Crim. App. Jan. 17, 2001). Mr. Crowley continually "conceded his inexperience and unawareness of the basic requirements of competent representation." *Lethal Indifference* at 20. But this incompetence is no excuse for his dismal performances in each case, nor does it justify his continued lack of due diligence in recent cases after over thirty years of experience. And it certainly is no excuse for his continued decisions to accept capital appointments when he clearly is not capable of handling them competently.

Similarly, Mr. Crowley exhibited his lack of diligence and ignored his duty to provide effective counsel in his representation of another capital defendant, Derrick Dewayne Charles. *See Charles v. Quarterman*, Amended Petition for Writ of Habeas Corpus, No. 09-CV-00592 (S.D. Tex. Sept. 22, 2009). There, Mr. Crowley and co-

counsel, Connie Williams, failed to present available mitigation evidence during the punishment phase of Charles' trial. *See id.* at 85. The state took five days to present its case for the death penalty, but Mr. Crowley and Ms. Williams presented only a two-hour defense. *Id.* at 85-86. Most troubling, Mr. Crowley and Ms. Williams included no mitigating evidence despite Charles' extensive history littered with mental illness, violence, poverty, and drug abuse. *Id.* at 86. The jury had no opportunity to hear any of the voluminous mitigating evidence because Mr. Crowley and Ms. Williams conducted their defense in an unprecedented *in camera* hearing with only the court and the court reporter. *Id.* at 80, 86. As a result, the jury had no choice but to sentence Charles to die, which it did.

b. J. Sidney Crowley provided ineffective assistance of counsel to Richard Masterson when he filed a nineteen-page writ of habeas corpus in which he presented only two allegations challenging the validity of Richard's conviction and resulting sentence.

Richard has similarly been prejudiced by Mr. Crowley's gross lack of diligence, which, as evidenced above, was all but inevitable because Mr. Crowley is one of Texas' worst capital defense attorneys; Mr. Crowley does not take his duty to the court or to his clients seriously. On February 26, 2004, thirty-six days after the original deadline, Mr. Crowley filed Richard's initial state application for post-conviction writ of habeas corpus. *See Ex Parte Masterson*, Application for Post-Conviction Writ of Habeas Corpus, No. 867834A (Tex. Dist. Ct. 176th Jud. Dist. Feb. 26, 2004). Despite knowing the application was over one month late, Mr. Crowley did not file a Motion to Extend the Filing Deadline until June 28, 2004—four months after the habeas application was originally filed. *See Ex Parte Masterson*, Motion to Extend Filing Deadline for 11.071 Writ, No. 867834A (Tex. Dist. Ct. 176th Jud. Dist. June 28, 2004).

In his state-habeas application, Mr. Crowley raised only two allegations of error: (1) Richard was denied his due process right to a jury trial when a juror slept through the medical examiner's testimony, and (2) Richard was deprived of the right to effective assistance of counsel at the guilt-innocence and punishment phases of trial. *See Ex Parte Masterson*, Application for Post-Conviction Writ of Habeas Corpus at 11-12. Mr. Crowley simply drew a conclusion for the first allegation of error and did not explain to the court how a juror sleeping through trial testimony prejudiced Richard. Furthermore, Mr. Crowley did not explain that the proper method to preserve error regarding jury misconduct was to move for a new trial, which Richard's trial counsel should have done. *See* Tex. R. App. P. 21.2, 21.3(g); *Trout v. State*, 702 S.W.2d 618, 620 (Tex. Crim. App. 1985); *James v. State*, No. 14-98-01083-CR, 2000 WL 123771, at *1 (Tex. App. Feb. 3, 2000).

While Mr. Crowley supported the second allegation of error with more analysis and support, he still failed to corroborate Richard's mitigating evidence with additional evidence and witness testimony that was available when the original state-habeas application was filed. *See* Part III, IV, and V *infra*. Even more troubling, when Mr. Crowley was questioned about his investigation into Richard's history and review of the trial records to use for the state-habeas application, he stated that he only reviewed the trial records once because the records were so voluminous. Exh. 12 (Dore Affidavit ¶4). Mr. Crowley also did not review Richard's juvenile records or have copies of the trial records to reference when drafting the habeas application. *See id.* Thus, with a thinly supported initial habeas application in which Mr. Crowley made conclusory statements with little-to-no support, the CCA had no choice but to issue a *per curiam* order with no

explanation affirming the lower court's denial of Richard's state-habeas application. *See Ex Parte Masterson*, Order, Writ No. 59, 481-01 (Tex. Crim. App. Aug. 20, 2008).

Indeed, as a legendarily deficient capital defense attorney in Texas, Mr. Crowley's lack of diligence in Richard's case should cause this Board to carefully evaluate Richard's case. Mr. Crowley's continued contempt for Texas courts, his death-row clients, and Richard specifically is enough to warrant a commutation of Richard's death sentence.

IV. Richard's federal habeas lawyer neglected Richard when it mattered most.

The United States District Court asked Mr. Crowley to continue his representation in federal court. Mercifully, Mr. Crowley declined. So the district court appointed a new attorney, Patrick F. McCann. Mr. McCann noticed that Mr. Crowley had done an inadequate job representing Richard. So he filed another action in state court trying to supplement Mr. Crowley's deficient state-habeas application. The Court of Criminal Appeals, however, declined to hear Mr. McCann's effort.

But Mr. McCann failed Richard on the most important issue: that Mr. Shrode's botched autopsy sent an innocent man to death row. Newspapers reported Mr. Shrode's fraud no later than May 2010. Exh. 13. And criminal defense attorneys were litigating Mr. Shrode's fraudulent and erroneous conclusions before that time. *See* Exh. 15. The federal court appointed Mr. McCann to Richard's case on February 2, 2011, ECF No. 12, so he should have been aware of Mr. Shrode's misconduct *before beginning his work on Richard's case*. But Mr. McCann never raised this meritorious issue in Richard's federal habeas litigation. Put more directly, Mr. McCann did not bother to investigate clear evidence that Richard was an innocent man.

WHO IS RICHARD MASTERSON?

I. Richard's infancy was filled with terror and violence at the hands of the people who should have protected him.

Richard Allen Masterson was born on March 5, 1972, in Houston, Texas, to James Ivan Masterson and Ellabelle Burnett Masterson. He was the youngest of eight children. Even before birth, Richard was already predisposed to mental and psychological health problems due to his parents' pre-existing conditions: his father's continuous alcoholism and drug addiction and his mother's childhood abuse. First App. 27-28, Apr. 8, 2013, ECF No. 54 (TYC Records p. 10-11).

Richard's childhood can only be characterized as violent, abusive, and traumatic. His father, the dominant male figure in his life, James Masterson, engaged in habitual physical, verbal, emotional, and psychological abuse toward Richard and the rest of his family Second App. 23, Apr. 8, 2013, ECF No. 55 (TYC Records p. 42). Since infancy, Richard's family inflicted horrific abuse on him, including rape. Richard's father would often strike his head violently and repeatedly to where his head would swell to two or three times its normal size. When discussing head injuries like this in children, John Hopkins Medicine notes:

> Head injuries are one of the most common causes of disability and death in children. The injury can be as mild as a bump, bruise (contusion), or cut on the head, or can be moderate to severe in nature due to a concussion, deep cut or open wound, fractured skull bone(s), or from internal bleeding and damage to the brain.

(http://www.hopkinsmedicine.org/healthlibrary/conditions/pediatrics/head_injury_in_children_90,P02604/).

Richard's siblings have spoken about the abuse Richard experienced and described the swelling of his head as a result of the abuse. Exh. 10. Richard's outward

symptoms and experiences are congruent with bruising and trauma to the brain. The effects of this type of damage to the brain can be long- or short-term changes in personality or behavior. Children subjected to this particular type of trauma require lifelong medical and rehabilitative (physical, occupational, or speech therapy) management. (http://www.hopkinsmedicine.org/healthlibrary/conditions/pediatrics/head_injury_in_children_90,P02604/). Richard never received this type of treatment despite desperately and obviously needing it.

In 2013, the American Psychiatric Association (APA) published The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). In this edition, the APA includes a new developmental subtype of PTSD called Post-Traumatic Stress Disorder in preschool children. This is the first developmental subtype of PTSD. The APA based its decision to include the new subtype on studies showing that using a developmentally sensitive set of criteria specifically for children led to approximately three to eight times more children qualifying for the diagnosis compared to the DSM-IV. The DSM-5 specifically cites abuse and witnessing interpersonal violence as risk factors for PTSD. (http://www.ptsd.va.gov/professional/PTSD-overview/ptsd_children_6_and_younger.asp). These discoveries came long after Richard suffered his abuse providing no chance for a proper diagnosis and treatment of his injuries.

Richard witnessed firsthand the domestic violence perpetrated by his father. Richard saw his father physically abuse and rape his mother and his siblings. Second App. 23, Apr. 8, 2013, ECF No. 55 (TYC Records p. 42). At the age of seven or eight,

Richard's older brother, who himself was the victim of rape by their father, raped Richard. Exh. 8 at 3. Child sexual abuse survivors often show symptoms of PTSD, including agitated behavior, frightening dreams, and repetitive play in which aspects of the abuse are expressed. (http://www.ptsd.va.gov/professional/trauma/other/child_sexual_abuse.asp). Richard's records document his frequent sleep disorders and bad dreams, symptoms of his ongoing and untreated PTSD. Richard lived with the secret of his sexual abuse until the age of 27, when for the first time in his life he spoke about it to his then girlfriend. Exh. 8 at 3.

Their father's constant abuse became so unbearable that Richard and his siblings begged and urged their mother to leave their father, which she eventually did after twenty-seven years of marriage. Second App. 25, Apr. 8, 2013, ECF No. 55 (TYC Report p. 42). By that point, however, Richard had already experienced severe trauma, including brain damage, and had developed PTSD. The abuse at home and the recurring PTSD symptoms entrenched into Richard's life outside of his home, severely crippling his educational advancement. His performance in school suffered, and he repeated several grades after failing. Richard's attendance in school likewise suffered, and he missed school frequently, leading to truancy issues. He mirrored the fights he witnessed at home and frequently engaged in altercations with his classmates. Exh. 8 at 3. Moreover, his untreated ADHD exacerbated his existing mental health problems. Second App. 23, Apr. 8, 2013, ECF No. 55. Richard first engaged in consensual sex at age 11, *id.*, far too early to understand the psychological and emotional effects of a sexual life that were thrown onto Richard at an early age by the abuse to which he was subjected. Research conducted by Julia Whealin, Ph.D. and Erin Barnett, Ph.D. shows childhood sexual abuse that is not

effectively treated may cause long-term symptoms that persist into adulthood. These include PTSD and anxiety; depression and thoughts of suicide; sexual anxiety and disorders, including promiscuity and difficulty maintaining appropriate boundaries with others; enmeshed or avoidant relationships; poor body image and low self-esteem. Moreover, the use of unhealthy behaviors such as alcohol abuse, drug abuse, self-mutilation, or eating disorders are additional symptoms exhibited that are done to help mask painful emotions related to the experienced abuse. (http://www.ptsd.va.gov/professional/trauma/other/child_sexual_abuse.asp)

By the age of 13, Richard hit rock bottom and felt hopeless and defeated. He dropped out of school, left his abusive home, and found himself homeless and living on the streets Exh. 8 at 3. The desperate need for money to survive led him to prostitution and selling drugs at that tender age of 13. *Id.* The idea of prostituting himself with older men brought back painful and unwanted memories of his earlier abuse. Richard began to rob these men who sexually preyed on children. His life experiences created a hatred for them. And these men would not contact the police to report a theft because they would fear being prosecuted for their association with the sexual exploitation of vulnerable children. In his mind, Richard was robbing child molesters just as they were robbing him of his dignity and innocence by engaging in sex with him, a minor child.

When Richard turned 16, the violence eventually caught up with him. During a drug deal gone wrong, Richard was shot in the chest, and the bullet lodged under his heart near his spine. Second App. 16, 20, Apr. 8, 2013, ECF No. 55. This traumatic experience alone, separate from all of the other atrocities Richard had experienced up to this point in his life, further aggravated his PTSD diagnosis. Notably, the National

Institute of Mental Health notes that PTSD can happen to anyone at any age, and the victim need not be physically hurt. Merely witnessing another person, such as a friend or family member, get hurt can trigger PTSD. (http://www.nimh.nih.gov/health/publications/post-traumatic-stress-disorder-easy-to-read/index.shtml). So when Richard witnessed his father brutally victimizing his other family members, he developed PTSD, aside from the trauma he experienced from being personally victimized.

The totality of the abuse and violence Richard experienced in his early life speak to the severe mental illness and PTSD involved in this matter. When Richard suffered the majority of trauma in his life, PTSD was not yet understood the way it is today nor diagnosed in children. Only within the last decade has the psychological community begun to truly understand the depth and severity of the consequences of PTSD. Brain trauma, PTSD, and other symptoms of sexual and physical assault help to shed light on Richard's path in life. In a 2005 study, Smith, Ireland, and Thornberry noted that substantiated cases of adolescent maltreatment (involving children ages 12 to 17) increased the odds of arrest, general and violent offending, and illicit drug use in young adulthood. (Smith, C.A., T.O. Ireland, and T.P. Thornberry, "Adolescent Maltreatment and Its Impact on Young Adult Antisocial Behavior" Child Abuse & Neglect 29(10) (2005): 1099–1119). The existence of these diagnoses alone does not condemn Richard to a continued life of tribulation. Research conducted by Sonya Norman, Ph.D., Eric B. Elbogen, Ph.D. and Paula P. Schnurr, Ph.D. shows individuals with PTSD are not dangerous and are not likely to commit acts of violence. (http://www.ptsd.va.gov/professional/cooccurring/assessing_risk_violence_ptsd.asp).

Richard's traumatic past has gone untreated for his entire life and as a result, he has never been given the chance to live a normal life – much less the opportunity to succeed.

II. Richard escaped his house of horrors and landed on the streets where he was forced to fend for himself as a child prostitute.

Richard endured a tumultuous childhood and suffered abuse and neglect from an early age. When the Masterson family lived together, their father would frequently come home drunk late at night to beat the children. T. 4/25/2002, 58. (Vol. 22). Their father would select one child, pull him out of bed, kick him "from one end of the house to the other," and beat him. *Id.* When Richard was three, his father kidnapped his mother and left all eight children alone for a month. *Id.* at 56. When their mother was able to return, she was arrested for abandoning the children. *Id.* at 57. The State jailed her, leaving Richard at the mercy of his father. Richard was eventually placed in a foster home, which was the only time Richard had a "normal home situation." *Id.* at 63.

In addition to the beatings, Richard reported that his older brother molested him when he was around seven- or eight-years-old. Exh. 8 at 2. His brother most likely learned the predatory behavior from their father, who sexually abused this brother and at least one of his sisters. *Id.*

By the age of eleven or twelve, Richard was no longer attending school regularly. He dropped out completely by the sixth grade. *Id.* By age thirteen, Richard fled his home to escape his parents' abuse and neglect. But he had nowhere to go, so he decided to live on the streets instead of his home. Richard's family never looked for him or tried to bring him home.

To survive on the streets, Richard turned to prostitution, drugs, and criminal activity. *Id.* During his trial, the State argued that Richard robbed rich homosexuals

during these desperate years living on the streets. As a thirteen- or fourteen-year-old, he would only rob older male clients. Richard admitted he stole, but only from "child molesters." These older men were not random targets, singled out because of their homosexuality. They were looking for vulnerable, young boys who were susceptible to the money from performed sex acts. These older men wanted to molest children who society would not believe if they reported these rich men's criminal behavior. Richard understandably hated these men who preyed on him. Because they were looking for child victims, Richard robbed them to get even. And even though he robbed these sexual predators, he killed no one and never had the desire to do so.

During these desperate early-teenage years, Richard began using cocaine daily and developed an addiction "at the most vulnerable time for human addiction, during adolescence." Exh. 9. He would continue to indulge in daily drug binges, including intravenous cocaine, for the rest of his life. Exh. 8.

Due to years of drug abuse, Richard developed a host of medical issues, including further aggravated brain damage. *Id.* at 3. He was previously diagnosed with Hepatitis C, attributed to his intravenous drug use. *Id.* In addition, he has a history of seizures because of his crack use. Exh. 9. Richard reported experiencing as many as three seizures a day during the time he used crack. Exh. 8. Dr. Shawanda Williams-Anderson, the neuropsychologist evaluating Richard during his federal habeas proceedings, opined that his substantial drug use was a contributing factor. *Id.* Richard's recent symptoms included daily migraines, a deep "heaviness inside" his cranium, and pain that shoots from the front of his head to the back. *Id.*

During the neuropsychological exam to assess brain function, Dr. Williams-Anderson found multiple deficits, particularly with cognitive processing speed and abstract reasoning. *Id.*at 4. Dr. Williams-Anderson concluded that his results were typical of a "person with a history of substance abuse and subtle brain dysfunction." *Id.* at 5.

III. Richard accidentally contributed to Darrin Honeycutt's death, who most likely died from a heart attack – not strangulation.

The central issue in Richard's trial was what caused Mr. Honeycutt's death. Richard maintained that the death was accidental. The State argued that Richard killed him to rob him. Richard did not dispute that he went to Mr. Honeycutt's apartment that night. But he forcefully avowed that he did not intend to kill Mr. Honeycutt. He did not know just how correct he was.

Richard and Mr. Honeycutt left a bar together in the early morning hours of Friday, January 26, 2001. They were drinking, and Richard was, as usual, using cocaine. Richard and Mr. Honeycutt went to Mr. Honeycutt's apartment to have consensual sex with each other. Once inside the apartment, the pair engaged in sexual relations. Mr. Honeycutt performed oral sex on Richard. Then Mr. Honeycutt asked Richard to have anal sex with him while performing autoerotic asphyxiation on him. Richard agreed.

Richard tried to insert his penis into Mr. Honeycutt, but could not do so due to the prolactin released during his refractory period. But Richard complied with Mr. Honeycutt's request for autoerotic asphyxiation. Autoerotic asphyxiation is a sexual technique that heightens an individual's climax by temporarily depriving the brain of oxygen. The technique is fraught with danger, and many famous people have died attempting it, including David Carradine, Albert Dekker, and Stephen Milligan. To accomplish the sexual technique, Richard applied pressure to Mr. Honeycutt's neck,

temporarily cutting oxygen for the heightened climax. And Mr. Honeycutt did climax. The State later tested DNA found in semen on Mr. Honeycutt's thigh; the semen was Mr. Honeycutt's.

After this sexual act, Mr. Honeycutt fell off his bed and onto the floor. He was breathing but not responsive. Richard thought he was still alive but unconscious. After a little more time had passed, Richard believed that Mr. Honeycutt had died. He panicked. He knew no one would believe the death was accidental given his history. He also feared that homophobia would become a factor contributing to hostility against him. Richard remembered that others knew he went to Mr. Honeycutt's apartment. So he tried to make the apartment look like it had been burglarized in a misguided attempt to deflect suspicion away from him.

Richard was ultimately correct. While his efforts to cut oxygen to Mr. Honeycutt's brain likely contributed to Mr. Honeycutt's death, Richard did not strangle him to death. The State's expert pathologist at trial was Assistant Medical Examiner Paul Shrode. The parties did not know at the time, but Mr. Shrode had lied about his qualifications to work as a medical examiner. Exh. 13, 15. In fact, Mr. Shrode was not qualified to give an expert opinion about Mr. Honeycutt's cause of death, *see id.*, and was dismissed from his post in 2010 after an Ohio prisoner received clemency on the basis of Dr. Shrode's fraudulent testimony. Exh. 15. Shrode's lack of qualification was no mere technicality. Mr. Shrode made fundamental errors when testifying to his "expert opinion" in Richard's trial. Because Mr. Shrode did not understand basic medical principles of pulmonary pathology, he could not understand the physiological signs that pointed toward a heart attack. Exh. 7. This has been confirmed by two expert pathologists who

have looked at Mr. Honeycutt's autopsy file in the time since Richard was sentenced to death. Richard's new expert pathologist, Christena Roberts, M.D., properly looked at Mr. Honeycutt's autopsy and gave a qualified medical expert opinion based on the evidence still available. Dr. Roberts's expert opinion, the only expert opinion available to the Board, opines that no evidence exists making it more likely that Mr. Honeycutt died from strangulation than that he died from a tragic but unplanned cardiac arrhythmia. Exh. 7. Based in part on the autopsy records and in part on Richard's trial testimony, Dr. Roberts opined that Mr. Honeycutt most likely died from a heart attack triggered by Mr. Honeycutt's pre-existing severe coronary artery disease. *Id.*

So Richard was more accurate than he knew when he testified that he did not intentionally kill Darrin Honeycutt. Not only did he not intentionally kill Mr. Honeycutt, but the only qualified expert to look at the data concluded he did not even directly cause Mr. Honeycutt's death. Mr. Honeycutt died from the sudden stress of their consensual sex on his heart, burdened by severe coronary artery disease.

IV. When Richard was in jail, his brain malformation caused him to become severely depressed and suicidal, causing him to falsely confess and behave antagonistically toward others to accomplish his suicidal desires.

After Richard's arrest, he suffered from drug withdrawal and severe depression. Richard had used cocaine intravenously all day at the time of the Mr. Honeycutt's death, and he consistently used methamphetamines until two days before his arrest. Richard's withdrawal after this prolonged drug use made him feel vulnerable, extremely depressed, and with no desire to live. In essence, Richard committed suicide by confession when Officer David S. Null confronted him in a Florida jail on February 9, 2001.

At trial, Richard testified that he voluntarily confessed to capital murder because

he wanted the death penalty rather than a life in prison. Unfortunately, the jury did not believe him because his trial attorneys did not spend the time to consult with experts about Mr. Honeycutt's cause of death, or Richard's trauma, PTSD, and mental illnesses. But besides that readily available scientific evidence, Richard had other serious brain-chemistry problems that science had not recognized yet.

Dr. Williams-Anderson examined Richard's brain function in 2013 and found that he exhibited multiple neuropsychological deficits in his reasoning ability and had a brain anomaly. Exh. 8. Dr. Williams-Anderson believed that Richard's substance abuse triggered frequent seizures. *Id.* When the brain is repeatedly exposed to drugs, it naturally adjusts its chemistry to tolerate the effects of the drugs and achieve stimulation. Exh. 9. Because stimulant drugs release dopamine and stimulate the brain to anticipate pleasurable events, Richard became profoundly energized and euphoric. So when Richard discontinued the stimulant drug use, his brain developed symptoms of hyperactivity and craved more drugs to maintain normality. *Id.*

Dr. Wilke A. Wilson also conducted a research study on the effects of drugs on the adolescent brain, but general awareness of the research was not available until after the trial. Following a 2002 publication on psychostimulant drug use, the scientific community acknowledged a correlation between acute stimulant withdrawal and the symptoms of major depressive disorder. *See* AM Barr, A Markou, AG Phillips. *A Crash Course on Psychostimulant Withdrawal as a Model of Depression.* TRENDS in Pharmacological Sciences Vol. 23 No. 10 (1041-1052) October 2002. Severe depression combined with withdrawal from stimulants produces suicidal ideation. Exh. 9.

At the time of Richard's interrogation, he was suffering a major-depression

episode because of stimulant withdrawal, known as "transient stimulant withdrawal depression." His confession was a desperate attempt to commit suicide. When the depression subsided, Richard no longer wanted the State to put him to death. He testified on his own behalf in a doomed attempt to convince the jury that he was not guilty of capital murder. Without this evidence to explain why Richard would make a false confession to capital murder, the jury rejected Richard's pleas of innocence.

After the jury convicted Richard of capital murder, he sank into his depressed, suicidal shell again. To further his suicidal goal, Richard once again took the stand during the sentencing phase and pled for a death sentence:

> D.A. Mitchell: You mentioned that you wanted – you think the jury should answer the special issues in such a way that you get the death penalty, right?
>
> Masterson: If they're following the law, yes.
>
> D.A.: They have to, right?
>
> Masterson: Yes, if they're following the law.
>
> . . .
>
> D.A.: You're positive there's no way you could stay in prison probably even for a year without getting violent again, right?
>
> Masterson: Probably not. Probably not even a month.

T. 4/24/2002, 100 (Vol. 22). Richard asked his jury to sentence him to death. His suicidal urges won that day; the jury obliged.

V. Richard's brain anamolies caused him to behave bizarrely and to continue his suicidal behavior during the trial and post-conviction litigation.

Richard Masterson remained suicidal while housed on death row. His filings started somewhat benignly; they were more bizarre than suicidal. But Richard was

exhibiting disorganized and paranoid thinking that displayed his severe mental illness and brain anomaly. On October 20, 2011, Richard wrote a letter to the Clerk of the United States District Court for the Southern District of Texas, warning the court that another death-row inmate would write to sabotage his case. Pet. Letter, ECF No. 23. The other inmate had no interest in writing the court about Richard's case; that man had to worry about his own capital litigation. This bizarre paranoia, however, revealed that Richard's brain was not functioning correctly.

After he realized that his federal attorney would not be responding to his attempts to communicate, Richard sank into another deep, suicidal depression. Over a period of eight months, Richard wrote the federal district court three times asking to drop his legal challenges. On August 10, 2012, Richard wrote to the court saying that he wanted to be executed because his lawyers, family, and friends had abandoned him. He no longer had the will to live after everyone who was supposed to care for his fate abandoned him and lied to him. *Id.* at ECF No. 39. When the court did not respond to that request, Richard wrote again on March 15, 2013. *Id.* at ECF No. 52. In that letter, Richard knew that his habeas petition would fail without any additional amendments, so he asked the court to set his execution date as soon as the petition would be denied. And less than a month later, Richard directly expressed his ultimate desire: to waive any further legal challenges and be put to death. *Id.* at ECF No. 61. Richard's state of mind appeared to flip-flop almost every two to three months. He was conflicted by a willingness to live and a desire to end his suffering. Due to stress and want of a fair trial, Richard's depression worsened to include frequent headaches and unmanageable pain.

After Richard's final letter asking the court to expedite his death, prison officials

prescribed him Zoloft, a common anti-depressant. This common remedy alleviated the severity of Richard's crushing depression and he filed a motion in the district court withdrawing his three previous letters volunteering for execution. *Id.* at ECF No. 64. He realized that he had been so deeply depressed that he had been attempting to commit suicide. *Id.* After receiving a simple anti-depression treatment, Richard wanted to fight for his life.

CONCLUSION

One must wonder what would have happened if someone, anyone, would have shown Richard Masterson some care during his childhood. Barring that, what would have happened if someone stepped in during his adult years and attempted to get him treatment for his drug addiction and suicidal depression.

Richard is not a monster. He is not a sociopath. He is not even a murderer. Richard may have accidentally contributed to the death of Darrin Honeycutt. But he did not kill Mr. Honeycutt. Mr. Honeycutt's death does not qualify Richard Masterson for the death penalty. Richard faces the death house because he has brain malformations, severe mental illness, and suicidal tendencies. This deadly combination caused Richard to act irrationally and caustically after Mr. Honeycutt's death, all but ensuring that he would himself be sentenced to death.

It is easy to see why Richard felt suicidal. Since his birth, Richard was destined to repeat the trauma of his parents' past. His father's alcoholism and addiction to drugs led to a chemical imbalance that was passed down to Richard at birth, giving him an overwhelming disadvantage that when left undiagnosed and untreated, exacerbated the effects of the horrific traumas he faced at home. The repeated rape and physical abuse

that Richard experienced prevented him from ever truly developing meaningful relationships with his parents, siblings, or any other person that came into his life. His sleep and night terrors, along with his suicidal ideation, angry and hostile demeanor, and depressed feelings, are overwhelming evidence of an individual with deep trauma and unresolved PTSD, which, at the time, was not a diagnosis within reach.

As a teenager living on the streets, Richard succumbed to the horrors that many teenage runaways must endure to survive. He prostituted himself for money to eat, and he used alcohol and drugs to numb the pain of his dismal existence. This substance abuse and stress aggravated his brain anomaies and mental illness. In response, Richard continued to use drugs in an attempt to self-medicate. And that continued the vicious cycle, further harming his damaged brain.

Richard made many mistakes in his life, but he did not kill Darrin Honeycutt. The State's fraudulent "medical examiner" botched Mr. Honeycutt's autopsy, making a finding on cause of death impossible. But we know that Mr. Shrode was wrong. **There is no scientific evidence supporting Mr. Shrode's critical trial testimony that Mr. Honeycutt died by strangulation.**

Compounding the injustice, Richard's jury never heard about the biological underpinnings of his suicidal behavior. Had the jury understood that his childhood abuse damaged Richard's brain and that his brain chemistry caused him to act in a suicidal manner, it might have shown compassion for him and sentenced him to life.

But those opportunities to present a full picture of Richard Allen Masterson to a judge or jury have passed. He will never have them again. He only has one last chance to convince anyone to show him compassion and understanding: this Board. The clemency

process is well understood to function as "a safeguard for claims that have not been considered on the merits." AMERICAN BAR ASSOCIATION, EVALUATING FAIRNESS AND ACCURACY IN STATE DEATH PENALTY SYSTEM, THE TEXAS CAPITAL PUNISHMENT ASSESSMENT REPORT 253 (2013), *available at* http://www.americanbar.org/content/dam/aba/administrative/death_penalty_moratorium/tx_complete_report.authcheckdam.pdf. Compelling evidence is available that Richard Masterson is innocent of Darrin Honeycutt's murder. However, as a result of both the State's and his own attorneys' refusal to dedicate themselves to truth-seeking in Richard's case, that evidence has never been, and never will be, considered by any court. Richard does not deserve the death penalty in these circumstances. He respectfully asks this Board to commute his sentence to life in prison without the possibility of parole.

Respectfully submitted,
RICHARD ALLEN MASTERSON

By: _____

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[1] The author thanks and acknowledges his team members for their substantial contributions to this petition: Miranda Dore, Ryan S. Traeger, Mark W. Hsen, and Pam Ly from American University's Washington College of Law; Erica Santamaria from the Georgetown University Law School; and Marissa L. Jimenez from the Washington University School of Law at St. Louis. He also thanks Jennifer Giddings for her help and contributions.

REQUEST FOR A HEARING

The Petitioner, Richard Allen Masterson, respectfully requests a hearing on this Petition. To accomplish this hearing, Mr. Masterson asks the Governor for a 120-day reprieve. If the Governor is willing to consider a reprieve for a smaller time period, Mr. Masterson respectfully requests the Governor to issue the reprieve for that time period.

Gregory W. Gardner

EXHIBIT 1

Indictment

THE STATE OF TEXAS
VS.

RICHARD ALLEN MASTERSON
UNKNOWN

SPN: **01035874**
DOB: **WM 03-05-72**
DATE PREPARED: **05-02-01**

230rd GJ

D.A. LOG NUMBER:**660987**
CJIS TRACKING NO.:
BY: **MLS** DA NO: **058149045**
AGENCY:**HPD**
O/R NO: **11846601L**
ARREST DATE: **02-09-01**

NCIC CODE: **0907 10**

RELATED CASES:

Vol 236 Page 427 AX GM

FELONY CHARGE: **CAPITAL MURDER**
CAUSE NO: **867834**
HARRIS COUNTY DISTRICT COURT NO: **176**
FIRST SETTING DATE:

BAIL: **$NO BOND**
PRIOR CAUSE NO:

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

The duly organized Grand Jury of Harris County, Texas, presents in the District Court of Harris County, Texas, that in Harris County, Texas, **RICHARD ALLEN MASTERSON**, hereafter styled the Defendant, heretofore on or about **JANUARY 26, 2001**, did then and there unlawfully, while in the course of committing and attempting to commit the robbery of DARIN SHANE HONEYCUTT, intentionally cause the death of DARIN SHANE HONEYCUTT by choking DARIN SHANE HONEYCUTT with his arm.

~~It is further presented that in Harris County, Texas, RICHARD ALLEN MASTERSON, hereafter styled the Defendant, heretofore on or about JANUARY 26, 2001, did then and there unlawfully while in the course of committing and attempting to commit the robbery of DARIN SHANE HONEYCUTT, intentionally cause the death of DARIN SHANE HONEYCUTT by choking DARIN SHANE HONEYCUTT with his hands.~~

STATE ABANDONS (BE)

~~It is further presented that in Harris County, Texas, RICHARD ALLEN MASTERSON, hereafter styled the Defendant, heretofore on or about JANUARY 26, 2001, did then and there unlawfully while in the course of committing and attempting to commit the robbery of DARIN SHANE HONEYCUTT, intentionally cause the death of DARIN SHANE HONEYCUTT by choking DARIN SHANE HONEYCUTT by an unknown manner and means.~~

STATE ABANDONS (BE)

01 NOV -4 PM 1:19

230th FOREMAN

AGAINST THE PEACE AND DIGNITY OF THE STATE.

FOREMAN OF THE GRAND JURY

INDICTMENT

STATE OF TEXAS
COUNTY OF HARRIS

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

Witness my official hand and seal of office this

DEC 30 2015

CHRIS DANIEL, DISTRICT CLERK
HARRIS COUNTY, TEXAS

_____ Deputy

DISTRICT COURT OF HARRIS COUNTY, TEXAS

EXHIBIT 2

District Court's Judgment

192

JUDGMENT – DEATH PENALTY

CAUSE NO. 867834

THE STATE OF TEXAS
VS.
RICHARD ALLEN MASTERSON
(Name of Defendant)
AKA

IN THE 176TH DISTRICT COURT
OF HARRIS COUNTY, TEXAS

Date of Judgment: APR 24 2002
Date of Offense: FEB 9 2001
Attorney for State: SUNNY MITCHELL
Attorney for Defendant: BOB LOPER ☐ Defendant Waived Counsel
Offense Convicted of: CAPITAL MURDER

A FELONY, DEGREE: CAPITAL

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

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

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

This cause being called for trial, in Harris County, Texas, unless otherwise referenced, the State appeared by her District Attorney as named above and the Defendant named above appeared in person with Counsel as named above; or the Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel as indicated above in writing in open court, and both parties announced ready for trial.

A Jury composed of DANNY LEE EPPERS and eleven others was selected, impaneled, and sworn. The indictment was read to the Jury, and the Defendant entered a plea of not guilty thereto, after having heard the evidence submitted; and having been charged by the Court as to their duty to determine the guilt or innocence of the Defendant and having heard argument of counsels, the Jury retired in charge of the proper officer and returned into open Court on APR 24 2002, the following verdict, which was received by the Court and is here entered on record upon the minutes:

"We, the Jury, find the defendant, Richard Allen Masterson, guilty of capital murder, as charged in the indictment."

Thereupon, the Jury, in accordance with law, heard further evidence in consideration of punishment, and having been again charged by the Court, the jury retired in charge of the proper officer in consideration of punishment and returned in open Court on APR 25 2002, the following verdict, which was received by the Court and is here entered of record upon the minutes:

(Special Issues/Verdict/Certification):

Do you find from the evidence beyond a reasonable doubt that there is a probability that the defendant, Richard Allen Masterson, would commit criminal acts of violence that would constitute a continuing threat to society?

ANSWER:

We, the jury, unanimously find and determine beyond a reasonable doubt that the answer to this Special Issue is "YES."

(Special Issues – Continued):

Do you find from the evidence, taking into consideration all of the evidence, including the circumstances of the offense, the defendant's character and background, and the personal moral culpability of the defendant, Richard Allen Masterson, that there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment rather than a death sentence be imposed?

ANSWER:
We, te jury, unaminously find that the answer to this Special Issue is "NO."

VERDICT

We, the Jury, return in open court the above answers to the "Special Issues" submitted to us, and the same is our verdict in this case.

It is therefore considered, ordered, and adjudged by the Court that the Defendant is guilty of the offense indicated above, a felony, as found by the verdict of the Jury, and that the said Defendant committed the said offense on the date indicated above, and that he be punished as has been determined by the Jury, by death, and that Defendant be remanded to jail to await further orders of this Court.

And thereupon, the said Defendant was asked by the Court whether he had anything to say why sentence should not be pronounced against him, and he answered nothing in bar thereof.

Whereupon the Court proceeded, in presence of said Defendant to pronounce sentence against him as follows, to wit, "It is the order of the Court that the Defendant named above, who has been adjudged to be guilty of the offense indicated above and whose punishment has been assessed by the verdict of the Jury and the judgment of the Court at Death, shall be delivered by the Sheriff of Harris County, Texas immediately to the Director of the Institutional Division, Texas Department of Criminal Justice or any other person legally authorized to receive such convicts, and said Defendant shall be confined in said Institutional Division in accordance with the provisions of the law governing the Texas Department of Criminal Justice, Institutional Division until a date of execution of the said Defendant is imposed by this Court after receipt in this Court of mandate of affirmance from the Court of Criminal Appeals of the State of Texas. The said Defendant is remanded to jail until said Sheriff can obey the directions of this sentence. From which sentence an appeal is taken as a matter of law to the Court of Criminal Appeals of the State of Texas.

Signed and entered on APR 25 2002

X Brian Rains

BRIAN RAINS
JUDGE PRESIDING

Automatic Appeal 4-25-02
MANDATE OF AFFIRM. 3-7-05

2/998/EE
4/444/EE

STATE OF TEXAS
COUNTY OF HARRIS

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

Witness my official hand and seal of office this

DEC 3 0 2015

CHRIS DANIEL, DISTRICT CLERK
HARRIS COUNTY, TEXAS

Deputy

DISTRICT COURT OF HARRIS COUNTY, TEXAS

EXHIBIT 3

Verdict

CAUSE NO. 867834

THE STATE OF TEXAS	§	IN THE 176TH DISTRICT COURT
VS.	§	OF HARRIS COUNTY, TEXAS
RICHARD ALLEN MASTERSON	§	FEBRUARY TERM, A. D., 2002

CHOOSE ONE

"We, the Jury, find the defendant, Richard Allen Masterson, guilty of capital murder, as charged in the indictment."

FILED
CHARLES BACARISSE
District Clerk
APR 24 2002
Time
Harris County, Texas
By Deputy

Foreman of the Jury

DANNY L. EPPERS

(Please Print) Foreman

"We, the Jury, find the defendant, Richard Allen Masterson, guilty of murder."

Foreman of the Jury

(Please Print) Foreman

"We, the Jury, find the defendant, Richard Allen Masterson, guilty of manslaughter."

Foreman of the Jury

(Please Print) Foreman

STATE OF TEXAS
COUNTY OF HARRIS

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

Witness my official hand and seal of office this DEC 30 2015

CHRIS DANIEL, DISTRICT CLERK
HARRIS COUNTY, TEXAS

Erin Bryan Deputy

DISTRICT COURT OF HARRIS COUNTY TEXAS

SPECIAL ISSUE NO. 1

Do you find from the evidence beyond a reasonable doubt that there is a probability that the defendant, Richard Allen Masterson, would commit criminal acts of violence that would constitute a continuing threat to society?

ANSWER

We, the jury, unanimously find and determine beyond a reasonable doubt that the answer to this Special Issue is "YES."

DANNY L. EPPERS
Foreman of the Jury

OR

We, the jury, because at least ten (10) jurors have a reasonable doubt as to the probability that the defendant, Richard Allen Masterson, would commit criminal acts of violence that would constitute a continuing threat to society, determine that the answer to this Special Issue is "NO."

Foreman of the Jury

In the event that the jury has answered Special Issue No. 1 in the affirmative, and only then, shall the jury answer Special Issue No. 2 to be found on the following page.

STATE OF TEXAS
COUNTY OF HARRIS

I, Chris Daniel, District Clerk of Har[illegible]y Texas, certify that
this is a true and correct copy of [illegible]cord filed and or recorded
in my office, electronically or hard [illegible]ppears on this date.
Witness my official hand and seal of office this
DEC 30 2019

CHRIS DANIEL, DISTRICT CLERK
HARRIS COUNTY, TEXAS

Erin Bazan Deputy

DISTRICT COURT OF HARRIS COUNTY TEXAS

SPECIAL ISSUE NO. 2

Do you find from the evidence, taking into consideration all of the evidence, including the circumstances of the offense, the defendant's character and background, and the personal moral culpability of the defendant, Richard Allen Masterson, that there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment rather than a death sentence be imposed?

ANSWER

We, the jury, unanimously find that the answer to this Special Issue is "NO."

DANNY L. EPPERS
Foreman of the Jury

OR

We, the jury, because at least ten (10) jurors find that there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment rather than a death sentence be imposed, find that the answer to this Special Issue is "YES."

Foreman of the Jury

After the jury has answered each of the Special Issues under the conditions and instructions outlined above, the Foreman should sign the verdict form to be found on the last page of this charge.

STATE OF TEXAS
COUNTY OF HARRIS

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

Witness my official hand and seal of office this

DEC 30 2015

CHRIS DANIEL, DISTRICT CLERK
HARRIS COUNTY, TEXAS

Erem Bayer Deputy

DISTRICT COURT OF HARRIS COUNTY TEXAS

VERDICT

We, the Jury, return in open court the above answers to the "Special Issues" submitted to us, and the same is our verdict in this case.

DAWN L. EPPERS
Foreman of the Jury

FILED
CHARLES BACARISSE
District Clerk
APR 25 2002
Time: _____
Harris County, Texas
By _____ Deputy

STATE OF TEXAS
COUNTY OF HARRIS

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

DEC 30 2015

CHRIS DANIEL, DISTRICT CLERK
HARRIS COUNTY, TEXAS

Deputy

DISTRICT COURT OF HARRIS COUNTY TEXAS

EXHIBIT 4

Sentence

JUDGMENT – DEATH PENALTY

CAUSE NO. 867834

THE STATE OF TEXAS
VS.

RICHARD ALLEN MASTERSON
(Name of Defendant)

AKA

IN THE 176TH DISTRICT COURT

OF HARRIS COUNTY, TEXAS

Date of Judgment: APR 24 2002

Date of Offense: FEB 9 2001

Attorney for State: SUNNY MITCHELL

Attorney for Defendant: BOB LOPER ☐ Defendant Waived Counsel

Offense Convicted of: CAPITAL MURDER

A FELONY, DEGREE: CAPITAL

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

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

This cause being called for trial, in Harris County, Texas, unless otherwise referenced, the State appeared by her District Attorney as named above and the Defendant named above appeared in person with Counsel as named above; or the Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel as indicated above in writing in open court, and both parties announced ready for trial.

A Jury composed of DANNY LEE EPPERS and eleven others was selected, impaneled, and sworn. The indictment was read to the Jury, and the Defendant entered a plea of not guilty thereto, after having heard the evidence submitted; and having been charged by the Court as to their duty to determine the guilt or innocence of the Defendant and having heard argument of counsels, the Jury retired in charge of the proper officer and returned into open Court on APR 24 2002, the following verdict, which was received by the Court and is here entered on record upon the minutes:

"We, the Jury, find the defendant, Richard Allen Masterson, guilty of capital murder, as charged in the indictment."

Thereupon, the Jury, in accordance with law, heard further evidence in consideration of punishment, and having been again charged by the Court, the jury retired in charge of the proper officer in consideration of punishment and returned in open Court on APR 25 2002, the following verdict, which was received by the Court and is here entered of record upon the minutes:

(Special Issues/Verdict/Certification):

Do you find from the evidence beyond a reasonable doubt that there is a probability that the defendant, Richard Allen Masterson, would commit criminal acts of violence that would constitute a continuing threat to society?

ANSWER:

We, the jury, unanimously find and determine beyond a reasonable doubt that the answer to this Special Issue is "YES."

A368P0589

000317

(Special Issues – Continued):

Do you find from the evidence, taking into consideration all of the evidence, including the circumstances of the offense, the defendant's character and background, and the personal moral culpability of the defendant, Richard Allen Masterson, that there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment rather than a death sentence be imposed?

ANSWER:
We, te jury, unaminously find that the answer to this Special Issue is "NO."

VERDICT

We, the Jury, return in open court the above answers to the"Special Issues" submitted to us, and the same is our verdict in this case.

It is therefore considered, ordered, and adjudged by the Court that the Defendant is guilty of the offense indicated above, a felony, as found by the verdict of the Jury, and that the said Defendant committed the said offense on the date indicated above, and that he be punished as has been determined by the Jury, by death, and that Defendant be remanded to jail to await further orders of this Court.

And thereupon, the said Defendant was asked by the Court whether he had anything to say why sentence should not be pronounced against him, and he answered nothing in bar thereof.

Whereupon the Court proceeded, in presence of said Defendant to pronounce sentence against him as follows, to wit, "It is the order of the Court that the Defendant named above, who has been adjudged to be guilty of the offense indicated above and whose punishment has been assessed by the verdict of the Jury and the judgment of the Court at Death, shall be delivered by the Sheriff of Harris County, Texas immediately to the Director of the Institutional Division, Texas Department of Criminal Justice or any other person legally authorized to receive such convicts, and said Defendant shall be confined in said Institutional Division in accordance with the provisions of the law governing the Texas Department of Criminal Justice, Institutional Division until a date of execution of the said Defendant is imposed by this Court after receipt in this Court of mandate of affirmance from the Court of Criminal Appeals of the State of Texas.
The said Defendant is remanded to jail until said Sheriff can obey the directions of this sentence. From which sentence an appeal is taken as a matter of law to the Court of Criminal Appeals of the State of Texas.

Signed and entered on APR 25 2002

X Brian Rains

BRIAN RAINS
JUDGE PRESIDING

Automatic Appeal 4-25-02

2/998/EE
4/999/EE

EXHIBIT 5

Execution Order

99p/13/956 bp
99p/13/955 bp

CAUSE NO 867834

EX PARTE	§	IN THE 176TH DISTRICT COURT
	§	OF
RICHARD ALLEN MASTERSON, Defendant	§	HARRIS COUNTY, TEXAS

EXECUTION ORDER

You, RICHARD ALLEN MASTERSON, were indicted by the Grand Jury of Harris County, Texas, charging you with the offense of capital murder in cause no 867834 On April 24, 2002, a jury in this Court returned a verdict finding you guilty of the offense of capital murder On April 25, 2002, the same jury in this Court returned answers to the special issues, submitted to the jury at punishment pursuant to Article 37 071 of the Texas Code of Criminal Procedure, and this Court, in accordance with the jury's findings at punishment, assessed your punishment at death. The judgment of this Court was reviewed by the Texas Court of Criminal Appeals and the Court of Criminal Appeals affirmed the judgment of this Court in all things. Subsequently, the Court of Criminal Appeals denied your initial application for writ of habeas corpus in cause no 867834-A This Court now proceeds with the judgment and sentence in your case and now enters the following order

IT IS HEREBY **ORDERED** by this Court that you, RICHARD ALLEN MASTERSON, having been adjudged guilty of capital murder and having been assessed punishment at death, in accordance with the findings of the jury and the judgment of this Court, shall at some time after the hour of 6 00 p m on the 20TH day of January, 2016, be put to death by an executioner designated by the Director of the Institutional Division of the Texas Department of Criminal Justice, who shall cause a substance or substances in a lethal quantity to be intravenously injected into your body sufficient to cause your death and until your death. such execution procedure to be determined and supervised by the said Director of the Institutional Division of the Texas Department of Criminal Justice.

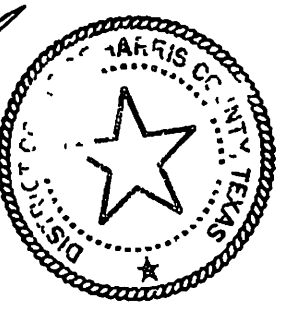
It is **ORDERED** that the Clerk of this Court shall issue a death warrant, in accordance with this sentence, to the Director of the Institutional Division of the Texas Department of

Criminal Justice, and shall deliver such warrant to the Sheriff of Harris County, Texas to be delivered by him to the Director of the Institutional Division of the Texas Department of Criminal Justice together with the defendant, RICHARD ALLEN MASTERSON.

The Defendant, RICHARD ALLEN MASTERSON, is hereby remanded to the custody of the Sheriff of Harris County, Texas, to await transfer to Huntsville, Texas and the execution of this sentence of death

DONE AND ENTERED this 17TH day of July, 2015.

STACY BOND
Presiding Judge
176TH District Court
Harris County, Texas



STATE OF TEXAS
COUNTY OF HARRIS

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

Witness my official hand and seal of office this

DEC 3 0 2015

CHRIS DANIEL, DISTRICT CLERK
HARRIS COUNTY, TEXAS

Deputy

DISTRICT COURT OF HARRIS COUNTY

EXHIBIT 6

Initial Police Reports

SUPPLEMENT(S)

No-0019

Offense- CAPITAL MURDER (MEDICAL LEGAL #01-0307)
Street location information
Number- 1218 Name-JACKSON Type-BLVD Suffix-
Apt no-7 Name-VAN BUREN Type- Suffix-
Date of offense-01/25/01 Date of supplement-04/28/01
Compl(s) Last-HONEYCUTT First-DARIN Middle-SHANE
Last-
Recovered stolen vehicles information
Stored- by- Ph#- (000) 000-0000
Officer1-R.G. PARISH Emp#-048476 Shift-1 Div/Station-HOMICIDE

SUPPLEMENT NARRATIVE

PROGRESS REPORT:

WEDNESDAY, MARCH 7, 2001
****

SGT. PARISH CONTINUED THIS INVESTIGATION AFTER RECEIVING A PACKAGE FROM DET. S. NOBLITT WITH THE TAMPA FLORIDA POLICE DEPARTMENT. DET. NOBLITT HAD INVESTIGATED THE ROBBERY WHERE THE TAMPA COMPL. WAS BEATEN AND ROBBED OF HIS VEHICLE BY THE SUSPECT RICHARD MASTERSON. CHARGES IN TAMPA HAD BEEN FILED AND THE WARRANT HAD BEEN FOWARDED TO THE HARRIS COUNTY SHERIFF'S DEPARTMENT WARRANT DIVISION. FOR DETAILS REFER TO THE TAMPA P.D. OFFENSE REPORT:

Supplement entered by = 48476
Report reviewed by-DR Employee number-082821
Date cleared- 02/07/01

No-0020

Offense- CAPITAL MURDER (MEDICAL LEGAL #01-0307)
Street location information
Number- 1218 Name-JACKSON Type-BLVD Suffix-
Apt no-7 Name-VAN BUREN Type- Suffix-
Date of offense-01/25/01 Date of supplement-05/10/01
Compl(s) Last-HONEYCUTT First-DARIN Middle-SHANE
Last-
Recovered stolen vehicles information
Stored- by- Ph#- (000) 000-0000
Officer1-J.L. SCHRAUB Emp#-058696 Shift-1 Div/Station-LATENT LAB.

SUPPLEMENT NARRATIVE

L/L# 375-01
LISTED BELOW ARE ITEMS SUBMITTED TO THE LATENT LABORATORY ON 01-29-01, BY OFFICER J.C. WOOD , TO BE EXAMINED FOR LATENT PRINTS AS EVIDENCE IN CONNECTION WITH THIS OFFENSE:
ONE (1) YELLOW PAPER "POST-IT" NOTE
EXAMINATION OF THIS EVIDENCE REVEALED NO LATENT PRINT(S) CONTAINING SUFFICIENT CHARACTERISTICS TO EFFECT AN IDENTIFICATION.

DISPOSITION OF EVIDENCE: SUBMITTED TO THE POLICE PROPERTY ROOM.

J.L. SCHRAUB 058696
LATENT PRINT EXAMINER
IDENTIFICATION DIVISION

Supplement entered by = 58696
Report reviewed by-DR Employee number-082821
Date cleared- 02/07/01

No-0021

Offense- CAPITAL MURDER (MEDICAL LEGAL #01-0307)
Street location information
Number- 1218 Name-JACKSON Type-BLVD Suffix-
Apt no-7 Name-VAN BUREN Type- Suffix-
Date of offense-01/25/01 Date of supplement-05/10/01
Compl(s) Last-HONEYCUTT First-DARIN Middle-SHANE
Last-
Recovered stolen vehicles information
Stored- by- Ph#- (000) 000-0000
Officer1-J.L. SCHRAUB Emp#-058696 Shift-1 Div/Station-LATENT LAB.

SUPPLEMENT NARRATIVE

L/L# 375-01
AN EXAMINATION, ON THIS DATE, OF LATENT PRINTS SUBMITTED TO THIS DIVISION BY SERGEANT R.G. PARISH , REVEALED THE FOLLOWING:
*****PRINTS DEVELOPED AND LIFTED BY OFF. S. BRADLEY OF BARTOW COUNTY S.O.*****
NO LATENT FINGERPRINTS(S) CONTAINING SUFFICIENT CHARACTERISTICS TO EFFECT AN IDENTIFICATION.
NO LATENT PALM PRINT(S) CONTAINING SUFFICIENT CHARACTERISTICS TO EFFECT AN IDENTIFICATION.
EVIDENCE RETAINED, LATENT LABORATORY.
N-AFS

J.L. SCHRAUB 05869637
LATENT PRINT EXAMINER
IDENTIFICATION DIVISION&&&&

SUPPLEMENT(S)

No-0021

Offense- CAPITAL MURDER (MEDICAL LEGAL #01-0307)
Street location information
Number- 1218 Name-JACKSON Type-BLVD Suffix-
Apt no-7 Name-VAN BUREN Type- Suffix-
Date of offense-01/25/01 Date of supplement-05/10/01
Compl(s) Last-HONEYCUTT First-DARIN Middle-SHANE
Last-
Recovered stolen vehicles information
Stored- by- Ph#- (000) 000-0000
Officer1-J.L. SCHRAUB Emp#-058696 Shift-1 Div/Station-LATENT LAB.

SUPPLEMENT NARRATIVE

L/L# 375-01
AN EXAMINATION, ON THIS DATE, OF LATENT PRINTS SUBMITTED TO THIS DIVISION
BY SERGEANT R.G. PARISH , REVEALED THE FOLLOWING:
*****PRINTS DEVELOPED AND LIFTED BY OFF. S. BRADLEY OF BARTOW COUNTY S.O.*****
NO LATENT FINGERPRINTS(S) CONTAINING SUFFICIENT CHARACTERISTICS
TO EFFECT AN IDENTIFICATION.
NO LATENT PALM PRINT(S) CONTAINING SUFFICIENT CHARACTERISTICS
TO EFFECT AN IDENTIFICATION.
EVIDENCE RETAINED, LATENT LABORATORY.
N-AFS

J.L. SCHRAUB 05869637
LATENT PRINT EXAMINER
IDENTIFICATION DIVISION

Supplement entered by = 58696
Report reviewed by-DR Employee number-082821
Date cleared- 02/07/01

No-0022

Offense- CAPITAL MURDER (MEDICAL LEGAL #01-0307)
Street location information
Number- 1218 Name-JACKSON Type-BLVD Suffix-
Apt no-7 Name-VAN BUREN Type- Suffix-
Date of offense-01/25/01 Date of supplement-05/10/01
Compl(s) Last-HONEYCUTT First-DARIN Middle-SHANE
Last-
Recovered stolen vehicles information
Stored- by- Ph#- (000) 000-0000
Officer1-J.L. SCHRAUB Emp#-058696 Shift-1 Div/Station-LATENT LAB.

SUPPLEMENT NARRATIVE

L/L# 375-01
AN EXAMINATION, ON THIS DATE, OF LATENT PRINTS SUBMITTED TO THIS DIVISION BY IDENTIFICATION OFFICER J.C. ROWE, REVEALED THE FOLLOWING:

SEVEN LATENT FINGERPRINTS(S) CONTAINING SUFFICIENT CHARACTERISTICS TO EFFECT AN IDENTIFICATION.
NO LATENT PALM PRINT(S) CONTAINING SUFFICIENT CHARACTERISTICS TO EFFECT AN IDENTIFICATION.
EVIDENCE RETAINED, LATENT LABORATORY.
N-AFS

J.L. SCHRAUB 058696
LATENT PRINT EXAMINER
IDENTIFICATION DIVISION

Supplement entered by = 58696
Report reviewed by-DR Employee number-082821
Date cleared- 02/07/01

No-0023

Offense- CAPITAL MURDER (MEDICAL LEGAL #01-0307)
Street location information
Number- 1218 Name-JACKSON Type-BLVD Suffix-
Apt no-7 Name-VAN BUREN Type- Suffix-
Date of offense-01/25/01 Date of supplement-03/04/02
Compl(s) Last-HONEYCUTT First-DARIN Middle-SHANE
Last-
Recovered stolen vehicles information
Stored- by- Ph#- (000) 000-0000
Officer1-R.G. PARISH Emp#-048476 Shift-1 Div/Station-HOMICIDE

SUPPLEMENT NARRATIVE

PROGRESS REPORT:
MONDAY, MARCH 4, 2002
****

LAB ANALYSIS REQUEST:

PLEASE ANALYZE THE RAPE KIT COLLECTED FROM THE AUTOPSY OF THE COMPL. DARRIN HONEYCUTT.

&&&&

Supplement entered by = 48476
Report reviewed by-DR Employee number-082821
Date cleared- 02/07/01

No-0024

Offense- CAPITAL MURDER (MEDICAL LEGAL #01-0307)
Street location information
Number- 1218 Name-JACKSON Type-BLVD Suffix-
Apt no-7 Name-VAN BUREN Type- Suffix-
Date of offense-01/25/01 Date of supplement-03/18/02
Compl(s) Last-HONEYCUTT First-DARIN Middle-SHANE
Recovered stolen vehicles information
Recovery location- District- Beat- 00
Stored- by-
Officer1-KIM Emp#-080164 Shift-1 Div/Station-CRIME LAB

SUPPLEMENT NARRATIVE

REF: L02-3288

SUSPECT: UNKNOWN

ON MARCH 5, 2002 THE FOLLOWING ITEMS WERE RETRIEVED FROM THE PROPERTY ROOM:

AUTOPSY KIT (ML# 01-0307) OF DARIN HONEYCUTT CONTAINING:

SWABS-PENILE, RECTAL, ORAL, CONTROL
UNKNOWN HAIR AND BOBBY PIN
HEAD HAIR-PULLED AND LOOSE
PUBIC HAIR-PULLED
FINGERNAIL CLIPPING
LOOSE EVIDENCE-HAIR/FIBER
TWO HAND BAGS

RESULTS:

SEMEN WAS DETECTED ON THE PENILE AND CONTROL SWABS.
BLOOD WAS INDICATED ON THE NAIL CLIPPINGS.

PENILE AND CONTROL SWABS AND FINGERNAIL CLIPPINGS ARE BEING RETAINED AT THE LAB FOR FURTHER TESTING.

THE OTHER ITEMS OF EVIDENCE WILL BE RETURNED TO THE PROPERTY ROOM.

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

```
*****************************************************************
*  ENTRY DEVICE: NEC POWERMATE 176216 S12                       *
*  ENTRY FROM DATE-031802 TIME-1413  TO  DATE-031802 TIME-1416  *
*  TRANSFER DEVICE: NEC POWERMATE 176216 S12        VER. 4.00-W*
*  TRANSFER DATE-031802 TIME-1422   LOAD DATE-031802 TIME-1432  *
*  LOCATION OF OFFENSE: POLICE DISTRICT-DOWNTOWN BEAT 1A DIST-DN *
```

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

Supplement entered by = 80164
Report reviewed by-DR Employee number-082821
Date cleared- 02/07/01

No-0025

Offense- CAPITAL MURDER (MEDICAL LEGAL #01-0307)
Street location information
Number- 1218 Name-JACKSON Type-BLVD Suffix-
Apt no-7 Name-VAN BUREN Type- Suffix-
Date of offense-01/25/01 Date of supplement-03/20/02
Compl(s) Last-HONEYCUTT First-DARIN Middle-SHANE
Recovered stolen vehicles information
Recovery location- District- Beat- 00
Stored- by-
Officer1-R.G. PARISH Emp#-048476 Shift-1 Div/Station-HOMICIDE

SUPPLEMENT NARRATIVE

PROGRESS REPORT: INCIDENT #11846601-L

FRIDAY, FEBRUARY 15, 2002
****

SGT. PARISH CONTINUED THIS INVESTIGATION BY FLYING TO TAMPA FLORIDA WITH ASST. D.A. SUNNI MITCHELL. IN TAMPA, SGT. AND ADA. WERE MET BY DET. SCOTT TOWNLEY AT THE AIRPORT. DET. TOWNLEY THEN CHAUFFERED SGT. AND ADA MITCHELL AROUND TAMPA AND ASSISTED WITH THIS INVESTIGATION.

SGT. AND ADA MITCHELL MET WITH THE COMPL. STEPHEN DREW, WHO WAS A ROBBERY VICTIM IN TAMPA. THIS COMPL. HAD BEEN ROBBED AND STRANGLED BY THE SAME SUSPECT, RICHARD MASTERSON, WHO WAS CHARGED WITH CAPITAL MURDER IN THE HOUSTON CASE. THE SUSPECT HAD BEEN ARRESTED WITH MR. DREW'S VEHICLE IN MARION COUNTY FLORIDA.

MR. DREW STATED THAT HE HAD MET THE SUSPECT AT A BAR IN TAMPA, "THE JUNGLE" ON HENDERSON STREET. HE SAID THAT HE AND THE SUSPECT HAD STARTED A CONVERSATION AND THE SUSPECT NEEDED SOME PLACE TO STAY AND THE COMPL. DREW OFFERED HIM HIS COUCH FOR THE NIGHT. HE SAID THAT THEY WENT TO HIS APARTMENT AT 4714 NORTH HABANA #1014. MR. DREW STATED THAT HE WAS IN THE BACK BEDROOM AND WAS CHANGING WHEN HE WAS GRABBED FROM BEHIND IN A CHOKE HOLD BY THE SUSPECT. HE SAID THAT HE COULD NOT BREAK LOOSE AND THEY FOUGHT INTO THE LIVING ROOM, WHERE HE STARTED TO BLACK OUT. HE SAID THAT THEY FELL TO THE FLOOR AND THE NEXT THING THAT HE REMEMBERED WAS WAKING UP AS THE DOOR TO THE APARTMENT WAS CLOSING.

MR. DREW STATED THAT HE CHECKED THE APARTMENT AND FOUND THAT HIS WALLET WITH

CREDIT CARDS AND ABOUT $20 WAS MISSING ALONG WITH HIS WATCH AND SOME JEWELRY. HE SAID THAT HE THEN THOUGHT ABOUT HIS CAR AND WHEN HE COULDN'T FIND HIS KEYS, HE CHECKED THE PARKING LOT AND FOUND THAT HIS CAR WAS MISSING. HE SAID THAT HE CALLED THE POLICE AND MADE THE REPORT.

MR. DREW WAS THEN SHOWN A PHOTO ARRAY THAT HAD BEEN PREPARED USING THE MOST RECENT PHOTO OF THE SUSPECT MASTERSON ALONG WITH FIVE SIMILAR LOOKING WHITE MALES. THE PHOTO ARRAY WAS PREPARED BY THE IDENTIFICATION DIVISION OF THE HARRIS COUNTY SHERIFF'S OFFICE IN HOUSTON, TEXAS. THE SUPSECT MASTERSON WAS PLACE RANDOMLY IN THE NUMBER 4 POSITION.

WHEN MR. DREW WAS SHOWN THE PHOTO ARRAY, HE LOOKED AT IT FOR APPROXIMATELY A MINUTE AND STATED THAT THE PICTURE IN THE #4 POSITION WAS THE MAN THAT HAD ATTACKED HIM AND TAKEN HIS PROPERTY. HE WAS THEN ASKED TO SIGN, DATE AND TIME THE INSIDE COVER OF THE PHOTO ARRAY IN THE #4 POSITION, WHICH HE DID ON 2-15-02, AT 12:45PM.

SGT. PARISH AND ADA MITCHELL THEN RETURNED TO HOUSTON ON THE EVENING OF THE 2-15-02.

THURSDAY, MARCH 7, 2002
****

SGT. PARISH CONTACTED THE H.P.D. CRIME LAB AND LEARNED THAT ANALYST KRISTI KIM HAD BEEN ASSIGNED THE ANALYSIS OF THE RAPE KIT RECOVERED DURING THE AUTOPSY OF THE COMPL..

MONDAY, MARCH 18, 2002
****

SGT. CHECKED WITH CRIME LAB ANALYST KRISTI KIM AND LEARNED THAT DURING IN THE ANALYSIS OF THE COMPL'S RAPE KIT, SHE FOUND SEMEN PRESENT IN THE PENAL SWAB AND A KNOWN SAMPLE FROM THE COMPL'S LEG. THE ANAL SWAB WAS NEGATIVE FOR SEMEN AND THE ORAL SWAB WAS ALSO NEGATIVE FOR SEMEN.

TUESDAY, MARCH 19, 2002
****

SGT. PARISH DROVE TO THE HARRIS COUNTY MEDICAL EXAMINER'S OFFICE AND MET WITH DNA ANALYST BRANDT MOORE, WHO SUPPLIED SGT. WITH A DNA STAIN CARD CONTAINING THE COMPL'S DNA. SGT. TOOK CUSTODY OF THIS CARD AND DROVE TO THE HOUSTON POLICE STATION AT 1200 TRAVIS WHERE HE MET WITH CRIME LAB ANALYST KRISTI KIM, WHO TOOK CUSTODY OF THE DNA STAIN CARD.

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

```
*****************************************************************
*  ENTRY DEVICE: COMPAQ PENUTIUM 177100 N57                     *
*  ENTRY FROM DATE-032002 TIME-0840  TO  DATE-032002 TIME-0841  *
*  TRANSFER DEVICE: COMPAQ PENUTIUM 177100 N57        VER. 4.00-W*
*  TRANSFER DATE-032002 TIME-0841   LOAD DATE-032002 TIME-0851  *
*  LOCATION OF OFFENSE: POLICE DISTRICT-CONFIDENTIAL     DIST-CO *
```

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

Supplement entered by = 48476
Report reviewed by-DR Employee number-082821
Date cleared- 02/07/01

No-0026

Offense- CAPITAL MURDER (MEDICAL LEGAL #01-0307)
Street location information
Number- 1218 Name-JACKSON Type-BLVD Suffix-
Apt no-7 Name-VAN BUREN Type- Suffix-
Date of offense-01/25/01 Date of supplement-03/25/02
Compl(s) Last-HONEYCUTT First-DARIN Middle-SHANE
Last-
Recovered stolen vehicles information
Stored- by- Ph#- (000) 000-0000
Officer1-R.G. PARISH Emp#-048476 Shift-1 Div/Station-HOMICIDE
Officer2-D.S. NULL Emp#-083124 Shift-1

SUPPLEMENT NARRATIVE

PROGRESS REPORT:

THURSDAY, MARCH 21, 2002
****

SGT. PARISH CONTINUED THIS INVESTIGTION BY MEETING WITH ASST. D.A. SUNNI MITCHELL, WHO DREW UP A SEARCH WARRANT FOR A D.N.A. SAMPLE FROM THE SUSPECT, RICHARD MASTERSON. AFTER THE WARRANT WAS DRAWN UP, SGT. WENT TO THE 176TH DISTRICT COURT, WHERE JUDGE BRIAN RAINS, AFTER REVIEWING THE PROBABLE CAUSE FOR THE WARRANT, SIGNED THE WARRANT AT 11:26AM.
SGT. THEN WENT TO THE HOLDING CELL OF THE COURTROOM, WHERE THE SUSPECT WAS WAITING WITH HIS ATTORNEY, BOB LOPER. AT THIS POINT, SGT. EXECUTED THE WARRANT BY TAKING TWO ORAL SWABS FROM THE MOUTH OF THE SUSPECT IN THE PRESENCE OF HIS ATTORNEY AND OFF. SCOTT NULL.

ONCE THE SAMPLES WERE OBTAINED, SGT. DROVE TO THE H.P.D. HEADQUARTERS, WHERE HE MET WITH CRIME LAB ANALYST CHRISTI KIM. THE SAMPLES OBTAINED FROM THE WARRANT WERE GIVEN TO MS. KIM FOR ANALYSIS.

THE SEARCH WARRANT WILL BE RETURNED TO THE COUNTY CLERK'S OFFICE AND A CERTIFIED

COPY WILL BE OBTAINED AND ATTACHED TO THIS CASE FILE.

Supplement entered by = 48476
Report reviewed by-DR Employee number-082821
Date cleared- 02/07/01

No-0027

Offense- CAPITAL MURDER (MEDICAL LEGAL #01-0307)
Street location information
Number- 1218 Name-JACKSON Type-BLVD Suffix-
Apt no-7 Name-VAN BUREN Type- Suffix-
Date of offense-01/25/01 Date of supplement-04/15/02
Compl(s) Last-HONEYCUTT First-DARIN Middle-SHANE
Recovered stolen vehicles information
Recovery location- District- Beat- 00
Stored- by-
Officer1-JENNIFER LACOSS Emp#-117367 Shift-1 Div/Station-CRIME LAB

SUPPLEMENT NARRATIVE

REFERENCE: L02-3288

SUSPECT: RICHARD MASTERSON

ON MARCH 22, 2002 DNA EXTRACTED FROM THE FOLLOWING ITEMS WERE TRANSFERRED FROM CRIMINALIST C. KIM TO CRIMINALIST J. LACOSS FOR DNA ANALYSIS:

1. PENILE SWAB
2. CONTROL SWAB
3. RIGHT HAND FINGERNAIL CLIPPINGS
4. LEFT HAND FINGERNAIL CLIPPINGS
5. DARIN HONEYCUT (ML#01-0307)

ON APRIL 8, 2002 DNA EXTRACTED FROM THE FOLLOWING ITEM WAS TRANSFERRED FROM CRIMINALIST C. KIM TO CRIMINALIST J. LACOSS FOR DNA ANALYSIS:

1. RICHARD MASTERSON (SUSPECT)

RESULTS:

A MIXTURE OF DNA PROFILES OF ATLEAST 3 INDIVIDUALS WAS DETECTED ON THE LEFT HAND FINGERNAIL CLIPPING, HOWEVER THESE RESULTS ARE INCONCLUSIVE.

NO FOREIGN DNA PATTERNS WERE DETECTED ON ANY OTHER ITEM ANALYZED. (OTHER THAN CLIP)

PLEASE CONTACT THE LABORATORY IF THERE ARE QUESTIONS.

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

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*****************************************************************
*  ENTRY DEVICE: NEC POWERMATE 176216 S12                       *
*  ENTRY FROM DATE-041502 TIME-1039  TO  DATE-041502 TIME-1040  *
*  TRANSFER DEVICE: NEC POWERMATE 176216 S12          VER. 4.00-W*
*  TRANSFER DATE-041502 TIME-1042   LOAD DATE-041502 TIME-1051  *
*  LOCATION OF OFFENSE: POLICE DISTRICT-DOWNTOWN BEAT 1A DIST-DN *
*****************************************************************
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EVIDENCE WAS TAGGED-N LATENT PRINTS WERE LIFTED AT A SCENE-N

Supplement entered by = 117367
Date cleared- 02/07/01

END OF PAGE TWO

EXHIBIT 7

Dr. Christena Robert's Expert Opinion
On Darrin Honeycutt's Cause of Death

CJ Consulting of America, LLC
Christena Roberts, MD
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Attorney Work Product

Decedent: Darrin Honeycutt
Autopsy performed: Office of the Medical Examiner of Harris County, Houston, TX
Report by: Dr. Paul Shrode
Court Case/ Ref. #: 867834-B
County: Harris; 176th Judicial District
Defense Attorney: Patrick McCann
Defendant: Richard Allen Masterson

I was asked to review the discovery related to the autopsy of Darrin Honeycutt and offer an opinion about the determination of the cause and mechanism of death. I have attached a copy of my curriculum vitae. In summary I am a Forensic Pathologist who formerly practiced as an Associate Medical Examiner in two districts in Florida and practiced as an Assistant Chief Medical Examiner in Western Virginia. I now am a Forensic Pathology consultant in multiple jurisdictions and states. I consult in both criminal and civil cases and perform private autopsies. The majority of my work involves reviewing current and post-conviction murder cases and providing an objective scientific review of the discovery.

The following information has been reviewed:

- Autopsy report without body diagrams
- Autopsy photographs (4) from court records
- Report of investigation by Medical Examiner
- Police reports and witness statements
- Copies of four (4) of crime scene photographs; black and white
- Trial testimony of Dr. Shrode
- Affidavit of Dr. Paul Radelat

Background Information/Timeline:
Mr. Darrin Honeycutt was last seen alive on 1/25/2001 around midnight when he left a nightclub with 3 other people in his car. When he could not be reached by friends and hadn't reported for work a wellness check was initiated on 1/27/01 and he was found dead in his apartment. His body was located in the bedroom and he was found nude and partially face down on the bed.

He was positioned so that from the waist down his torso and lower extremities were on the bed and his torso was suspended in a bridge like fashion. His shoulders, upper extremities and head were on the floor and supported the upper torso body weight. His face was turned partially to the left. One first responder described that his feet were pointed towards the ceiling indicating that they were at least partially elevated off the bed. The local medical examiner described the corneas as being cloudy which is an early sign of decomposition and consistent with the time frame when he was last known alive. There was "pronounced" livor mortis (settling of blood after death due to gravity) of the chest, neck, face and upper extremities. The LME report notes blood and mucous around the nose. The "blood" was likely purge

fluid that is seen postmortem as there were no injuries to the mouth or nose. The mucous was pooling from gravity from the upper airways.

No injuries were noted at the scene. The apartment was locked and had no forced entry and there were no indications of a struggle at the scene other than a transfer of facial makeup to the sheets on the mattress and the carpet under the face. There were some signs of burglary in the apartment and the decedent's car was missing.

Richard Masterson was later found to be in possession of the decedent's car. According to witness statements Richard was one of the people in the car with Darrin on 1/25/01. He returned to Darrin's apartment with him. Richard reported to his brother James that he had Darrin in a head lock and he went limp and that he didn't mean to kill him.

Richard's statements give different explanations of how this occurred. Police reports indicate he stated that he waited for Darrin to get undressed and came from behind him and put Darrin's throat is the joint of his elbow (sleeper hold) and squeezed. He said he pushed him onto the bed and they slid to the floor.

In trial testimony Richard stated that Darrin had asked him to perform manual compression of his neck as part of a sexual act known as erotic asphyxiation. Richard described that Darrin was near the edge of the bed, face down, with his knees buckled and he was supporting himself with his right elbow. When asked, Richard put his right arm in a sleep hold around Darrin's neck. His left hand was guiding his own penis as part of the sexual act. Richard was unable to support himself and he said he was putting too much body weight on Darrin. During this act Darrin went limp and his right elbow came off the bed and both men fell towards the floor and both were in the position that Darrin was found in, with Ricard on top. Richard got up and Darrin was making grunting or gurgling sounds. He left the room and when he came back he could tell Darrin was dead.

Review of the Autopsy Report:
The autopsy was performed by Dr. Paul Shrode on 1/28/2001. The cause of death was listed as External Neck Compression with the manner of death as homicide. The autopsy report was signed on February 23, 2001.

Note that the autopsy appears to be at least partially based on a template that was incompletely filled in as blank spaces are present that were meant for measurements. After a sentence that states the "testes are normal size and shape without abnormality", is a sentence that reads "The second testicle is identified". This statement makes no sense contextually. These errors or omissions likely represent dictation into a standard template without re-wording or careful editing.

General:
Rigor mortis (stiffening of body after death) is absent at time of autopsy. Livor mortis is noted to be fixed and anterior (towards front of body) without any further description of extent of color and involvement of the face, neck, chest and upper extremities.

The autopsy report notes the sclera (white part of the eye globe) was hemorrhagic and the conjunctivae lining the eye and eyelids was congested. This is consistent with dependent lividity with the body positioned so that the head was much lower than the torso.

There is no documentation of rigor or livor on the LME form in the area provided. As the LME saw the body at the scene this information would be needed to make an opinion about time of death.

Review of the 2 autopsy photographs from the court records that show parts of the decedents face reveal drying artifact of the tip of the tongue that is a common postmortem finding. The eyes have scleral and conjunctival congestion that is consistent with dependent lividity. There are a few scattered coalesced areas (larger pool of hemorrhage) that are consistent with pooling from gravity after rupture of the small vessels from increased pressure. It is not possible to tell if these small vessels ruptured (petechial hemorrhages) from antemortem increased pressure from compression of the vessels in the neck or if it is from the dependent position of the body. The head was much lower than the waist and torso and gravity would have caused increased pressure with rupturing of the vessels. This reviewer has seen many cases where the body was simply face down and not suspended almost upside down, and the hemorrhage produced by gravity was much more pronounced than is seen in these photos.

Review of the photos also shows that the face has early decompositional changes consisting of patchy red discoloration of the skin over the cheeks, nose and periorbital area (around the eyes). These early decompositional changes were not documented in the autopsy report. With this level early decompositional changes present, some of the red discoloration will be from decomposition changes.

Blunt Force Trauma:
The autopsy report notes a single curvilinear drying abrasion over the outer corner of the right eyebrow. This is consistent with the position of the body and a "rug burn" when the face contacted the floor.

The autopsy report also notes 3 linear superficial abrasions on the right upper buttocks. No information is provided about apparent age of the abrasions. No microscopic sections were taken of the abrasions for dating. The abrasions may be from that day or may have occurred at an earlier time. *No autopsy photos are available for review. These may represent patterned injuries consistent with fingernail scratches which by location may be consistent with contact during a sexual act.*

<u>Trial testimony:</u>
During testimony Dr. Shrode testifies that he directed photos to be taken of contusions on the knuckles. He gives no indication of color or size. There is no documentation in the autopsy report of contusions on the hands. It must be noted that the hands were also involved with pronounced lividity that would make interpretation of contusions difficult unless they were incised into. There was no indication in testimony that the contusions were incised to see if they were discoloration from lividity or truly a contusion. No microscopic sections were taken for dating. Without histology sections, even if the bruises were present there is no reliable way to say how old they were. They may have occurred from routine activities prior to the day of death.

Photos were presented to Dr. Shrode at trial and he was unable to demonstrate the contusions, indicating that the lighting of this photo was different. At the beginning of his testimony 9 (nine) autopsy photos were listed as being entered into evidence. There is no indication that Dr. Shrode referred to any of those photos to demonstrate these contusions.

Review of the autopsy photographs in the court records shows a single photograph of the left hand. There are no discernable contusions.

Clarifying if these contusions existed and their apparent age is important in this case as the reference to them may lead the jury to believe that Darrin had offensive injuries consistent with an altercation. There is no evidence of defensive wounds.

<u>Negative Findings:</u>
The nasal bone is noted to be intact. The lips and tongue have no traumatic injury.

Evidence of Manual External Neck Compression:
There is no documentation in the autopsy report of evidence of external neck compression.

As noted above the "External Examination" section notes "hemorrhagic sclera" (white part of the eye) and congestion of the conjunctivae lining the eye (bulbar) and the eyelids (palpebral). There is no documentation of petechial hemorrhages of the conjunctivae. There is no description of distribution or size of the petechiae. There is no description of confluence of petechiae (larger pools). The only place this is listed is under "pathologic findings" simply as a diagnosis of "bilateral bulbar and palpebral petechial hemorrhages".

It should be noted that petechial hemorrhages when found with other findings in the neck are "supportive" of a diagnosis of strangulation and are not "diagnostic" of strangulation[1]. See discussion below. Petechial hemorrhages are caused by increased pressure in the vessels in the eyes which results in rupture of the tiny capillaries. This can occur in various types of manual strangulation (see discussion below) but can also be seen in natural disease processes such as fatal heart disease. Petechial hemorrhages can be found in positional asphyxia (upside down position) secondary to pooling of the blood, increased pressure and rupture of the vessels.

Hemorrhages in the eyes can also be seen when the head is in a lower position than the body after death (or when just face down) and the blood pools in the facial tissues by gravity. The vessels eventually rupture causing petechial hemorrhages that may become large. This is called dependent lividity as would be expected with the body position in this case. It is quite easy to find textbook references in Forensic literature showing extensive facial, periorbital and conjunctival hemorrhages in people who die of heart disease and are found in the prone position (face down)[2].

As noted above, review of the photographs from the court records clearly show congestion that is consistent with dependent lividity. There are a few scattered large petechial hemorrhages that could be from the extreme dependent position of the body or could be from antemortem increased pressure. There is no scientific reliable way to separate the two as petechial hemorrhages are a non-specific finding that only indicates increased pressure with rupture of the tiny vessels and pooling. In addition, there were early decompositional changes of the face and some of the red discoloration in the eyes would be from decomposition. These changes also can't be reliably separated from dependent lividity.

<u>Negative Findings for Manual External Neck Compression:</u>
There is no external bruising on the skin of the neck.

Page 3 of the autopsy report under section "Internal Evidence of Injury" notes "none". Under the section "neck" the autopsy report specifically notes that the neck (likely anterior) was dissected in layers and there was no discoloration of the soft tissues. Therefore there was no hemorrhage (bruising) in the anterior strap muscles of the neck or of any of the anterior neck structures.

The hyoid bone and thyroid cartilage were intact and had no fractures. There was no blood noted around these structures.

The autopsy report specifically notes that there were no petechiae of the larynx or trachea.

There are no defensive injuries to the neck. In cases of manual strangulation when the victim struggles with their attacker there can be shallow, linear abrasions on the neck from the victim's fingernails scratching the skin while trying to remove the hands or arms.

<u>Trial Testimony:</u>

Dr. Shrode testifies that petechial hemorrhages can be from inability of the blood to return to the heart with rupture of the tiny vessels. In this same statement he testifies that the hemorrhages can be caused by pooling of blood with gravity in a body that is face down.

Dr. Shrode testifies that the jugular veins are occluded first with pressure as they are "more prominent and more out in front". The vessels are next to each other in the neck with the veins being only slightly more towards the front and outer aspect of the neck. The veins are occluded first because they are thin walled vessels that require only 4 pounds of pressure to be occluded. The carotid arteries are muscular walled vessels and require 11 lbs. of pressure to occlude.

On page 205 of the trial transcript Dr. Shrode testified that there were very small hemorrhage areas in the windpipe and on the windpipe. This is in direct conflict with his autopsy report that noted no internal neck injuries and specifically no discoloration of the tissues and no petechiae within the trachea.

Review of the autopsy photographs from the court records show the trachea with the thyroid cartilage and overlying thyroid gland. The dark discoloration of the right side is within the vascular pattern and is consistent with dependent lividity. There are a few scattered pinpoint dark red areas that are consistent with Tardieu spots which are concentrated dependent lividity. In the absence of external bruising of the neck and no hemorrhage in the overlying anterior strap muscles or soft tissues of the neck, these areas are clearly from congestion and rupture of small vessels from dependent lividity. They do not represent blunt force trauma.

Dr. Shrode testified that the victim could not have survived the external neck compression. Victims often lose consciousness from manual strangulation and suffer anoxic brain injury and die at a later time. He states during his testimony that this was not present at autopsy as evidenced by "no cerebral edema". The autopsy report has a blank space where the brain weight should have been documented so it is unknown is the brain was swollen and heavier than it should have been. The standard of Forensic Pathology would be to submit sections of brain for microscopic examination and look for ischemic changes. As no microscopic sections were taken of the brain Dr. Shrode or another pathologist can't rule out the presence of ischemic changes. As no microscopic sections were taken of the brain and no brain weight was recorded, no independent evaluation can be made.

Dr. Shrode testified that takes 5-6 seconds of external neck compression to "pass out". Studies have shown that unconsciousness can occur in 10-15 seconds if the arteries are occluded and 30-40 seconds or longer if only the veins are occluded (see below).

Natural Disease Processes:

Heart:

The left anterior descending artery had atherosclerosis with luminal stenosis of 90% along the proximal (upper) one-third. This is very significant coronary artery disease for a man this age. In general, one would see a more focal area of severe narrowing in a background of less significant narrowing. It is unusual for the entire proximal third to be narrowed to this degree.

No microscopic sections were submitted of the heart tissue so no independent evaluation of signs of ischemic heart muscle can be made.

Liver:

Toxicology showed the presence of a drug used to treat HIV-1 infection. This drug can be hepatotoxic (damages the liver) which can be life threatening, especially when first taking it. The gross description of the liver appears normal but no microscopic sections were submitted. Without histologic evaluation one can't determine the presence or severity of liver damage.

Liver damage may affect the metabolism of alcohol therefore increasing the half-life in the body. As the toxicology shows a level of alcohol that would be considered intoxicating, information about injury to the liver would be helpful when making an opinion about amount of alcohol consumed and the time since consumed.

Lungs:
The lungs have pulmonary congestion and edema at autopsy. The trachea and bronchi had white froth that is another indicator of pulmonary edema. This is a common finding at autopsy when death is due to imbalance between the heart and lungs, such as a heart attack or congestive heart failure. It is a non-specific finding and also is seen in drug overdose deaths. As the body was found with the head on the floor and much lower than the lower torso, the congestion and edema would be an expected finding with dependent lividity.

Trial testimony:
Dr. Shrode's testimony that he could rule out that Darrin Honeycutt died from "heart attack" (heart disease) because he didn't have any hemorrhage in his heart tissue is in error. His explanation shows a general lack of knowledge about heart pathology. Severe coronary artery disease can lead to sudden death with an acute ischemic event and fatal arrhythmia. When a person dies suddenly from an arrhythmia there are no findings in the heart muscle visually at autopsy or microscopically to prove this. One must make the opinion based on the presence of severe coronary artery disease and its likelihood to result in sudden death.

If a person suffers an ischemic event of the heart tissue (commonly called a heart attack) and survives then as the body attempts to heal the injured heart muscle findings are visually evident[3]. As early as 4-12 hours (survival) one can see some dark discoloration and microscopically see heart muscle necrosis (cell death). Noticeable dark mottling (red discoloration) of the heart muscle is seen after 12-24 hours. Mottling with a yellow tan center isn't seen until 1-3 days after the event. Scarring that is seen as dense white tissue is seen > 2 weeks after the ischemic event. *The reference included here is standard text cited from a medical school pathology book.*

Dr. Shrode's testimony that since there was [no] scarring of the heart muscle it indicated there was no evidence of heart disease is also in error. Very often at autopsy there will be severe coronary artery disease with no previous ischemic events or scarring and the first sign of heart disease is sudden death due to fatal arrhythmia.

Dr. Shrode's testimony that he knows the collateral vessels developed to supply this area of the heart because the other coronary arteries were "open" is in error and misleading. Each coronary artery supplies an area of the heart. For example, the right coronary artery supplies the right side of the heart and electric points called the SA node and AV node. When it has an open lumen it only tells you the circulation is intact to the aspect of the heart. It is not an indicator that it grew extra vessels and sent them to the left side of the heart. If an area of the heart has decreased oxygen supply collateral vessels can move into the area from nearby arteries but not to a great extent. The only way to demonstrate the presence of these vessels is to dissect them. This is not documented in the autopsy report.

Evidence:
The body was received with the hands bagged and the acrylic fingernails were clipped collected. It was noted at autopsy that the acrylic mail of the left "ring" finger (4th digit) was partially torn off and there was possible dried blood under the nail. The lab report indicates that DNA from 3 people was present. There was no indication on the report that Richard Masterson's DNA profile matched.

A sexual assault kit was collected. The lab report indicated that the penile swab was positive for semen and no foreign DNA was identified.

Toxicology:
The toxicology performed on blood (no indication if the sample was from the aorta or peripheral) showed ethanol at 0.11 g/dl. This is alcohol in the blood at a level slightly higher than that most states list as their legal limit of driving which is 0.08. Medication prescribed to the decedent was also present. No narcotics were identified.

Discussion:
Manual strangulation causes death not by occluding the airway but by compressing the jugular veins and/or the carotid arteries in the neck. When enough pressure is applied to occlude the veins, blood can get to the brain but not leave, causing an increase in pressure and rupture of the tiny capillaries in the eyes (petechial hemorrhage). When the arteries are also occluded the blood and therefore oxygen cannot get to the brain and over seconds to a minute unconsciousness occurs. If the pressure is maintained and the brain is denied oxygen for a sufficient time period then death will occur. Often during manual or ligature strangulation the pressure will be released and repositioned. The greater the pressure, over a longer time period and larger, confluent scleral and conjunctival hemorrhage form.

Other types of manual strangulation would be variations of the choke hold. In the first type of choke hold is applied from behind with the arm wrapped around the neck and pulling the forearm in creating pressure on the victim's neck (airway and vessels affected).

The variation called the lateral vascular neck restraint (LVNR) is where the anterior neck is held in the antecubital fossa (front of the elbow) and the forearm is pulled towards the arm, compressing the vessels in both sides of the neck. This is basically a pincher movement with both sides of the neck between the arm and forearm and is commonly called a sleeper hold. If the victim is struggling and twisting then the hold can turn into a combination of the two choke holds. In this type of hold it takes less pressure to compress the veins in the neck and more pressure to compress the carotid arteries. Studies have shown that unconsciousness can occur in 30-40 seconds if the veins are compressed. If the arteries are completely occluded unconsciousness can occur as early as 10-15 seconds[1]. Another consideration with this type of hold is compression of the carotid sinus which can result in bradycardia (very slow heart rate) and rarely cardiac arrest. Generally this vagal stimulation only causes mild bradycardia and excessive stimulation is likely limited to individuals with significant cardiovascular disease as seen in this case.

In both types of choke hold if there was a struggle one can find hemorrhage in the strap muscles of the neck and possibly fractures of the thyroid cartilage and hyoid bone. The superior horns of the thyroid cartilage are thinner and more susceptible to fracture. These injuries are more likely with the choke type hold than the sleeper type of hold.

As noted above petechial hemorrhages when found with other findings in the neck are "supportive" of a diagnosis of strangulation and are not "diagnostic" of strangulation. Petechial hemorrhages are caused by increased pressure in the vessels in the eyes which results in rupture of the tiny capillaries. This can occur in various types of manual strangulation but can also be seen in natural disease processes such as fatal heart disease. Petechial hemorrhages can be found in positional asphyxia (upside down position) secondary to pooling of the blood by gravity. The increased pressure causes the same tiny ruptures of the vessels.

DeMaio's textbook of Forensic Pathology highlights one study involving 79 victims who survived attempted strangulation. Conjunctival hemorrhages were found in 14 of the surviving victims and only 8 of them had lost consciousness. This study helps illustrate that petechial hemorrhages are simply a result

of increased pressure in the vessels of the eyes. If compression is applied to the veins in the neck, petechial hemorrhages can occur with or without loss of consciousness and/or death.

Hemorrhages in the eyes can also be seen when the head is in a lower position than the body after death (or when just face down) and the blood pools in the facial tissues by gravity. The vessels eventually rupture causing petechial hemorrhages that may become large. This is called dependent lividity as would be expected with the position the body was found in this case. These changes can also be seen on the skin and the ruptured vessels are called Tardieu spots in the areas of prominent lividity. It is quite easy to find textbook references in Forensic literature showing extensive facial, periorbital and conjunctival hemorrhages in people who die of heart disease and are found in the prone position (face down). These changes can also be seen internally involving small vessels, in this case the vessels of the thyroid. <u>There is no reliable scientific method to distinguish antemortem petechial hemorrhages from postmortem artifact hemorrhages caused by pooling of blood with gravity (dependent lividity).</u>

One possible scenario in this case is that with or without external manual compression of the neck, Darrin Honeycutt died as a result of heart disease. The left anterior descending coronary artery had severe atherosclerotic disease. If this man had been found dead in his apartment with no other signs of trauma or natural disease process the cause of death would be determined "Atherosclerotic Heart Disease".

The left anterior descending artery is referred to as "the widow maker" as it's a large coronary artery supplying the anteriorlateral wall of the left ventricle, the apex of the heart and the interventricular septum. Since its supplies such a large portion of the left ventricle it's considered the most critical artery in supplying oxygen to the heart. Unfortunately, often the first sign of heart disease is sudden death. Often family will report that their family member had no history of heart disease or controlled high blood pressure and they die suddenly. At autopsy significant coronary artery disease is discovered. Even under normal activity one can die secondary to a fatal ventricular arrhythmia. When the body and therefore the heart are stressed by physical exertion the oxygen demand of the heart muscle increases and an acute ischemic can trigger a fatal arrhythmia[4].

In this case, one statement from the defendant was that he compressed Darrin's neck on request to cause decreased oxygen as part of erotic asphyxiation. Decreased oxygen would stress the heart muscle. As there was severe luminal narrowing of the left anterior descending artery this additional stress very likely could have resulted in an acute ischemic event and fatal arrhythmia. Once the victim became limp there would be no external signs that he was having or had a fatal arrhythmia.

Another factor to consider in this case is the position of the body such that the body weight was on the neck face and shoulders with the neck extended. This position may have caused a decreased ability to breath and one can't rule out a contribution of positional asphyxia, especially if the decedent were unconscious while in this position.

Review of the discovery included an Affidavit written by Dr. Paul Radelat that noted that the sleep hold placed on Darrin by Richard likely could have produced the desired erotic effect of decreased consciousness while simultaneously producing an undesired fatal cardiac arrhythmia. I agree with Dr. Radelat's Affidavit. I would note that there is no evidence of this neck compression at autopsy but only as relayed by the defendant.

Summary:
There is no independent scientific evidence of external neck compression or any other type of manual strangulation in the autopsy of Darrin Honeycutt. There is no external bruising of the neck, hemorrhage in the strap muscles or soft tissues of the neck or fractures of neck structures. The "petechial hemorrhages" that were listed as a diagnosis in the autopsy report and testified to as evidence of external

neck compression are non-specific. The hemorrhages in the eyes are simply from increased pressure and rupture of tiny capillaries. This could have occurred from a fatal cardiac event, antemortem compression of the neck or dependent lividity from blood pooling after death. There is no accurate scientific method to distinguish between them. In addition, there were early decompositional changes of the face with some degree of red discoloration further complicating interpretation.

Even in the event that one could separate out antemortem petechial hemorrhages they are "supportive" of but not "diagnostic" of a manual compression event. The pathologist appears to have relied on the "confession" and not any independent scientific observation.

In his trial Richard Masterson testified that during a sexual act Darrin Honeycutt asked him to perform erotic asphyxiation. During this act his body weight was pressing on the torso of the decedent and when they both fell to the floor they were in a dependent position. The decreased oxygenation could have created stress on the heart. Darrin Honeycutt had severe coronary artery disease which easily could have triggered an ischemic event with resultant fatal ventricular arrhythmia and death following the increased stress on the heart.

The pathologist in this case inaccurately ruled out that Darrin Honeycutt died from an acute ischemic event of the heart followed by a lethal arrhythmia based on the absence of hemorrhaging in the heart muscle. As noted above there would be no visual findings in the heart tissue if one died immediately from that event.

REFERENCES:

[1]DiMaio, VJ and DiMaio, D: Forensic Pathology, 2nd ed. Boca Raton, FL: CRC Press; 2001; (8) *Asphyxia.* 229-277.

[2]Dolinak, D, Matshes, EW and Lew, EO: Forensic Pathology, Principles and Practice. Burlington, MA: Elsevier Academic Press; 2005; (8) *Asphyxia.* 201-225.

[3]Robbins, SL and Cotran, RS: Pathologic Basis of Disease, 7th ed.: Elsevier Saunders; 2005; (12) *The Heart.* 555-618.

[4]Huikuri, H., Castellanos, A.; et al. *Sudden Death due to Cardiac Arrhythmias.* N Engl J Med, 2001. Vol 345, No 20. 1473-1482.

DiMaio, VJ and DiMaio, D: Forensic Pathology, 2nd ed. Boca Raton, FL: CRC Press; 2001; (2) *Time of Death.* 21-41. Generally cited.

EXHIBIT 8

Dr. Shawanda Williams-Anderson's Expert Opinion
On Richard Masterson's Probable Brain Damage

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RE: R. Masterson

NPA REFERENCE NUMBER:

☒ URGENT ☒ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Greetings Mr. McCann,

Please see attached psych eval report for the patient named on the reference line. Thank you for the referral and we welcome feedback, suggestions, and any future referrals.

Best regards,

Shawanda W. Anderson, Ph. D., HSPP

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FORENSIC NEUROPSYCHOLOGICAL EVALUATION

Name: Richard Masterson

Civil Action #: H-09-2731

Ethnicity: Caucasian

Gender: Male

Date of Evaluation: 01/11/2013

DOB: 03/05/1972

Reason for Referral:

The examinee was referred, by his defense attorney, for a neuropsychological evaluation to help determine if symptoms he experienced can be attributed to an organic cause, and if the symptoms warrants further investigation.

Assessment Tools:

Unstructured clinical interview with the examinee,

Mini-mental Status Exam (MMSE),

Rey Auditory Verbal Learning Test (RAVLT),

Trails A & B,

Symbol Digit Modalities Test (SDMT),

Rey Complex Figure Test (RCFT),

Hooper Visual Organization Test (HVOT)

Wisconsin Card Sort Test-64 (WCST-64).

Behavioral Observations:

The examinee was escorted to the interview room by 3 armed officers. The interview room contained a round wooden table and 2 chairs. The room was visible to officers through a barred window. Mr. Masterson's hands and feet were shackled, but his hands were released on request by the examiner so that he could sufficiently interact in the assessment process. He wore a standard issued, white jumpsuit. He also wore glasses for corrected vision. Eye contact was appropriate. He appeared his stated age, and was tall in stature. There were visible scars on the left side of his head. A slight dysconjugate gaze was also noted.

Mr. Masterson was not very talkative initially and seemed quite guarded. He stated that he believed that the assessment was to occur earlier in the month and seemed disappointed that it did not. After explanation of what to expect, the examiner's role, and the limits of confidentiality, he seemed eager to begin the process. Rapport was fairly easily established and maintained. His thought processes were coherent, and he did not appear to be attending to unseen external stimuli. He denied the presence of delusions, suicidal and homicidal ideation. Mr. Masterson's attention and effort were good and he was able to follow all instructions to completion. He seemed to approach each task frankly and with the intent to perform his best.

Background/Social History:

Mr. Masterson, a 41-year-old, right-handed Caucasian male, was able to give a verbal account of his personal history and medical background. Mr. Masterson relayed that he was born in Houston, Texas. He reported being the youngest of 9 children born to his parents. There is reportedly a 13 year age range between he and his oldest sibling. He reported that his gestational period and birth were unremarkable. He also reported that he reached his developmental milestones at the appropriate ages. He did report that he was born with a congenital condition that caused blindness in his left eye. He reported having corrective surgery on his eye at age 10 and that the beneficial results were short-lived. He attributed the congenital condition to the noted dysconjugate gaze.

He stated that his parents were married for 27 years, but were separated for several years during this time. Mr. Masterson stated that he was 11 years old at the time of the separation. He regarded his parents as neglectful and reported being placed in "foster care" when he was approximately 4 years old. He stated that his father drank heavily and was often abusive. He reported that he was raised in North Houston by both parents and it was "Hell growing up." His father reportedly passed away from cancer in 2000. His mother has also passed away from cancer. Mr. Masterson also reported being the victim of other perpetrators in the home. He reported that his older brother molested him at approximately age 7 or 8. He suspected that his brother learned this behavior from their father, as his brother and at least 1 sister were victims of incest. Mr. Masterson stated that he never divulged his abuse until age 27 when he told his girlfriend and subsequently confronted his brother.

Mr. Masterson reported receiving 7 years of formal education and concluded his education in 6th grade. He stated that he was retained at least once and was 13 when he signed from school. He did not readily acknowledge academic problems in school, but did indicate that he had behavioral difficulties in school. He stated he "fought a lot" because he was often teased about his eye. He estimated a frequency of engaging in physical altercations as "everyday." However, he was somewhat elusive and did not divulge a formal diagnosis or psychiatric problems that would better account for his behavior.

At age 13, Mr. Masterson reportedly was homeless and refused to return home because of the abuse/neglect. He stated that he was "on the street" and living from "friend-to-friend" for approximately 2 years. He stated, by age 15 he lived in a motel room with 14 other children, and 2 adults. He reported that prostitution and drug sales were his means of support. He also reported that it was approximately the same time that he began using illicit substances. He reported daily use of cocaine until his initial incarceration in 1988 (charges were truancy and criminal mischief). He stated that after his 11 month sentence, he remained sober for approximately 4-5 years. Subsequently, he engaged in daily drug binges and used cocaine intravenously from ages 21 to 24.

Currently, Mr. Masterson is incarcerated on Death Row of the Polunsky Unit. He has been convicted on capital murder charges involving strangulation and car theft. He began his sentence in May of 2002. He stated that he was unfamiliar with the victim and that it was an accidental death. He has never married and has no children. He has limited contact from family members. He stated that he rarely receives correspondences from his siblings.

Medical/Psychological History:

Mr. Masterson has a significant medical history. In addition to his congenital eye defect, he has been diagnosed with Hepatitis C. He attributed the latter to his drug use. He also has a history of grand mal seizures. He reported that when he was using illicit substances, he could experience as many as 3 seizures per day.

Recent symptoms that are of concern are daily migraines that Mr. Masterson experiences. He described the pain as a "heaviness inside" his cranium. He stated that the pain is deep inside the cranium and extends down towards the spinal column. He also reported a shooting pain from the front of his head to the back that originates behind his eye. He stated that he experiences a stiff neck in addition to the pain. He reported a family history of migraines.

Mr. Masterson also reported that a Dr. Day, in 1988, conducted an evaluation while he was incarcerated (TYC). Reportedly, Dr. Day recommended that Mr. Masterson be evaluated and treated for organic brain damage. It is unclear what Dr. Day attributed to the etiology of the damage, but Mr. Masterson postulated that his many fights and altercations may have resulted in some damage to his cerebrum and was detected by Dr. Day. His history of substantial drug use may also be a contributing factor.

Test findings:

Memory--Mr. Masterson was oriented x 4. He scored 30 out of 30 points on the MMSE. He demonstrated intact and adequate cognitive skills to participate in the evaluation. The evaluation began with measures of memory.

On a verbal learning task requiring him to recall a list of 15 words that were repeated 5 times, Mr. Masterson was able to recall as many as 15 of 15 words after the fifth trial. He recalled between 8-15 words across trials. He did demonstrate benefit from exposure and repetition. Following a period of distraction, he was able to recall 13 of 15 words, which indicated little deterioration of information. This performance fell in the average range. Following some delay (30 minutes), he was able to freely recall 14 of 15 words. This performance fell in the high average range.

Processing Speed-- Measures of cognitive processing speed indicated low average ability. The timed task required Mr. Masterson to write a number associated with a novel symbol, with visual stimulus cues being continuously given. Mr. Masterson completed 43 of a possible 110 items when his responses were written. He was able to correctly identify 47 of 110 items when he gave the responses verbally. He made 6 errors when completing this task. Although he has left visual field blindness, this could not fully account for the perceptual transposing that was observed on this task.

Visual Perceptual-- The RCFT was administered to assess perceptual organization. The examinee is given a complex figure and asked to copy the figure presented. Mr. Masterson's performance was classified as average. He was able to recreate all of the 36 point aspects of the

figure. He did not omit features of the figure and was able to recreate the figure in an average amount of time. Mr. Masterson's performance suggests that he does not have difficulties with visually processing complex information, thus his performance on the processing speed task was not due to perceptual deficits.

A second and unrelated task of visual perception, the HVOT, was also administered. The HOVT is an instrument designed to measure an individual's ability to organize visual stimuli. The test consists of 30 line drawings depicting simple objects, which have been cut into pieces and rearranged in a puzzle-like manner. The subject is asked to identify what each object would be if it were put back together correctly. Mr. Masterson correctly identified 24 out of 30 objects. This performance falls in the average range despite the errors.

Executive Functioning-- Trails A & B were administered to Mr. Masterson to assess speeded scanning and mental flexibility. On Trails A, Mr. Masterson was required to connect circles containing letters in alphabetical order while being timed. Thus, the task requires intact visual scanning abilities, mental ordering, and fine motor abilities. Mr. Masterson's ability to perform the task was in the average range (T=44). He was able to order the alphabets, but did make 1error. He was able to complete the task in 41 seconds. Visual scanning and fine motor ability were adequate for the task. His performance on Trails B was similar and fell in the average range (T=53). Trails B is a more complex task in that it has circles to be connected that contain letters and numbers. The examinee is required to switch between letters and numbers when ordering. Mr. Masterson performed the task in 80 seconds. He did not make any errors on the task.

The WCST-64 is an abbreviated task that requires the examinee to match 64 cards to 4 stimulus cards. The examinee is given only minimal feedback (i.e., correct/incorrect) on his/her performance and is to use that feedback to guide future responses. Thus, abstract reasoning, flexibility, and deduction are necessary tasks to successfully complete the WCST-64. On the WCST-64 Mr. Masterson was able to complete 1 of 3 categories. He was not particularly perseverative on this task, but did have difficulty reasoning and deciphering the rules of the task. He responded well to the feedback, but did not take it into consideration when deducing his next move. Results indicate that this area of executive functioning is impaired and that he may have difficulty using his environment to make decisions, having forethought about his actions, and reasoning.

Summary/Conceptualization: Mr. Richard Masterson is a 41-year-old, Caucasian male with a history of abuse/neglect, significant substance use, and behavioral difficulties. Currently, he is incarcerated and being housed on Death Row of the Polunsky Unit on charges of capital murder. His defense team precipitated and requested a neuropsychological evaluation to determine if symptoms he is currently experiencing could be attributed to an organic etiology. The current symptoms include daily headaches, vertebral stiffness, and neck pain. He also has a medical history significant for Hepatitis C, blindness in his left eye, and grand mal seizures.

Test results indicated that Mr. Masterson has many intact abilities, including memory and visual perception. However, he did demonstrate relative deficits in the areas of cognitive processing speed and abstract reasoning. Although his processing speed was in the low average range, he made several errors. Likewise, his reasoning was impaired and fraught with errors.

Mr. Masterson's testing profile is typical of a person with a history of substance abuse and subtle brain dysfunction. That is, many areas are intact, but there are deficits seen in higher order cognitive domains such as speeded processing and reasoning that may not be overt to an untrained observer. His deficits can surely be from injuries he sustained in his developmental years where abuse frequently occurred, or his many physical altercations. Also, substance abuse can be a causative and/or contributing factor. In general, chronic substance use can cause brain damage and dysfunction, and the effects can be even more detrimental if the brain was previously comprised via injury or otherwise. The symptoms Mr. Masterson is experiencing may indicate the presence of some sort of brain anomaly. He described a "heavy" sensation that may indicate such. Additionally, he described symptoms such as stiff neck and "pain deep in the brain" that may specific to irregular brain ventricles or a foreign substance in the cerebrospinal fluid. Lastly, but of great importance, is the fact that a previous practitioner mentioned and queried the possible presence of brain injury. In summary, Mr. Masterson's profile indicates that he may be experiencing symptoms related to brain dysfuntion. Given the pattern of his symptoms and history, neuroimaging and further evaluation is warranted.

Ph.D 2/8/13

Shawanda W. Anderson, Ph. D., HSPP Date

Licensed Psychologist/Neuropsychologist

EXHIBIT 9

Dr. Wilkie Wilson's Expert Opinion
On Richard Masterson's Malfunctioning Brain
And Suicidcal Behavior

Wilkie A. Wilson, PhD
302 Watts St.
Durham, NC 27701
December 15 2015

Patrick F. McCann
Law Offices of Patrick F. McCann
909 Texas Ave, Ste. 205
Houston, Texas 77002

Mandy Miller
Mandy Miller Legal, PLLC
2910 Commercial Center Blvd.,
Ste. 103-201
Katy, TX 77494

Dear Mr. McCann and Ms. Miller:

This letter is in reference to the case of Richard Masterson. You asked me to review this case from the standpoint of the effects of stimulants and their acute withdrawal could have had on Mr. Masterson at the time of his confession. In particular you asked that I consider what scientific findings have emerged since his trial in 2002.

I am a neuropharmacologist at Duke University in Durham, North Carolina and a Professor of Prevention Science in the Social Sciences Research Institute. I hold a B.S.E.E. from Louisiana State University and a Ph.D. from Duke University. Until 2009, I was a Research Professor of Pharmacology at Duke University Medical School, and an Associate Professor of Medicine until 2010. Additionally, until December 31, 2010, I served as a Research Career Scientist for the Veterans Health Service at the VA Medical Center in Durham, North Carolina. I still serve the VA in a "without compensation" position.

I continue to conduct scientific research concerning the effects of drugs on brain function in collaboration with other scientists. I am currently funded by the National Institute of Health through grants to study alcohol and nicotine. From July 1, 2012 to June 30. 2015, I, along with colleagues, had funding from the United States Department of Education Institute of Educational Sciences to develop brain-related educational programs for high school students (that work continues with funding from Duke).

I have written numerous research papers as detailed in my CV. In particular I have studied the unique effects of recreational drugs in adolescents. In addition, I have co-authored three books that explain the effects of recreational drugs to members of the public who are not scientists. The lead book of the series is *Buzzed: The straight facts about the most used and abused drugs from alcohol to ecstasy* (WW Norton, 1998, 2003, 2008, 2014). In this book we discuss the effects of cocaine, methamphetamine and ethanol on the brain and behavior.

I also teach members of the criminal justice community, about neuropharmacology, addiction, and recreational drugs at the School of Government at the University of North Carolina. I have testified in criminal proceedings as an expert in neuropharmacology in North Carolina, Louisiana, Texas, and Florida. I have consulted on other cases in Tennessee, Georgia, California and Virginia.

Sources of Information about this case

- Report of Dr. Shawanda Anderson dated 02/11/2013
- Trial Testimony dated from March, 2002 to April, 2002 including the guilt-innocence and punishment phases of the trial.
- An interview with Mr. Masterson December 4, 2015 at the Polunsky Unit.
- A transcript of Mr. Masterson's confession
- Autopsy report for the victim, Darrin Honeycutt

The interview of Richard Masterson

- I interviewed Mr. Masterson on December 4, 2015 in the death row facility of the Texas Department of Corrections Polunsky Unit.
- I first focused on his drug use in the time leading up to the death of the victim. Mr. Masterson stated that he was using I-V cocaine, smoking crack cocaine, methamphetamine (all drugs classed as "stimulants") , and ethanol on a daily basis. That had been his pattern of use for the preceding year, and that his drug use had begun as a young teenager.
- He indicated that he had experienced seizures associated with crack use.
- On the day of the death, he had been using stimulants and ethanol all day.
- He stated he was arrested 11 days prior to the death and had used stimulants for all but the last two days prior to his arrest. He stated that he had consumed all of his drugs and could not get more.
- I then asked him more about the circumstances of the death. He stated that he did not know the victim prior to their meeting at a club.
- He gave essentially the same description of the events leading up to the death that he did in his court testimony. The victim invited him to his apartment and asked to have sex, including erotic asphyxiation. Mr. Masterson complied with his wishes. As he released the victim from the neck compression, he realized that he was likely dead and then decided to escape rather than call for help because of his criminal record.
- When he was arrested he was depressed from stimulant withdrawal and "didn't have anything to live for." He wanted to get the death penalty.
- He described speaking with the detective "off camera" to script what he would have to say to get the death penalty and then he proceeded to repeat that for his taped confession.

Mr. Masterson's drug addiction history

The psychological report by Dr. Shawanda Anderson details the tragic life history of Mr. Masterson and it is not necessary to repeat it here except to say that he began using illicit drugs at age 15, when he was homeless. From age 21 he began

using I-V cocaine, and was using it at the time of the death of the victim. Clearly Mr. Masterson was addicted to stimulants and this began at the most vulnerable time for human addiction, during adolescence. Dr. Anderson's report includes the results of a neuropsychological examination that was given to assess Mr. Masterson's brain function. She concluded that Mr. Masterson had multiple deficits with a major deficit in his reasoning ability, and that these deficits may reflect some brain anomaly. She indicated that such brain dysfunctions could result from brain injury or damage from substance abuse. His stimulant abuse triggered frequent seizures, and the repeated seizures may well have caused damage to his brain.

Unique effects of adolescent drug exposure

The work of our group studying the unique effects of drugs in adolescents began in 1996 when we showed that alcohol was far less sedative in adolescent animals than in adult animals, mirroring the human experience. At that time there was very little attention paid to the effects of drugs on the teen brain. Slowly more laboratories began to study adolescents, and a seminal review paper was published in 2003, "Developmental Neurocircuitry of Motivation in Adolescence: A Critical Period of Addiction Vulnerability.[1]" This paper synthesized the emerging research concerning the adolescent brain and described new research models of its unique vulnerability to addictive agents.

This review paper has been cited more than 1000 times and gave enormous momentum to research about drugs and the adolescent brain. This paper was obviously not available at the time of trial and while some of the research cited in it was published before 2002, general awareness of the issue developed after its publication. As an example, just in 2010, the National Institute of Alcohol Abuse and Alcoholism recognized the need for research in this area and funded the first Consortium on the Neurobiology of Adolescent Drinking in Adulthood. Our group is part of that consortium.

If the defense team had known about the effects of drug use during adolescence they could have presented this information to the jury to explain how Mr. Masterson became addicted to the stimulants that eventually caused him to make a confession that he hoped would result in his death.

The mental state of Mr. Masterson at the time of arrest

Mr. Masterson made it very clear that he was extremely depressed at the time of his arrest and that he had no reason to live. He knew that he had a criminal record and felt that he would likely be convicted and given a life sentence. He felt hopeless and thought it best to get the death penalty rather than live out his life in prison. **Essentially, Mr. Masterson was committing suicide by confession.**

The unrecognized origin of Mr. Masterson's depression at the time of confession: drug withdrawal after prolonged use of stimulants

- Tolerance to and withdrawal from drugs

When the brain is repeatedly exposed to drugs, the natural response of the brain is to adjust its chemistry to try and oppose the effects of the drugs. This is called the development of drug tolerance. An example familiar to people who use caffeine is the caffeine tolerance and withdrawal syndrome. Caffeine inhibits the actions of a brain chemical, adenosine, and the block of adenosine makes people feel alert, awake, and generally stimulated. With regular use, the brain develops tolerance to the caffeine as the brain adjusts its adenosine sensors (receptors) to try and counter the effects of the caffeine. Thus a caffeine user may need more caffeine to achieve stimulation. But, if the user stops consuming caffeine, the brain, which is now hypersensitive to adenosine, produces feelings of lethargy, sedation, and the withdrawn person can have an awful headache. These are all symptoms of adenosine hyperactivity.

- Depression following stimulant withdrawal

The issue in Mr. Masterson's case is not caffeine, but the much more powerful stimulants, cocaine (including IV cocaine and crack cocaine) and methamphetamine. These drugs produce stimulation of the individual by releasing endogenous stimulating neurochemicals in the brain. The most important of these is the neurotransmitter dopamine. Dopamine is produced by the anticipation of pleasurable events and organizes the brain to get the anticipated pleasure.

Dopamine release is produced by all addicting drugs and behaviors, but the stimulant drugs such as cocaine (in all forms) and methamphetamine are highly effective releasers. They release much more dopamine that any "natural pleasure, such as food, sex, etc. When an individual use cocaine or "meth," especially by smoking or the I-V route, there occurs a massive elevation of dopamine in the brain and the individual becomes profoundly energized and euphoric. This state is the opposite of a depressive state.

As a stimulant drug is repeatedly used, the brain attempts to maintain normality and it adjusts its chemistry to reduce the number and sensitivity of sensors for dopamine. At this point the individual needs the drugs just to feel normal, and natural pleasurable activities lose their value.

When the stimulant drug is not present, the addict is deprived of dopamine function and she/he becomes depressed, perhaps profoundly so. Thus an individual, such as Mr. Masterson, who used stimulants for an extended period of time, is highly dependent on them to maintain anything approaching a non-depressed state.

In late 2002 (after the date of the trial) a paper was published that demonstrated the remarkable correlation between the symptoms of major depressive disorder and the effects of stimulant withdrawal. This paper, "A 'crash' course on psychostimulant withdrawal as a model of depression[2]," was an invited paper in a very prestigious and widely read journal. While previous literature, mostly limited to stimulant researchers, recognized that people in stimulant withdrawal could be depressed, this paper made the case that this is a biological effect of stimulants, that the effects are identical to

those seen in major depressive disorder, and this could have profound effects on the function of the individual. In addition the paper emphasizes that the correlation is so good that stimulant withdrawal could be used as an animal research model of depression for the development of therapies.

The comparison table is reproduced below:

Table 1. Similarities between major depressive disorder and psychostimulant withdrawal in humans[a]

Major depressive disorder	Psychostimulant withdrawal	Refs
Behavioral (DSM-IV criteria)		
Depressed mood and/or irritability	Severely depressed mood and/or irritability	[14]
Diminished interest or pleasure in daily activities	Loss of interest or pleasure in daily activities	[14]
Large increase or decrease in appetite	Increase in appetite	[17]
Insomnia or excessive sleepiness	Excessive sleepiness	[17]
Psychomotor agitation or retardation	Psychomotor retardation	[17]
Fatigue or loss of energy	Fatigue and/or loss of energy	[16]
Diminished ability to think or concentrate	Poor ability to concentrate or confusion	[14]
Feelings of worthlessness and/or guilt	Unknown	
Recurrent thoughts of death or suicide	Significant suicidal ideation	[14]
Behavioral (non-diagnostic)		
Feelings of restlessness	Restlessness	[14]
Comorbid anxiety	High levels of anxiety	[14]
Carbohydrate craving	Increased craving for carbohydrates	[19]
Elevated drug self-administration	Greater drug-seeking and drug-taking behaviors	[57]
Physiological		
Disturbed HPA axis	Increased HPA axis activity	[58]
Disrupted sleep architecture	Decreased REM latency; higher REM density	[59]
Changes in regional brain metabolism	Elevated metabolic activity in orbitofrontal cortex	[60]

[a]Abbreviations: DSM-IV, Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition; HPA, hypothalamic–pituitary–adrenal; REM, rapid eye movement.

This paper shows that depression following stimulant withdrawal can produce all the problems as seen in "major depressive disorder," including suicidal ideation. Mr. Masterson was not showing signs of clinical depression either before or after this withdrawal period, and the defense clearly never realized that there was a biological explanation, transient stimulant withdrawal depression, that led Mr. Masterson to confess and then to change his account at the time of trial. If this information had been available at the time of the trial, the defense team could have recognized that there was a completely rational explanation for his changed confession. He was suffering from major stimulant withdrawal depression and thus wanted to commit "suicide by confession." Moreover, this terrible decision was very likely facilitated by his documented brain deficits in reasoning, shown by Dr. Anderson's neuropsychological testing. When the withdrawal-triggered depression had subsided by the time of trial, he no longer wanted to die, and he changed his explanation of events when he testified.

Thus, it is my opinion that at the time of trial the general legal and clinical community could not have fully appreciated why Mr. Masterson first confessed in such a manner as to insure his conviction and virtually guarantee that he would receive the death penalty, and then why he would change his description of events at a later time. Had they had the information in this paper and the understanding of

stimulant-induced changes in the brain that have developed in the years since then, they could have explained this to the court.

Sincerely yours,

Wilkie A. Wilson, PhD
Neuropharmacologist and
Professor of Prevention Science
Duke University Social Sciences Research Institute

1. RA Chambers, JR Taylor, MN Potenza. Developmental Neurocircuitry of Motivation in Adolescence: A Critical Period of Addiction Vulnerability. Am. J. Psychiatry 160:6 June 2003.

2. AM Barr, A Markou, AG Phillips. A Crash Course On Psychostimulant Withdrawal As A Model Of Depression. TRENDS in Pharmacological Sciences Vol. 23 No. 10 (1041-1052) October 2002.

EXHIBIT 10

Ramona Weiss' Affdavit
About Richard Masterson's Childhood Abuse and Trauma

STATE OF TEXAS §
COUNTY OF HARRIS §

Affidavit of Ramona Weiss

My name is Ramona Weiss. I am of sound mind and over eighteen years of age. I make the following statements under the penalties of perjury:

- I am Richard Allen Masterson's sister. I am 10 years older than Richard.
- I lived in the same household as Richard until I was 14 years old. At that time, Richard was 4 years old.
- Richard and I have the same father, James Ivan Masterson, and mother, Ellabelle Masterson.
- When Richard was an infant, our father would beat Richard repeatedly. I know of at least 20+ occassions I can say it happened at least once a month, it just depended on which one of us was closest to him when he came home drunk.
- During these beating, our father would strike Richard's head numerous times. I can remember one occasion that Richard's head swoll up 3 times its normal size. He has been kicked in the head with Cowboy Boots from one end of house to the other.
- There were many times after the beatings that Richard wouldn't cry at all because he was afraid of getting hit. He would just lay in a laundry basket or dresser drawer just depended on what was being used at the time and not make any sounds. He had difficulty in learning to talk and walk as a toddler.
- These beatings continued throughout Richard's childhood. I know that he has no

memories from the age of 9 to the age of 12 and he was with my Dad and Mom during that time. Our father often violently struck Richard's head.

- I believe that Richard has brain damage based on these beatings.
- I believe that Richard had brain damage as an infant based on these beatings.

I affirm that these statements are true and correct.

Ramona Weiss
Ramona Weiss

12-17-15
Date

Sworn before me on this 17th day of December 2015.

Miguel A. Perez
Printed Name

Signature

April 4, 2019
Date Commission Expires

NOTARY PUBLIC STATE OF TEXAS
MIGUEL A PEREZ
My Commission Expires
April 4, 2019

EXHIBIT 11

J. Sidney Crowley's Attorney Grievance Reprimand

CAUSE NO. 05-CV-140898

COMMISSION FOR LAWYER DISCIPLINE,	§	**IN THE DISTRICT COURT OF**
	§	
Petitioner,	§	
	§	
vs.	§	**FORT BEND, TEXAS**
	§	
JAMES S. CROWLEY,	§	
	§	
Respondent.	§	**240th JUDICIAL DISTRICT**

AGREED JUDGMENT OF PUBLIC REPRIMAND

On the 26th day of May, 2006, came to be heard the above-entitled and numbered cause with the Honorable Steven Williams presiding pursuant to his appointment by the SUPREME COURT OF TEXAS as set forth in Rule 3.02 of the TEXAS RULES OF DISCIPLINARY PROCEDURE. Petitioner, the **COMMISSION FOR LAWYER DISCIPLINE** (hereinafter referred to as the "**CFLD**"), by and through its attorney of record, Audrie L. Lawton, Assistant Disciplinary Counsel, Office of the Chief Disciplinary Counsel, STATE BAR OF TEXAS, and Respondent, **JAMES S. CROWLEY** (hereinafter referred to as "Respondent"), Texas Bar Number 05170200, Pro se, announced to the Court that the parties agree and stipulate that judgment should be entered in this case as set forth in this *Agreed Judgment of Public Reprimand.* The Court, after considering the pleadings on file in this disciplinary action, is of the opinion that the agreement of the parties is just and equitable, and that final judgment should be entered in accordance thereof and as set forth herein.

Respondent is an attorney licensed to practice law in Texas and is a member of the STATE BAR OF TEXAS. Respondent's principal place of practice is Fort Bend County, Texas. Therefore,

this Court has jurisdiction over the parties and subject matter of this case, and venue is appropriate in Fort Bend County, Texas.

The Court finds and concludes, as stipulated by the parties, that Respondent has committed professional misconduct as defined by Rule 1.06V of the TEXAS RULES OF DISCIPLINARY PROCEDURE and in violation of Rule **1.01(b)(1)**; **1.01(b)(2)** and **1.03(a)** of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT, Article X, Section 9, of the STATE BAR RULES. Accordingly, the **CFLD** is entitled to judgment against Respondent as prayed in the current *Disciplinary Petition* on file in this case.

IT IS AGREED AND THEREFORE ORDERED, ADJUDGED, and **DECREED** in accordance with the factors set forth in Rule 3.10 of the TEXAS RULES OF DISCIPLINARY PROCEDURE that the proper discipline of Respondent for each act of professional misconduct as found in this case is a public reprimand. Respondent consents to the rendition and entry of this *Agreed Judgment of Public Reprimand.*

IT IS AGREED AND THEREFORE ORDERED that Respondent pay reasonable and necessary **attorneys' fees and costs in the amount of Six Hundred Four and 50/100 Dollars ($604.50). All payments are to be remitted to the STATE BAR OF TEXAS, Office of the Chief Disciplinary Counsel, 600 Jefferson, Suite 1000, Houston, Texas 77002, by money order, certified check, or cashier's check. Respondent shall pay all attorneys' fees and costs contemporaneously with the signing of this *Judgment*.**

IT IS FURTHER AGREED AND THEREFORE ORDERED that this reprimand is to be made a matter of public record and shall be appropriately recorded in accordance with the TEXAS RULES OF DISCIPLINARY PROCEDURE.

IT IS AGREED AND THEREFORE ORDERED that the Clerk of this Court shall forward a certified copy of the current *Disciplinary Petition* on file in this case, along with a copy of this *Judgment* to the following: (1) Clerk of the SUPREME COURT OF TEXAS, Supreme Court Building, Austin, Texas 78711; and (2) Respondent 4410 Texas Trail, Sugar Land, Texas 77479.

IT IS FURTHER AGREED AND THEREFORE ORDERED that the Clerk of this Court shall forward two (2) certified copies of the current *Disciplinary Petition* on file in this case along with two (2) copies of this *Judgment* to Audrie L. Lawton, Assistant Disciplinary Counsel, Office of the Chief Disciplinary Counsel, STATE BAR OF TEXAS, 600 Jefferson, Suite 1000, Houston, Texas 77002.

By the signatures of Respondent and all counsel of record, it is shown that this *Agreed Judgment of Public Reprimand* is agreed to by the parties pursuant to Rule 11 of the TEXAS RULES OF CIVIL PROCEDURE, both as to form and substance.

IT IS ORDERED that all costs of court incurred in the prosecution of this lawsuit shall be taxed against Respondent, for which the Clerk may have execution if they are not timely paid.

All relief not expressly granted in this *Agreed Judgment of Public Reprimand* is **DENIED**.

SIGNED this 26th day of May, 2006.

HONORABLE STEVEN WILLIAMS

FILED
2006 JUN -8 PM 2:21
Glory Hopkins
CLERK DISTRICT COURT
FT. BEND CO. TX.

COPY

APPROVED AS TO BOTH FORM AND SUBSTANCE:

STATE BAR OF TEXAS
Office of the Chief Disciplinary Counsel

JOHN A. NEAL
Chief Disciplinary Counsel

AUDRIE L. LAWTON
Assistant Disciplinary Counsel
State Bar No. 24036953
600 Jefferson, Suite 1000
Houston, Texas 77002
Phone: (713) 758-8200
Fax: (713) 758-8292

ATTORNEYS FOR PETITIONER, COMMISSION FOR LAWYER DISCIPLINE

APPROVED AS TO BOTH FORM AND SUBSTANCE:

JAMES S. CROWLEY
Respondent, Pro se
State Bar No. 05170200
4410 Texas Trail
Houston, Texas 77479
Phone: (713) 225-5454
Fax: (713) 227-2922

CAUSE NO. 05-CV-140898

COMMISSION FOR LAWYER DISCIPLINE,	§	IN THE DISTRICT COURT OF
	§	
Petitioner,	§	
	§	
vs.	§	FORT BEND COUNTY, TEXAS
	§	
JAMES S. CROWLEY,	§	
	§	
Respondent.	§	140th JUDICIAL DISTRICT

CONSENT TO JUDGMENT

In connection with the charges of professional misconduct filed against me, I hereby consent to entry of the *Agreed Judgment of Public Reprimand* in the form submitted to me.

SIGNED this 2d day of May, 2006.

JAMES S. CROWLEY
State Bar No. 05170200

STATE OF TEXAS	§	
	§	
COUNTY OF FORT BEND	§	

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared **JAMES S. CROWLEY**, known to me to be the person whose name is subscribed to the foregoing instrument, and being by me first duly sworn, acknowledged to me that the same was executed for the purposes and considerations therein expressed, and the *Agreed Judgment of Public Reprimand* is true in every respect.

GIVEN UNDER my hand and seal of office this 2nd day of May, 2006.

LAURA L. MORADO
Notary Public, State of Texas
My Commission Expires
June 08, 2009

Laura L. Morado
Notary Public in and for the State of Texas

FILED
2006 JUN -8 PM 2: 21
Glory Hopkins
CLERK DISTRICT COURT
FT BEND CO TX

COPY

CAUSE NO. 05-CV-140898

COMMISSION FOR LAWYER DISCIPLINE	]	**IN THE CIVIL DISTRICT COURT**
Petitioner,	]	
v.	]	**OF FORT BEND COUNTY, TEXAS**
JAMES S. CROWLEY	]	
Respondent.	]	240 **JUDICIAL DISTRICT**

PETITIONER'S ORIGINAL DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Petitioner, the **COMMISSION FOR LAWYER DISCIPLINE** (hereinafter referred to as "Petitioner"), a committee of the STATE BAR OF TEXAS, complaining of Respondent, **JAMES S. CROWLEY** (hereinafter referred to as "Respondent"), Texas Bar Card No.**05170200,** and would respectfully show unto the Court the following:

DISCOVERY DECLARATION

1. Pursuant to Rules 190.1 and 190.3, TEXAS RULES OF CIVIL PROCEDURE (TRCP), Petitioner intends discovery in this case to be conducted under the Level 2 Discovery Control Plan, as Petitioner seeks relief that is considered an exception to TRCP 190.2. TRCP 190.2(b)(3).

NATURE OF PROCEEDING

2. Petitioner brings this disciplinary action pursuant to the STATE BAR ACT, TEXAS GOVERNMENT CODE ANNOTATED §81.001, *et seq.* (Vernon 1988 and supp. 1994); the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT; and the TEXAS RULES OF DISCIPLINARY PROCEDURE.

PARTIES

3. Petitioner COMMISSION FOR LAWYER DISCIPLINE is a permanent committee of the State Bar of Texas.

4. Respondent JAMES S. CROWLEY is a licensed attorney and a member of the State Bar of Texas. He may be served citation by service at his principal place of practice, 4410 Texas Trail, Sugar Land, TX 77479.

VENUE AND JURISDICTION

5. As Respondent's principal place of practice is Fort Bend County, Texas, venue is ~~appropriate in Fort Bend County, Texas, pursuant to Rule 3.03 of the TEXAS RULES OF~~ DISCIPLINARY PROCEDURE.

6. Venue is proper as there is no mandatory venue requirements for this disciplinary action to commence elsewhere exist. CPRC Chapter 15, generally.

7. Jurisdiction is proper as relief sought is within this Court's jurisdiction and no other Court has exclusive jurisdiction for the causes of action asserted.

FACTS

8. Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas.

9. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorney fees and direct expenses associated with the proceedings of this matter, which should be paid by Respondent.

10. On or about June 6, 2003, Respondent was appointed to handle the appeal for Defendant George S. Guo ("Complainant") in Cause No. 0032362; *The State of Texas v. George S. Guo*; In the 268th Judicial District Court of Fort Bend County, Texas. The appellate style is Cause No. 13-03-00063-CR; Guo v State of Texas; In the 13th Court of Appeal

11. The reporter's record for Complainant's appeal was filed on or about September 5, 2003. By operation of law, the Appellant's brief was due on or about October 6, 2003. TRAP 38.6(a)(2).

12. Respondent admittedly failed to timely file Appellant's brief on or before October 6, 2003, stating that "I was occupied with several other legal matters."

13. Respondent admittedly failed to file a Motion to Extend Time to file Appellant's brief on or before October 21, 2003. TRAP 10.5(b)(1).

14. Respondent failed to apprise Complainant regarding the status of his appeal during the pendency of such, nor did Respondent inform Complainant that he failed to timely file

Appellant's brief (or Motion for Extension of Time to File Appellant's Brief) from October 2003 – March 2004.

15. Complainant sent two written correspondences to Respondent in or around March 2004 demanding that Respondent file the exceedingly late Appellant's brief in the aforementioned criminal appeal.

16. On or about March 12, 2004, Respondent filed a Motion to Extend Time to File Appellant's Brief with the 13th Court of Appeals. That time was extended to April 8, 2004.

17. Respondent did not file Appellant's Brief in Cause 13-03-00063-CR with the 13th Court of Appeals until April 29, 2004.

ADOPTION BY REFERENCE

18. Except as expressly set forth or implied by context, all statements set forth in each paragraph of this pleading are adopted by reference and incorporated into each and every section and paragraph of this pleading for purposes of providing fair notice of Petitioner's allegations in this disciplinary action.

RULE VIOLATION

19. Petitioner herein incorporates paragraphs 8-17 as evidence so as to place Respondent on notice of the factual basis for the rule violations asserted below. The acts of commission and/or omission by Respondent constitute conduct violative of any and/or all of the following Rules of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

- **1.01(b)(1)** [in representing a client, neglecting a legal matter entrusted to the lawyer];
- **1.01(b)(2)** [in representing a client, frequently failing to carry out completely the obligations owed to a client or clients];
- **1.01(c)** ["neglect" signifies inattentiveness involving a conscious disregard for the responsibilities owed to a client or clients];
- **1.03(a)** [failing to keep a client reasonably informed about the status of a matter and failing to promptly comply with reasonable requests for information]; and
- **1.03(b)** [failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation].

RELIEF SOUGHT

20. Petitioner seeks a finding of misconduct of the Texas Disciplinary Rules of Professional Conduct and requests that this Court discipline Respondent by imposing sanctions including, but not limited to reprimand, suspension or disbarment. Additionally, Petitioner also seeks any and all such appropriate and additional relief as determined by the trier of fact upon a favorable finding for Petitioner. TDRCP 3.01(f).

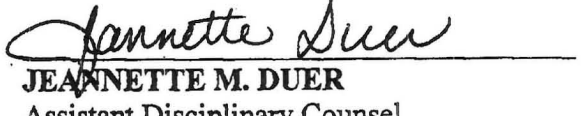
21. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorney fees and direct expenses associated with the preliminary proceedings of this particular matter and will continue to incur such costs and expenses prosecuting this disciplinary matter. Petitioner requests that Respondent pay taxable costs and expenses upon a favorable finding by the trier of fact for Petitioner.

PRAYER

THEREFORE, Petitioner the **COMMISSION FOR LAWYER DISCIPLINE** respectfully prays that this Court discipline Respondent as the facts shall warrant by finding professional misconduct with regard to the above-stated rule violation and imposing a sanction including, but not limited to reprimand, restitution, suspension and/or disbarment; and that the CFLD have all other relief to which it may show itself to be justly entitled, including costs of court, and attorneys' fees.

Respectfully submitted,

STATE BAR OF TEXAS
Office of the Chief Disciplinary Counsel
DAWN MILLER
Chief Disciplinary Counsel



JEANNETTE M. DUER
Assistant Disciplinary Counsel
State Bar No. 00793645
1111 Fannin, Suite 1370
Houston, Texas 77002
Phone: (713) 759-6931
Fax: (713) 752-2158
ATTORNEYS FOR PETITIONER,
COMMISSION FOR LAWYER DISCIPLINE

EXHIBIT 12

Miranda Dore's Affdavit
About Her Conversation With Attorney J. Sidney Crowley
Regarding his Lack of Preparation in Richard Masterson's Case

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RICHARD ALLEN MASTERSON,	§	
Petitioner,	§	
	§	**CASE NO. 4:09-CV-2731**
vs.	§	
	§	**HONORABLE KENNETH M. HOYT**
WILLIAM STEPHENS,	§	
Director,	§	
Texas Department of Criminal	§	
Justice, Correctional Institutions	§	**DEATH PENALTY CASE**
Division,	§	
	§	
Respondent.	§	
	§	

AFFIDAVIT OF MIRANDA A. DORE

I, Miranda A. Dore, make these statements under the penalties of perjury:

1. I am a student at American University's Washington College of Law. I am an intern at the Law Office of Gregory W. Gardner.
2. I volunteered to work on Mr. Masterson's case. I have not been and will not be compensated for my work on his case.
3. On October 8, 2015, I contacted J. Sidney Crowley, Mr. Masterson's initial state habeas attorney.
4. Mr. Crowley told me that he went to look at Mr. Masterson's trial records, which included his juvenile records, only one time because the records were so voluminous. Mr. Crowley said that he never received all of the files because there were too many.

5. When I asked Mr. Crowley how many times and for approximately how long he reviewed Mr. Masterson's files, he said that he only went one time, and he did not recall for how long he was there, but the visit occurred on a single day.

I confirm that all of these statements are true and accurate to the best of my knowledge. And I make these declarations under the penalties of perjury. I executed this Affidavit in Washington, D.C. on the 29th day of December 2015.

Respectfully,

Miranda Dore

Public Notary

WELLS FARGO

Jurat Certificate

State of District of Columbia

~~County~~ City of Washington

Subscribed and sworn to (or affirmed) before me on this 29th

day of December, 20 15, by

Notary Signature

Place Seal Here

PHELON DAVIS NOTARY PUBLIC DISTRICT OF COLUMBIA MY COMM. EXPIRES AUGUST 14, 2020

Description of Attached Document

Type or Title of Document

In the US District Court for the Southern District of Texas Houston Division

Document Date 12-29-15

Number of Pages 2

Signer(s) Other Than Named Above

DSG3018 (Rev 00-2-15)

EXHIBIT 13

Article About Assistant Medical Examiner
Paul Shrode Being Exposed as a Fraud

County fires Chief Medical Examiner Paul Shrode: Ohio Parole Board's ruling spurs decision

By Marty Schladen \ EL PASO TIMES (mailto:mschladen@elpasotimes.com?subject=El Paso Times)
POSTED: 05/25/2010 12:00:00 AM MDT

» Shrode resume
(http://extras.mnginteractive.com/live/media/site525/2010/0110/20100110_053046_Shroderesume.pdf)
» Transcript: Cross examination of Shrode
(http://extras.mnginteractive.com/live/media/site525/2010/0110/20100110_053811_Shrodercase.pdf)
» Richard Nields clemency report

(http://extras.mnginteractive.com/live/media/site525/2010/0522/20100522_124000_Richard_Nields_case.pdf)

EL PASO -- A majority of the County Commissioners Court stuck by Chief Medical Examiner Paul Shrode through three conflicting résumés and more than two years of questions about his credibility. All that changed Monday when court members fired Shrode on a 3-1 vote.

They acted after the Ohio Parole Board voted 4-3 last week to recommend clemency for a death-row inmate, citing problems with testimony Shrode gave against him in 1997.

County Judge Anthony Cobos and Commissioners Anna Perez and Veronica Escobar voted to dismiss Shrode immediately. Commissioner Dan Haggerty voted to keep him on the job. Commissioner Willie Gandara was absent on county business.

Now the commissioners must begin the search for another medical examiner.

District Attorney Jaime Esparza also is reviewing cases involving Shrode to see if convicts are likely to challenge his testimony.

"I don't think we'll see a rush to review his cases," Esparza said.

But Shrode probably is not done testifying in El Paso County courts. Defendants could call him in cases in which Shrode produced autopsy reports, Esparza said.

If Shrode testifies, taxpayers will be on the hook to pay his time and expenses, Esparza said.

He declined to say whether he still had confidence in Shrode. Esparza had publicly supported Shrode when his credentials were questioned in prior public meetings before the commissioners court.

Escobar said the Ohio case had little to do with her decision. Rather, she said, it was an accumulation of evidence -- some of it discussed in a lengthy closed-door session Monday -- that made her lose confidence in Shrode.

Perez said she believed there was little chance that people were wrongfully convicted in El Paso County based on Shrode's testimony.

Shrode, the county's highest-paid employee at more than $254,000 a year, declined to comment before or after the vote.

His troubles in El Paso began in August 2007, when Assistant County Attorney Bruce Yetter called Shrode to testify in a child protection case. Yetter introduced Shrode's résumé as a court exhibit. One entry on the résumé Shrode prepared said he had a "graduate law degree" from Southwest Texas State University.

Attorney Theresa Caballero cross-examined Shrode. She remembered that Southwest Texas State had no law school, so she asked: "Do you have a law degree, doctor?"

"Not in the sense of a law degree from a school of law, not like you," Shrode said.

He then admitted under oath that he had no law degree or diploma.

But in the résumés Shrode had submitted to El Paso and Harris counties, he claimed to hold a "graduate degree in law."

Later, after being questioned by Caballero, Shrode produced another résumé. That one said that he had a degree in law from a school of political science and that he was a member of the State Bar of Texas from 1979 to 1983. A third résumé by Shrode said that he had a "degree in law ... not a law degree" and that his bar membership was as a paralegal.

The State Bar of Texas had no record of Shrode being a member, either as an attorney or a paralegal.

When the commissioners court reviewed discrepancies on Shrode's résumés in November 2007, Escobar, Cobos and Haggerty all supported him.

The commissioners began new discussions about Shrode early this year, after a government watchdog named David Fisher filed a complaint against Shrode with the Texas Medical Board. Fisher said Shrode had lied on his résumés to obtain well-paying public jobs.

The El Paso County government did not authorize a check of all entries on Shrode's résumé until this year, nearly five years after the commissioners court hired him. In February, county Human Resources Director Betsy Keller told the court that Shrode had taken a semester's worth of political science courses at Southwest Texas State but had not received a graduate degree of any kind.

Caballero, speaking to the commissioners court Monday, said what happened with Shrode went beyond mistakes. It even went beyond Shrode, she said.

"It isn't about Dr. Shrode," Caballero said. "It's about elected officials and life and death."

Medical examiners frequently testify in felony trials.

Cobos said he wanted to fire Shrode early this year but did not have the support of the rest of the court.

"Nothing has changed for me," Cobos said Monday. "I was ready to act four or five months ago."

In its clemency recommendation last week, the Ohio Parole Board cited problems with Shrode's testimony in urging Gov. Ted Strickland to take Richard Nields off death row but keep him in prison for life.

Shrode testified that he knew from his autopsy that Nields beat Patricia Newsome in Cincinnati in 1997, left for 15 minutes to six hours, then came back and strangled Newsome. Shrode's supervisor later told the parole board that Shrode had no scientific basis for the claim, which helped establish to jurors that Nields acted in cold blood.

Perez said the Ohio ruling helped her change her mind about Shrode, "but it happened a long time ago."

Perez, an attorney, said she had no reason to believe that Shrode testified to any unsupported

conclusions in his testimony as El Paso County medical examiner. She said she was not concerned that anybody in El Paso might have been wrongly convicted based on Shrode's testimony.

Escobar and Perez would not say what they were told about Shrode in Monday's executive session, but they indicated that new information came to light about the medical examiner.

Esparza and County Attorney Jo Anne Bernal also would not divulge what was said. They said it was up to the commissioners to determine Shrode's fitness to be medical examiner.

Haggerty was the only commissioner to stick by Shrode, characterizing what Shrode did as "mistakes."

"Do people make mistakes?" he asked. "Yes."

Marty Schladen can be reached at mschladen@elpasotimes.com; 546-6127.

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EXHIBIT 14

Harris County Medical Examiner's Office's Reprimand of Paul Shrode

Harris County Medical Examiner's Office
1885 Old Spanish Trail
Houston, Texas 77054

COUNSELING WORKSHEET

Dr. Paul W. Shrode — NAME

10-5-01 — DATE

1. ( ) Unreported Absence
2. ( ) Tardiness
3. ( ) Drinking on duty
4. ( ) Insubordination
5. ( ) Dishonesty
6. ( ) Failure to obey orders
7. ( ) Fighting on premises
8. ( ) Leave without permission
9. ( ) Improper conduct
10. ( ) Reporting under the influences of alcohol
11. ( ) Violation of rules
12. (✓) Defective and improper work
13. ( ) Carelessness
14. ( ) Destruction of property
15. (✓) Other: Wrong determination of cause of death. Case - ML01. 2587

REMARKS: Set forth all facts relating to the above. Please use 2nd page if necessary.

The determination of cause of death was incorrect and case was not completed on time despite all pertinent information available since August 23, 2001.

The appropriate cause of death, manner of death and "How injury occurred" determinations were changed on numerous occasions including the staff meeting on August 22, 2001.

Correct ruling:
COD: Acute Toxic effects of cocaine and heroin
MOD: Accident
How injury occurred: Consumed drug mixture of cocaine and heroin.

Signature of Supervisor — Date 10/08/01.

RECEIVED
Kathy Ramsey
OCT 0 8 2001
MEDICAL EXAMINER'S OFFICE

Signature of Employee — Date 10-08-01

The above has been noted and is made a part of the above employee's record, as of this date.

09/93

EXHIBIT 15

State of Ohio Audult Parole Board Authority's
Clemency Recommendation for Richard Neilds

DATE TYPED: May 14, 2010
DATE PUBLISHED: May 18, 2010

IN RE: RICHARD NIELDS, OSP #A352-374

STATE OF OHIO
ADULT PAROLE AUTHORITY
COLUMBUS, OHIO

Date of Meeting: May 10, 2010

Minutes of the **SPECIAL MEETING** of the
Adult Parole Authority held at 770 West Broad Street,
Columbus, Ohio 43222 on the above date.

IN RE: Richard Nields, OSP #A352-374

SUBJECT:	Death Sentence Clemency
CRIME, CONVICTION:	Aggravated Murder with specifications, Aggravated Robbery.
DATE, PLACE OF CRIME:	March 27, 1997 in Springfield Township, Ohio
COUNTY:	Hamilton
CASE NUMBER:	B9703305
VICTIM:	Patricia Newsome
INDICTMENT:	5/2/1997: Counts 1-2: Aggravated Murder with specification, Count 3: Aggravated Robbery.
TRIAL:	Found guilty by jury
DATE OF SENTENCE:	12/22/1997
SENTENCE:	Aggravated Murder with specifications: DEATH Aggravated Robbery: 10 years * Counts 1- 2 merged for purposes of sentencing.
ADMITTED TO INSTITUTION:	December 23, 1997
JAIL TIME CREDIT:	1 day
TIME SERVED:	136 months
AGE AT ADMISSION:	47 years old
CURRENT AGE:	59 years old
DATE OF BIRTH:	May 19, 1950
JUDGE:	Honorable Thomas C. Nurre
PROSECUTING ATTORNEY:	Joseph T. Deters

FOREWORD:

Clemency in the case of Richard Nields, A352-374 was initiated by the Ohio Parole Board, pursuant to Section 2967.03 and 2967.07 of the Ohio Revised Code and Parole Board Policy #105-PBD-01.

On April 29, 2010, Mr. Nields was interviewed via video-conference by the Parole Board at the Ohio State Penitentiary. A Clemency Hearing was then held on May 10, 2010 with seven (7) members of the Ohio Parole Board participating. Arguments in support of and in opposition to clemency were then presented.

The Parole Board considered all of the written submissions, arguments, information disseminated by presenters at the hearing, prior investigative findings as well as judicial decisions and deliberated upon the propriety of clemency in this case. With seven (7) members participating, the Board voted four (4) to three (3) to provide a favorable recommendation for clemency to the Honorable Ted Strickland, Governor of the State of Ohio.

DETAILS OF THE INSTANT OFFENSE (B):

The following account of the instant offense was obtained from the Ohio Supreme Court opinion, decided August 29, 2001:

On the night of March 27, 1997, Patricia Newsome was found strangled on her kitchen floor. Police arrested the subject, Richard Nields, Newsome's frequent live-in companion, at Newsome's home that night, not long after Springfield Township Police had transported him there. Nields was indicted for aggravated murder and aggravated robbery, found guilty as charged, and sentenced to death.

Prior to 1997, Nields and Patricia Newsome had an on-again, off-again relationship for approximately ten to twelve years. In the year leading up to the murder, they lived together at Newsome's home in Finneytown, Springfield Township, in Hamilton County. Newsome worked as a realtor in Fairfield, and Nields was a keyboard musician who was out of work most of the time. On March 27, 1997, Newsome had lunch with her friend, Dorothy Kiser. Newsome told Kiser that she asked Nields to move out. Even though subject had packed his clothes in his car in order to move out, "he kept coming back to the house."

In the weeks leading up to March 27, Nields would call Newsome with hostile messages. On one occasion, an angry call for Newsome was received by the office receptionist, Floanna Ziegler, from a man identifying himself as a musician. Newsome wrote the incident down and told Ziegler, "I'm trying to file charges against him and I want to document everything that he said to you."

During the afternoon of March 27, Dorothy Alvin had a conversation with subject, who was a stranger to her, at Lulu's bar in Springfield Township. Nields told Alvin that the

lady whose house he lived in was throwing him out. Nields further told Alvin, "I'd like to kill her, but I guess I won't do that because I don't want to go to prison."

Later, during the evening of March 27, Barbara Beck and Patricia Denier were dining at the Briarwood Lounge on Hamilton Avenue. At approximately 10:30 p.m., Nields entered the bar and approached the two women, both of whom he knew. Both women noticed blood on his right hand and asked him what happened. Nields said to them, "You'll hear it on the news tomorrow." Nields also kept repeating, "I'm in serious, serious trouble." Both women thought that he was in shock and was acting strange. Neither smelled any alcohol on his breath.

As Beck and Denier left the lounge, subject walked them to their car and asked to go with them. After they declined to take subject with them, Nields told them, "I'm going to be driving home in a Cadillac." They saw subject walk across the street to a white Cadillac. Friends of Patricia Newsome testified that she owned a white Cadillac but never let anyone else drive it, especially subject, "because of the way he drank."

Anthony Studenka was at DJ's Pub on Winton Road on the night of March 27, a little before midnight and sat down next to a person at the bar who "told me he killed somebody." That person was Nields. Nields showed Studenka his hands, which had cuts on them, and told Studenka that he had killed some kid who was a drug pusher. Nields then suddenly became belligerent and started calling Studenka insulting names. Kimberly Brooks, a friend of Studenka, also heard subject declare that he had killed someone and noticed that subject had "dried blood all over" his hands. However, Nields then denied that he had killed anyone, and said that he had helped drag the body away. Brooks called 911 to report subject's statements.

Springfield Township Police Officer Greg Huber was in front of DJ's Pub when he heard a radio call that a male at the bar was bragging that he had killed someone. Huber encountered Nields inside the bar and asked him to step outside because of the noise. After initially refusing to do so, Nields went outside and spoke with Huber, who then noticed blood on both of subject's hands. When asked about the blood, Nields told Huber that he was in a fight across the street at Lulu's bar. At that time, Police Sgt. Ken Volz arrived on the scene. Huber then went to Lulu's to investigate and discovered that there had been no fight there.

Sgt. Volz and another officer, Clayton Smith, spoke with subject outside of DJ's Pub. Nields told the officers that the story of the killing he was telling inside the bar was really about a Clint Eastwood movie. Smith, who was familiar with such movies, asked subject questions to find out to which movie subject was referring. However, subject could not sufficiently answer any of his questions. Sgt. Volz then instructed Smith to drive subject home due to his "intoxication level."

Nields pointed to the white Cadillac across the way as "his girlfriend's car" that he drove, which Volz learned was registered to Patricia Newsome. Volz then went to Newsome's house on 8527 Pringle Avenue, "to check on her well being." When he peered through

the front window, he could see that the television and some lights were on, and he could hear the dog barking inside.

As Officer Smith drove up to the Pringle Avenue residence with Nields, Sgt. Volz was standing on the front porch area. Nields "became very uptight and aggressive and verbal and almost yelling" at Smith. Nields declared that they were not going into the house without a search warrant. Nields eventually calmed down, and the officers let him enter the house and hoped he would calm down for the night. However, after Nields entered the house, the officers could see him through the front window "waving his hands in an erratic fashion."

As the officers were leaving, they noticed the door on the attached garage was open. Officer Smith entered the open lit garage and peered in a window that looked into the kitchen. Smith saw "a female on the ground who was obviously deceased." The officers went to the front door and saw the subject through the front window still waving his arms. They knocked on the door, and as Nields opened the door, they grabbed his arm, pulled him outside, and handcuffed him. Police arrested Nields and advised him of his *Miranda* rights. Sgt. Volz entered the house to check on the victim but could not detect a pulse.

While Nields was detained in the police cruiser, he kept asking Officer Smith, "Is she alive?" During the arrest, police found fifteen traveler's checks in the subject's possession, all of which bore Patricia Newsome's name. Police Chief David Heimpold arrived at the scene and readvised Nields of his *Miranda* rights. Nields told Heimpold that he and Newsome had been in an argument. She hit him with the telephone, he then pushed her, and she hit her head on a bookcase. Nields also mentioned that someone named "Bob" was also there, but shortly thereafter, he admitted that this was a lie. Nields admitted that he had choked Newsome after they had had a fight. The assistant medical examiner, who performed the autopsy on Newsome, concluded that she had died from asphyxia due to manual strangulation.

Nields was incarcerated at the Hamilton County Justice Center. Two days after the murder, he talked with Timothy Griffis, who was serving time that weekend for nonpayment of child support. Nields told Griffis that "he had killed his girlfriend," that they had argued, and that he "jumped on top of her, started beating her up." Nields said that he then went to a bar. He came back to Newsome's home to see if she was breathing and started strangling her. He laid the phone on top of Newsome's chest, called her either "bitch" or "baby," and told her, "Call me from heaven." According to Griffis, the subject at times appeared to be remorseful, but at other times, he exhibited a carefree attitude while recounting the details of the murder. Nields also told Griffis that he took money, jewelry, and traveler's checks out of Newsome's purse. According to Griffis, the subject was kind of upset because he could not use the traveler's checks.

On May 2, 1997, the grand jury indicted Richard Nields for aggravated robbery, aggravated murder with prior calculation and design, and aggravated felony-murder during an aggravated robbery. A death penalty specification attached to the aggravated

murder counts alleged that Nields had committed aggravated murder during the aggravated robbery and that he was either the principal offender or committed the aggravated murder with prior calculation and design. R.C. 2929.04(A)(7).

Prior to trial, a suppression hearing was held on the subject's motion to suppress his statement to police after he requested an attorney, his statements at DJ's Pub, and his statement to Timothy Griffis because the police entered the curtilage of Newsome's home without a warrant. The trial court denied the motion to suppress, holding that exigent circumstances justified the search of the home. The court further held that Richard Nields statements to police after he requested an attorney were freely and voluntarily given and that his statement at the Justice Center to Griffis and his statements at the pub were not suppressible.

The state called numerous witnesses to establish Nields' guilt before a jury. The defense conceded that Nields had killed Newsome but disputed that Nields had purposefully or "knowingly caused the death of Patricia Newsome" because he was "under the influence of sudden passion and rage." During the trial, Officer Nancy Richter testified that she discovered three pages of yellow legal paper entitled "Record of Abuse" at Newsome's residence while she and Newsome's children were looking for her will several days after the murder. A forensic document examiner with the coroner's office determined that the "Record of Abuse" pages were written by Newsome.

Also at trial, Springfield Township Police Officer Paul Rook testified that he responded to a "domestic call" at Newsome's residence on March 1, 1997. At that time, Newsome told Rook that she wanted Nields to leave her home and that she was afraid of him. Rook and another officer took Nields from Newsome's residence until he could find someone else who would come and get him. The defense called one witness.

After deliberation, the jury found Nields guilty as charged.

At the mitigation hearing, the defense presented three witnesses: Nields' sister, Rochelle Pittman; Dr. Emmett Cooper, psychiatrist and pharmacologist; and Assistant Public Defender James Slattery. Pittman chronicled Nields' family life, including the fact that Nields' father was an alcoholic who left the family when Nields was in high school. Pittman also testified that she became friends with Newsome and that a few weeks before the murder, they discussed having Nields committed at Newsome's suggestion.

Dr. Cooper testified that Nields was an alcoholic and reviewed the medical ailments that Nields suffered as a result of his alcoholism. Dr. Cooper observed that Nields' time in jail since his arrest represented his longest period of sustained sobriety since 1976. Slattery, an admitted alcoholic, testified as to the deleterious effects of alcohol and how his alcoholism interfered with his ability to do what was best for himself as well as his ability to practice law.

The jury recommended death, and the court imposed the death sentence on Nields.

CRIMINAL HISTORY:

Juvenile: Unknown

Adult: Richard Nields has the following known adult arrest record:

Date	Offense	Location	Disposition
2/2/1976 (Age 25)	Drunk Driving on Highway	Riverside, California	3/8/1976: 1 year summary probation, $315 fine.
6/2/1977 (Age 27)	Drunk Driving on Highway	Santa Ana, California	7/26/1977: 24 months probation, 9 days jail, $316 fine.
3/9/1981 (Age 30)	Drunk Driving on Highway	Santa Ana, California	3 weekends
12/20/1989 (Age 39)	Domestic Violence 89CRB039644	Cincinnati, Ohio	12/28/1989: $200 fine, 1 year probation; 12/28/1990: terminated.
10/06/1991 (Age 41)	OVI – Alcohol and/or Drugs	Butler County, Ohio	10/7/1991: Convicted
3/27/1997 (Age 46)	Aggravated Murder, Aggravated Robbery (B973305)	Cincinnati, Ohio	INSTANT OFFENSE

Traffic Violations: On 11/25/1985, Nields received a moving violation in Hamilton County for which he received a $100 fine.

Institutional Adjustment:

Richard Nields was admitted to the Department of Rehabilitation and Correction on December 23, 1997. His work assignments while incarcerated at the Mansfield Correctional Institution included Food Service Worker, Laundry Worker and Recreation Worker. He was assigned to the extended privilege unit while at this institution. Since his transfer to the Ohio State Penitentiary, his work assignment has been as a Porter. Nields is also currently assigned to the extended privilege unit at OSP.

Since his admission, Richard Nields has never been placed in disciplinary control for any conduct problems.

Currently, Nields is actively involved in religious service programs, bible studies and worship services. He also assists in church musical programs where he plays the keyboard. Nields has also volunteered for community service projects both at the Mansfield Correctional Institution and at the Ohio State Penitentiary.

APPLICANT'S STATEMENT:

On April 29, 2010, Nields was interviewed from the Ohio State Penitentiary via video-conference by the Parole Board. During this interview Nields shared with the Board that he is asking for life without the possibility of parole. Additionally, he expressed sorrow and shared that not a day goes by that he does not feel remorse for what he did to the victim. He further shared that he "loved Patty, still loves Patty, and prays for her family."

When questioned by the Board as to what his role was in the instant offense, Nields shared the following: Nields stated that things began in the morning after the victim left for work. He began by stating he had been intoxicated for a period of ten days. On the morning of the instant offense, Nields walked to the liquor store and purchased some alcohol. He then went to the bar where he claims to have consumed alcohol all day long. Eventually, he went back home and continued drinking.

When Nields arrived home, Ms. Newsome was sitting on the couch and was very upset with him about his drinking. Nields claims that Ms. Newsome was so upset that she began yelling at him, and things started to "go down hill real fast." Nields indicated that the victim threw the telephone, hit him in the head with it, and he "snapped." This was the point at which Nields said he pushed the victim hard against the bookcase causing her to fall and hit her head. Next, Ms. Newsome picked up the phone again, and Nields tore it out of the wall. Nields then followed her to the kitchen and "grabbed" her as she attempted to leave. It was at this time that Ms. Newsome slipped on a mat by the door and hit her head on the kitchen floor. Nields shared that he got on top of her after she fell and started to hit and choke her. Eventually, he realized the victim was not responding, and blood started to come out of her mouth so he stopped.

Nields, then stated that after beating and choking the victim, he sat there for a minute, started to drink again, and began to talk to the victim. He also checked to see if the victim had a pulse, but she was already dead. Nields also states that he prayed for the victim as he finished his bottle of liquor. Next, he got into the car and drove to the local bar. It was at this time Nields told people he did an "insane thing" and let them know they would hear about it on the news. Eventually, he came to his senses and went back home. Upon arriving back home, Nields realized that the victim had not moved. He checked her pulse again and listened for a heart beat. Once again, he began praying and talking to the victim and eventually left to go to another bar.

While at the second local bar, Nields shared that he confessed to another patron about killing his girlfriend. It was at this time that someone must have called the police. The police showed up at the bar, questioned Nields, and drove him back home. After police drove Nields to the house, he told them that they needed a warrant before they could

search his house, and then he closed the door. Police knocked again, Nields opened the door, and he was arrested.

Nields shared that he and the victim met in 1985. He stated they had a "beautiful relationship, loved one another, and did fun things together." They were involved as a couple for 12 years and lived together for approximately ten years. He did disclose to the Board that the police were dispatched to the home earlier in the month because the victim was upset that he was drunk and had been smoking. In fact, Nields shared that he was not arrested by police when they arrived and stated that they removed him from the home by dropping him off at the local bar. He also admitted to being arrested in 1989 for domestic violence against the victim. Nields indicated that he had been drinking, he and the victim argued, and he smacked her with an "open hand." The victim telephoned police the next day, and Nields was arrested.

Other than the aforementioned arrest for domestic violence, Nields denied any other record of domestic violence. He shared that he had been an alcoholic since 1976, had been in and out of rehabilitation multiple times, and had attended Alcoholics Anonymous. He also indicted that he had never been sober for longer than five months prior to coming to prison. This upset him because he was never able to receive his six-month sobriety token from Alcoholics Anonymous. Inmate Nields shared that he has been completely sober for the last 13 years.

Upon further questioning by the Board, Nields denied that he and the victim had discussed him moving out or leaving the home. Furthermore, he couldn't recall stating to anyone prior to that time that he wanted to kill the victim. He did recall confessing to the murder to another inmate while he was held in the county jail for the murder of Ms. Newsome.

Nields admitted to taking money from Patricia Newsome's purse along with money orders or cashier checks as he was leaving to go the bar after killing the victim. He further admitted to taking the victim's car keys and driving the car to the local bar. Nields also shared that he drove the victim's car "quite a bit," especially when going to visit the victim's daughter. Nields indicated that he made a deal with the victim that he could drive her car as long as he was sober.

Nields shared that he is estranged from his sister. His friends are his Christian brothers in prison. When questioned by the Board as to whether or not he received a fair trial Nields indicated that he was not a lawyer, but he believed that he was over-indicted and over-sentenced. Rather, Nields believed that he should have received life in prison without the possibility of parole and stated that his attorney believed his case was closer to that of manslaughter. Nields believed that his crime was one of passion and did not deserve the death penalty.

The Board also asked Nields if he returned to the crime scene to kill the victim. He denied leaving and going back to strangle the victim. He stated that he went back to the crime scene because he was hoping for a miracle. Nields also denied that he stated that

he went back to strangle the victim to Timothy Griffis while being held in the county jail. Nields went on to add that he believed that Timothy Griffis was "speaking fiction when he did that" and added, "It disgusts me and makes me sick that he got on the stand and said that lie."

Nields was questioned as to why he did not get the victim help. He indicated that he did not know why and said, "When someone's dead, you know she's dead." He went on to state that he was not thinking clearly either. He admitted that it took approximately three to four minutes to strangle Ms. Newsome to death. Nields indicated that his conscience keeps this crime in the forefront of his mind, and he beats himself up over his actions as they play like videotapes over and over in his head.

Inmate Nields also shared with the Board that he did not steal the victim's car. He claimed that he took it because it was in the garage and that it was more convenient than taking his car which was parked on the street. Nields stated that it was not unusual to drive Ms. Newsome's car to the grocery store, and he was insured to drive her vehicle. He also indicated that he did not know why he took her money but did know that he would not be in prison if it were not for his alcohol abuse.

Nields adamantly denied ever being violent with anyone before the instant offense. He did share that the police were called to his home three or four times throughout his 12-year relationship with the victim. He further added that he has never been involved in a fight and hates violence. At this time, Nields was confronted with a document he had authored entitled *Anger-People I Harmed*. It is in this document that Mr. Nields describes multiple episodes of violence involving at least eight separate women to include his first and second wives, live-in girlfriend, roommate, and other female friends. Nields said these accounts were probably true since he recorded them in his AA inventory. However, he could not recall all of the descriptions listed in the inventory.

Nields shared that Ms. Newsome did not drink or do drugs. He also indicated that she was not fearful of him and that she "loved him and was crazy about him." Nields was then confronted with the fact that the victim kept a diary outlining her fears about him and the fact that he made statements of killing her and his sister. He claims that those statements were nothing more than figures of speech. In fact, Nields told the Board that the victim kept the diary because she wanted to have him committed.

Nields shared that he has spent most of his time on death row studying the word of God, and he knows that Jesus forgives him for the wretched life that he has lived. He finds peace in Jesus, plays music on the keyboard, plays chess and reads. He has remained a positive person over the last 13 years.

Nields concluded the interview by stating that he was grateful to have had the opportunity to speak to the Board, and that no one has visited with him with the exception of his attorneys. He said he told us the truth and has turned everything over to God. Nields also wanted to let Ms. Newsome's family know that he is sorry for what he did, prays for

them, and believes in the power of prayer. Finally, he told the Board he would be grateful if the Board would let him live.

ARGUMENTS IN SUPPORT OF CLEMENCY:

A written application with exhibits outlining the arguments in support of clemency for Richard Nields was received by the Parole Board. On May 10, 2010, a hearing was conducted to further consider the merits of the application. Carol Wright and Justin Thompson of the Federal Public Defender's Office and Randall Porter of the Ohio Public Defender's Office represented Inmate Nields and presented oral arguments and witnesses in support of clemency.

Attorney Carol Wright shared with the Board that they are requesting life without the possibility of parole for Richard Neilds. She began the presentation by quoting from the United States Sixth Circuit Court of Appeals. In 2007, this was the last court to have an opportunity to examine Richard Nields'case. She pointed out that those justices involved cited the following in their decision: "Despite the weakness of Nields' legal arguments on appeal, we cannot help but note that the circumstances of this case just barely get Nields over the death threshold under Ohio law." They further added, "At the same time, however, we recognize that a determination of whether this particular murder fits within that narrow category is a policy matter initially delegated by the State of Ohio to the jury and eventually delegated by the State to its governor to resolve in a fair-minded and even handed manner."

Attorney Wright stressed that the last court to examine Nields' case was "bothered" by what it saw. She also told the Board that she was going to present information that the jury, trial judge, and reviewing courts did not have available to them. Specifically, they relied on incorrect medical testimony that was provided by Dr. Paul Shrode. Additionally, they did not have available to them evidence showing that Nields has a damaged brain.

Nields' attorney began with the videotaped testimony from Dr. Robert Pfalzgraf. Dr. Pfalzgraf was the Deputy Coroner who supervised Dr. Shrode at the time of Nields' case, and he signed off on the autopsy results of Patricia Newsome that were conducted by Dr. Shrode. Dr. Pfalzgraf began his testimony by stating that the results of the autopsy report are correct and that nothing is technically wrong with them. However, what Dr. Pfalzgraf did not agree with are the conclusions that Dr Shrode testified to in front of the jury during Nields' trial. It should be noted that Dr. Shrode did not review his testimony in advance with Dr. Pfalzgraf in that he had moved out of state to take a different position.

Dr. Pfalzgraf shared that the conclusions that Dr. Shrode testified to at trial were not "scientifically supported," and he outlined five specific areas where his conclusions were not correct. First, he pointed out that there was no scientific evidence available to support the age of the bruises on the victim in that there was no evidence of healing. However, Dr. Shrode narrowed the time frame of the bruising on the victim down to 15

minutes all the way up to six hours. Dr. Pfalzgraf pointed out that bruises can appear within seconds and last for a day or more.

Second, Dr. Pfalzgraf stated that Dr. Shrode was also incorrect regarding his conclusions on the fingernail clippings that he examined. Dr. Shrode led the jury to believe that due to the lack of DNA evidence under the victim's fingernails, she was already rendered unconscious and was unable to fight back when she was being strangled to death. Dr. Pfalzgraf pointed out that one cannot scientifically conclude that the lack of DNA under the victim's fingernails means that she was not fighting back and/ or conscious during the attack. In fact, he has never had a case where there was DNA evidence left under the victim's fingernails in all of his years of experience as a pathologist. Dr. Pfalzgraf further pointed out that the lack of DNA cannot ensure that the victim was unconscious. In fact, he stated in his affidavit to the Board "that it is actually rare for a victim's fingernails to collect evidence during a crime."

Third, Dr. Shrode attempted to establish a gap in the victim's death between the beating and her strangulation when talking about rigor mortis. Dr. Pfalzgraf pointed out that the only thing that can be scientifically established from rigor mortis is that it occurs after a person is dead.

Fourth, Dr. Shrode's testimony in relation to petechia was also incorrect. Dr. Pfalzgraf pointed out that the only thing petechia can support in this case is that the victim was strangled. In no way can it assist in determining her time of death.

Finally, Dr. Pfalzgraf pointed out that there are no findings available to determine that the victim was unconscious when she was strangled to death. Again, Dr. Pfalzgraf pointed out that Dr. Shrode was incorrect to conclude that the victim was strangled to death 15 minutes up to six hours after being beaten. Rather, Dr. Pfalzgraf shared that this could have all occurred as a single act, and that no evidence exists to support two separate attacks.

Defense counsel pointed out that the jury relied on this incorrect medical information to conclude that the murder of Ms. Newsome was one involving prior calculation and design, in that the beating, then the strangulation, were two separate acts separated by at least 15 minutes up to 6 hours. The trial court also utilized this same factor in imposing the sentence of death.

Counsel next presented Dr. Doug Lehrer who is the Medical Director of Kettering Medical School to offer information about Nields' damaged brain. Dr. Lehrer is a Board Certified Forensic Pathologist. He obtained brain imaging tests in the form of an MRI and a Pet Scan on Nields. These scans were conducted by Dr. Lehrer's colleagues. The results showed that Inmate Nields does have a damaged brain. In fact, the tests concluded that almost every area of Nields' brain had less activity than that of the average normal person, and that this damage would impact every area of his cortex.

The neurological tests that were performed on Nields were completed in 2010. Dr. Lehrer pointed out that one could conclude that these same results would have been worse in 1997 when the crime occurred due to Nields' chronic alcohol abuse. In closing, he shared that these scans get better with prolonged remission from alcohol abuse. Nields' damaged brain would have caused him to be highly impulsive with emotionally driven behavior. While time has allowed for Nields' brain to heal, it is still damaged today.

Jackie Votaw is one of Nields' ex-wives. She provided videotaped testimony to the Board and highlighted the fact that Nields was a great guy who was a prankster and liked to have a lot of fun. She also shared that "music was his whole life." Ms. Votaw states that Nields was her first boyfriend and meant everything to her. They married in 1969, and together they have one daughter.

Ms. Votaw heard about Nields' crime on the news and was shocked to hear what he had done. She further shared that Nields was not shown love by his family and that his father was a drinker and ended up leaving the family. In the end, Ms. Votaw understands why Nields left their marriage. He wanted to be a famous drummer, and she did not want to hold him back from that dream. She indicated that today, Nields' admits to her that his biggest mistake was leaving her. In conclusion, Ms. Votaw said that she and her daughter would be deeply impacted if he is executed and asked for the Board to grant him clemency. She also pointed out that she never was called to testify at Nields' trial.

Nields' childhood friend Greg Mendell also gave videotaped testimony to the Board. He stated that he and Nields were the best of friends in high school and that Nields ended up being the best man in Mr. Mendell's wedding. Mr. Mendell shared that Nields was a nice guy and was never mean-spirited. In fact, he was "shocked" to read about Nields' arrest in the paper. He, too, was never contacted to testify at the trial.

Additionally, Mr. Mendell described Nields as being devoted to his music and often witnessed him practice his music for hours at a time. Mr. Mendell ended his statement by sharing that Inmate Nields has had sincere faith since the first grade and that this is what keeps him going. He asked the Board to let Nields spend the rest of his life in prison and "let God sort out his punishment."

Clinical Psychologist Dr. Robert Smith also presented videotaped testimony to the Board regarding alcoholism. He shared that 90% of Americans drink, but only 10% become alcoholics. He further stated that 10% become alcoholics due to biological or genetic factors, psychological factors, and/or environmental factors. Nields met all three of these factors.

Dr. Smith pointed out that Nields paternal and maternal grandfathers were alcoholics along with his father and his paternal uncles. Thus, Nields did not have a choice in the matter of becoming an alcoholic in that it was in his genetic make-up.

Dr. Smith also pointed out that environmentally, Nields felt that it was "normal" to drink and watched multiple family members drink a great deal. Finally, Dr. Smith pointed out that 40% of all alcoholics have co-occurring depressive disorders along with a history of emotional trauma. In Nields' case, he was diagnosed with depression, had financial problems, and his father left him when he was 18 years of age.

Dr. Smith stated that nothing externally forced Nields to drink. However, he described his craving for alcohol as being caused by a chemical change in the reward center of the brain. Dr. Smith compared it to non-alcoholics having a similar craving for food and water. He further added that working in bars and taverns while playing music could have also been a big trigger to Nields' alcohol abuse.

Dr. Smith concluded by stating that Nields had been drinking heavily on the day of the instant offense and that he would have been acutely intoxicated. Thus, this situation impaired his brain, made him impulsive, and caused him to have incorrect perceptions. Ultimately, Nields reacted to what he felt inside. Rather than talking about his feelings, he acted them out with aggression.

Nields' attorney presented one final witness to the Board. Ms. Pam Ewen, a friend of Nields, shared that she met him in 1993 at the Briarwood Lounge. She was employed as a waitress, and Nields was employed as the musician. Ms. Ewen highlighted the fact that Nields "loved music." She described him as a good man who was liked by everyone. She did admit that he drank too much and that she did witness him make failed attempts to get assistance for his drinking. She further pointed out that he was only sober for very short periods of time.

Ms. Ewen recalled her own mother driving Nields home from work on several occasions because he was too intoxicated to drive. She also claimed that there were times when Nields would fail to show up to work on a Saturday night and would not change his clothes for several days at a time. She said it was not unusual for him to get paid with "alcohol" by the owner of the lounge for his performances.

Ms. Ewen stated that Nields "drank all the time." She witnessed him become a "sloppy, nasty drinker." However, she was surprised to learn of his crime. She felt sorry for him at the time of trial because he was all alone. Ms. Ewen further commented that she would be greatly impacted if Nields is killed. She said, "He has a disease like cancer. We should not put him away, and should let him help others."

Federal Public Defender Carol Wright emphasized that Nields' case barely meets the threshold for the death penalty as was pointed out by the court. The jury and the judge relied on incorrect medical testimony, and Nields was destined to be an alcoholic who suffered brain damage as a result of his drinking.

Ohio Public Defender Randall Porter pointed out that this case was first indicted as a murder, and it was not until one month later that it was re-indicted as a capital case. He argued that the re-indictment for Aggravated Murder was based on the receipt of the

medical evidence Dr. Shrode would provide. It was not until then that the state believed it could establish prior calculation and design. Without the medical evidence provided by Dr. Shrode, the entire approach to this case would have been different. Although the case was technically eligible for the death penalty due to the aggravated robbery, the state relied heavily on the medical evidence to prove prior calculation and design. Likewise, the jury and sentencing court also relied on this evidence in making the recommendation and imposing the death sentence. The fact that the medical evidence is now refuted should not be considered as insignificant.

Finally, Attorney Porter pointed out that Nields was remorseful about his crime from the very beginning. He was tearful when telling his story to law enforcement and was upset and crying at times when sharing his story with Timothy Griffis, the jailhouse informant. It is also documented on his jail intake form that he was crying, saw no future for himself and was depressed. The jail ended up putting Inmate Nields on suicide watch.

ARGUMENTS IN OPPOSITION TO CLEMENCY:

Arguments in opposition to clemency were presented by Assistant Hamilton County Prosecutor Phil Cummings, and Assistant Attorney General Justin Lovett. Assistant Prosecutor Cummings shared that Nields is not worthy of clemency and that the victim in this matter loved and supported him. He described Nields as a cold, calculated, pre-meditated murderer who continues to lie and minimize his culpability in this crime.

Prosecutor Cummings pointed out that no one knows the exact sequence of events from that evening, in that Nields has told multiple stories and customizes this story, depending on his audience. He pointed out that what we do know is that this was a cold and deliberate act. Patricia Newsome, the victim in this case, documented her fears in her own written document entitled "Record of Abuse." A common theme that she wrote about in this record was Nields' continued need for money as well as his threats to choke her. He also left her threatening voice mail messages at her place of employment, and the police were called to their home one month prior to her murder for a domestic dispute where Nields was removed from the home.

Prosecutor Cummings also shared with the Board that Inmate Nields told Ms. Dorothy Alvin three to four hours prior to the murder, "As a matter of fact, I'd like to kill her, but I guess I won't do that because I don't want to go to prison." He also disclosed during this conversation that he was a musician who could not obtain employment and was financially broke. He was upset with Patricia Newsome for throwing him out of her home. Prosecutor Cummings points out that Nields had murder on his mind for months, and this crime was not one that involved a sudden fit of rage.

Prosecutor Cummings shared that it takes approximately three to five minutes to strangle someone to death. He also argued that the jury did have the option of finding Inmate Nields guilty of manslaughter, but they chose not to do so, based on the evidence presented at trial.

Prosecutor Cummings referenced testimony presented at trial from Timothy Griffis, who was another inmate being held at the Hamilton County Justice Center with Nields. Griffis was told details of the offense by Nields. Details such as how Nields and the victim argued over the telephone, how he grabbed her hair and pulled her to the floor, and thought that he knocked the victim unconscious or may have even killed her were reported by Nields. He also disclosed that he jumped on top of the victim, started beating her up and shared that "blood was coming out of the back of her head." Nields also admitted to knocking out the victim's teeth and said that "the little puppy she owned ran over and ate two of them." Nields also admitted to placing the phone near the victim's body and told her to "call me from heaven." He also bragged about a bloody handprint he left on a man after patting the man's shoulder. Nields also shared with Timothy Griffis that he made it a point to pull the blinds in the home to conceal the view of the victim's body and went back later to check on her.

Prosecutor Cummings shared that it really does not matter if the victim died from a single event or if Nields left and came back. He stressed that what is very clear is the fact that there is undisputed evidence that a robbery occurred, and that Nields' motive for this robbery was his financial dependence on Ms. Newsome. Nields realized that he would no longer have the victim's financial support. He stole the victim's money, travelers' checks, and her car after murdering her. In fact, Nields commented to his cellmate that he was upset that he was not able to use the travelers' checks.

Prosecutor Cummings pointed out that the Aggravated Robbery in this case was a key component to Nields' conviction. Furthermore, Cummings shared that the jury did have information available to them regarding Nields' brain damage by way of Dr. Cooper's testimony. Nields' sister also testified to her brother's battle with alcoholism. This testimony was presented during the penalty phase of Nields' trial.

Prosecutor Cummings also pointed out that because this case involves domestic violence that this should not diminish the inmate's culpability in this case. He believes that this case deserves more scrutiny than one not involving domestic violence.

The State also interviewed Dr. Pfalzgraf and provided a videotaped presentation of this interview. Dr Pfalzgraf shared that Dr. Shrode could not have determined a time frame between the beating and strangulation of the victim. Additionally, the autopsy of the victim would not assist in determining this time frame of the victim's death. He did share that it is "possible" that the crime happened the way that Dr. Shrode said it did as he testified at trial.

Assistant Attorney General Justin Lovett offered oral arguments to the Board during the clemency hearing. He began by stating that Dr. Shrode's testimony does not effect the second aggravated murder specification surrounding the robbery involved in this offense. He also shared that Nields had been a violent person for many years prior to this crime. We know this information by reading his own documentation of violence in Nields' AA inventory. The abuse dates back to 1970 when he abused his first wife Jackie.

Assistant Attorney General Lovett also shared that the police brought this case to the prosecutor as a murder and domestic violence charge. However, upon further investigation, the State went back to the Grand Jury with additional evidence. Thus a second indictment involving capital specifications was sought.

Attorney Lovett also pointed out that Dr. Shrode's testimony was not the only evidence to "hook" the jury into believing that this case involved premeditation. He went on to state that this was not a passionate murder. Rather this was about money and that this case deserves the death penalty.

In terms of the recent brain scans submitted by the defense, Attorney Lovett shared that these scans do not give the Board any idea as to when Nields' brain was actually injured. He commented that Nields could have sustained a head injury while playing basketball in prison.

In closing, the State reiterated that this case deserves the death penalty. The statement that the facts "barely" meet the threshold to impose the penalty of death is simply not accurate.

VICTIMS' REPRESENTATIVES:

Connie Brown, the victim's daughter, also presented testimony in opposition to clemency. She described her mother, Patricia Newsome, as a good woman who loved life, taught Sunday School and protected animals. She also had a very strong work ethic. Her mother showed Nields kindness. However, "the kindness was what Richard Nields took advantage of. He stole her kindness, her personal belongings, and ultimately her life."

Ms. Brown shared that three weeks prior to her mother's death, she visited with her in Cincinnati. During this visit, Patricia Newsome told her daughter that she should stay with her grandmother in that she has been having problems with Nields. Ms. Newsome shared that Nields had become very angry the previous night, and she became frightened and asked him to leave. When he refused to leave, Ms. Newsome called the police Police arrived and escorted Nields off of the property. Ms. Brown stated that approximately one week prior to her mother's death, Ms. Newsome had shared with her that Nields had been threatening her, and she had been keeping a record of the incidents to give to the police. Ms. Newsome never had an opportunity to present these threats to the police.

Ms. Brown respectfully asked the Board to deny clemency to Nields. She shared that he has been able to publish a book, yet has never taken the time to apologize to her family.

Carol Young, the victim's sister also provided oral testimony to the Board opposing clemency. She began her statement by telling the Board that her sister was her best friend and that their parents taught them to value life, help others, and work hard.

Ms. Young shared how she and her sister would go line dancing. They also went to real estate school together, took the test together, and worked together. She also spoke about how particular Ms. Newsome was about her Cadillac and shared that she never let anyone drive her car.

Ms. Young said that Ms. Newsome was a kind and generous person and was always willing to help others. She would often put the needs of others before her own. Ms. Young never recalled Nields having a full-time job. Rather, her sister took care of him, and when she finally had enough of his abuse, Nields killed her.

Ms. Young concluded by stating, "Richard Nields was given a sentence to pay for the crime of murdering my sister, and I am only asking that his sentence be carried through and clemency be denied."

The Office of Victim Services also read a letter from Ms. Newsome's son who is also opposed to clemency in this matter.

PAROLE BOARD'S POSITION AND CONCLUSION:

The Board reviewed documentary evidence presented both in support of and in opposition to clemency. Four (4) of the seven (7) Parole Board Members found the following factors pivotal in making a recommendation to commute Nields' sentence to life without the possibility of parole:

- Those voting to commute Nields' sentence to life without the possibility of parole are concerned with the medical evidence that was testified to at the time of trial by Dr. Shrode and has since been called into question by his former supervisor Dr. Pfalzgraf. While Dr. Pfalzgraf does not question the accuracy of the autopsy results completed by Dr. Shrode, he does question the lack of scientifically-supported conclusions that he testified to at that time of trial.
- Specifically, the Board was concerned that Dr. Shrode testified to the fact that the two attacks on Ms Newsome were separated by a minimum of 15 minutes to a maximum of six hours. Dr. Shrode came to this conclusion from bruising on Ms. Newsome. However, Dr. Pfalzgraf pointed out that there was no scientific evidence available to support the age of the bruises on the victim in that there was no evidence of healing. In fact, the bruising could have occurred within seconds and last up to a day or more.
- Members also put much weight into the United States Sixth Circuit Court of Appeals' decision. Members of this court stated the following: "Despite the weakness of Nields' legal arguments on appeal, we cannot help but note that the circumstances of this case just barely get Nields over the death threshold under Ohio law." They further cite in their opinion: "At the same time, however, we recognize that a determination of whether this particular murder fits within that narrow category is a policy matter initially delegated by the State of Ohio to the jury and eventually delegated by the State to its governor to resolve in a fair-minded and even-handed manner."

- Members also factored into their recommendation Justice Pfeifer's dissent in the Ohio Supreme Court decision. He stated in this dissent, "I do not believe that Nields'crime is the type of crime that the General Assembly did contemplate or should have contemplated as a death penalty offense." He further went on to state, "This case is not about robbery. It is about alcoholism, rage, and rejection and about Nields' inability to cope with any of them."
- Members give significant weight to Justice Pfeifer's opinion in that he was a member of the Ohio General Assembly in 1981, and was one of the leading forces who helped write and enact Ohio's current death penalty statute.
- Upon examining Judge Nurre's rationale for his decision to impose the ultimate sentence of death, it is clear that he did factor Dr. Shrode's medical conclusions into his decision to impose the death sentence. Judge Nurre cites the following: "The uncontroverted facts and exhibits reveal that the defendant first brutally beat the decedent, and at some time at least fifteen minutes later, the defendant returned to strangle Patricia Newsome to death." While this is not the only factor he lists, it is clear that it was considered.
- Finally, prosecutors relied on the timing of the victim's death throughout the guilt phase of the trial. They made references to this timing during opening and closing statements.
- In conclusion, members voting favorable are concerned about the medical evidence that has been called into question and not refuted by the State during their clemency presentation. Members also respect the dissent of Justice Pfeifer as well as the concern that the Justices of the United States Sixth Circuit Court of Appeal had, in that the circumstances of this case just barely get Nields over the death threshold under Ohio law. For this reason, we believe that Nields' sentence should be commuted to that of life without the possibility of parole.

Three (3) of the seven (7) Parole Board Members found the following factors pivotal in making an <u>unfavorable</u> recommendation regarding clemency:

While it is troubling that the jury and the courts relied on information from the medical examiner that may have been incorrect, we find that the information presented to the Board during the course of its clemency review lead us to vote in the minority.

- Even though the medical examiner's testimony has been rightly called into question, there is plenty of evidence of prior calculation and design in this case. Nields had threatened Ms. Newsome in the past, including in the time leading up to the murder. Hours before the offense, he told Ms. Dorothy Alvin, a stranger, that, "I'd like to kill her, but I guess I won't do that because I don't want to go to prison."

- Even without the prior calculation and design in this case, the Aggravated Robbery would be sufficient to make Nields eligible for the death penalty. After he killed her, Nields took her car, money, and travelers' checks. Nields was unemployed, without money, and nearly homeless. He needed money, and he went to a person from whom he had stolen in the past. Ms. Newsome wrote in

her diary, "I can't leave money in the house – he will steal it…I have to lock my purse in the car…He tells me every day to get rid of my car and asks for money…" Nields strangled Newsome and then made off with her valuables.

- Nields has been less than forthcoming about the details of the offense and his prior history of violence. He tried several times to mislead law enforcement while they were investigating the homicide. He said that he regularly drove Ms. Newsome's car when her family and her own notes indicate that he did not. He told the Parole Board that he had never been violent toward women in the past, in spite of his own notes in his AA Inventory.

- Nields has a history of violence against women, including a Domestic Violence conviction against Ms. Newsome after punching her in the face. He also recorded his own acts of violence against women in his AA Inventory. He had left harassing messages on her answering machine, and threatened her. He generated in her enough fear to cause her to keep a "Record of Abuse".

- Given all of these facts, we do not believe that the outcome of the case would have been any different had the court and jury heard more reliable medical testimony. We also believe that the aggravating circumstances in this case make death the appropriate sentence.

RECOMMENDATION:

The Ohio Parole Board with seven (7) members participating, by a vote of four (4) to three (3), recommends to the Honorable Ted Strickland, Governor of the State of Ohio, that executive clemency be granted in the case of Richard Nields, A352-374 in the form of a commutation to life without the possibility of parole.

Adult Parole Authority
Ohio Parole Board Members
Voting **Favorable**

Cynthia Mausser, Chair

Robert Maszczynski

Kathleen Kovach

Ellen Venters

Ohio Parole Board Members
Voting **Unfavorable**

R. F. Rauschenberg

Bobby J. Bogan, Jr.

Trayce Thalheimer

Date: April 30, 2010

Honorable Governor Ted Strickland, Governor of Ohio
Distinguished Members of the Ohio Parole Board

RE: Clemency Hearing for Richard Nields

Dear Governor Strickland and the Ohio Parole Board:

I write this letter to request that clemency for Richard Nields be completely denied and for the imposed sentence of the death penalty to take place as scheduled.

How can anyone describe the tragic and unexplainable loss of a loved one, especially a parent, your mother? It's just not possible to describe what a son, daughter, mother, sister, grandchild and countless friends go through when told of the senseless murder of a loving, caring, giving, and unselfish person. My mother, Patricia Newsome, was just that person.

My mother raised her children to give of themselves, to always help others and to treat others as you would want to be treated. She raised her family to know right from wrong and to do the right thing. She taught us we are responsible for our actions. We were raised in church where she taught Sunday school each week. She was involved in our lives, not only as children, but involved in our adult lives, our families lives. Her grandchildren were the pride and the joy of her life. She lived everyday to the fullest.

Pat Newsome valued the people in her life. Acquaintances became friends, many became very dear friends. My mother valued her life, the things she had earned, the feeling and joy of giving to others. My mother was a sincere, honest, and loving person. She deserved the same in return, although she would never ask of anyone. She was a dedicated and an extremely hard working person.

Richard Nields took advantage of these facts. He had no problem taking from her. When she gave, he took, and he never hesitated to take more. He took her kindness, sincerity, and her willingness to help others. Even the night he calculated and brutally murdered my mother, he took from her. He stole the money she worked hard to earn. He stole her car that she worked so hard to have. The car she used so her clients could pursue their dreams of owning a home. The very car she would never let him drive. He will tell you that he drove the car quite often. It's not the truth and he knows it. It's yet another way for him to avoid taking responsibility for his actions. Though money and cars can be replaced, Richard Nields took the one thing that can never be replaced, he took her life.

Pat Newsome was an important and needed person in this world. She was the type of person that made this world a better place and made us better people. Richard Nields has never given to this world, he has only taken. He remains a cold and calculated murderer. Richard Nields has never denied the murder, nor has he ever shown any remorse for the senseless, brutal and aggravated murder of a beautiful person. At trial, he never spoke. At sentencing, he never spoke. He has had plenty of opportunities. Richard Nields never apologized, never said he was sorry and has never said to the family that what he did to my mother was wrong. He remains a useless person of this society. He deserves absolutely nothing. He has forever affected the lives of scores of people.

My mother had her reasons to keep Nields away from our family. The reasons were never more apparent until after her death. She didn't want him involved, nor was he ever involved with our family. None of the family, especially me, cared for him. Though I met him on two occasions, I suspected he was trouble. However, I never thought for a moment that anyone could commit the crime that he did. If only I'd known, what could I have done to prevent it? When asked to go through her personal belongings, I was completely surprised to find a written log that she was keeping, a written log describing Nields violence, a written log of his threats, a written log that showed my mother was scared. She never told me any of it, she didn't want to burden me, and she didn't want me to get involved. I live with this fact every day of my life.

I grew up with wonderful grandparents, the joys of holidays with family, their unconditional love, the knowing that your family is always there for you. I can't even imagine the pain my Grandmother had to endure every day in the loss of her daughter. I feel the loss and pain each and every day....not one day goes by that the thought is not there, not one day!! I will never be able to describe to anyone what it feels like to sit down with your children and explain what happened to their Grandmother. How do you tell a young child that she is just gone and how? They get older and want to know more. Their lives have been affected forever. I taught my family the value of trust, giving back, sharing and helping others, just as I had been taught. All of this has been shattered due to the actions of Richard Nields. It's now been thirteen years since the tragedy and it continues to impact the lives of all of us. No person on this earth deserves to die in the vicious, brutal and atrocious way that Richard Nields murdered my Mother.

The grandchildren will never feel the happiness and love of their grandmother, never. The grandchildren will never know how important they were to this beautiful person. They will never share in the love and happiness that she gave. I will never have the chance to give back to my mother as she gave to me. The loss will always be there. It has, it does, and it will continue to affect our family for generations to come!!

It doesn't seem right for me to write a couple pages to talk about my mother in an attempt to tell who she was, how she made a difference and that she never deserved what happened to her. She deserves a book to be written about her to let everyone know the person she was. I love my Mother, Patricia Newsome.

I will continue to have faith in our justice system and in this case, I have full faith that justice will be carried out. I, along with my family, request that clemency for Richard Nields is fully denied. We request that the imposed sentence of the death penalty be carried out as scheduled.

I greatly appreciate your time in reading this letter.

Sincerely,

Greg Newsome
(Son of Patricia Newsome)