

STATE OF WISCONSIN,
Plaintiff,

v.

Case No: 90-CF-226

MARK H. PRICE,
Defendant.

MOTION FOR POST-CONVICTION RELIEF PURSUANT TO WIS. STATS. § 974.06

Introduction and Summary of Claims

Mark Price, through his attorney Byron Lichstein and law student Matt Gardner, moves this Court to vacate his conviction and order a new trial.

It is the mark of a healthy criminal justice system to accept when mistakes have occurred, and to take appropriate steps to acknowledge and remedy those mistakes to the extent possible. More than most places, Winnebago County has had the misfortune of facing that task, because of the criminal activity of its former District Attorney, Joseph Paulus. As the State and this Court are well aware, Mr. Paulus abused his power in numerous ways—large and small—until he was eventually caught. Since then, the prosecutors who succeeded Mr. Paulus have to their credit set about trying to fix the mistakes of the past. This motion is the latest chapter in that unpleasant but necessary process.

Mark Price does not come to this Court claiming to be an angel. He made serious misjudgments, including some that led to his involvement in this case. Mr. Price has paid dearly for those misjudgments. He has spent nearly 25 years in prison for this conviction. He is now 55 years old and suffers from a heart condition that limits his physical activity.

This motion is less about Mark Price than it is about the abhorrent criminal justice process—orchestrated by Mr. Paulus—that led to Mr. Price’s conviction. As detailed below, Mr. Paulus flagrantly violated the most basic canons of prosecutorial ethics, canons that are second nature to nearly all prosecutors. Mr. Paulus devised and executed a plan to present perjured testimony. He bribed potential State’s witnesses—giving them direct pecuniary benefits or promising them substantial assistance on their own cases—and then hid the bribery from Mr. Price and his attorney. He withheld or destroyed evidence helpful to the defense.

Mr. Paulus engaged in this sordid behavior because it was necessary to inflate the charges against Mr. Price. Rather than simply prosecute Mr. Price for the charges he deserved, Mr. Paulus instead ratcheted the charges up to first-degree intentional homicide, and manipulated the evidence to obtain a conviction on that charge.

Mr. Paulus’s misconduct and persecution of Mr. Price did not end with Mr. Price’s conviction in this case. After this conviction, Mr. Paulus orchestrated additional charges against Mr. Price for allegedly plotting and threatening to murder Mr. Paulus from prison in retaliation for the murder conviction. Despite being the alleged victim, Mr. Paulus directed the early stages of the investigation, and, when the time came to appoint a Special Prosecutor, he appointed his former deputy and best man from his wedding, Vince Biskupic, to handle the case. The 2006 post-conviction proceedings in that case (94-CF-285) revealed clear prosecutorial misconduct on Mr. Biskupic’s part to the extent that a Department of Justice Special Prosecutor agreed to vacate one of the convictions. The Special Prosecutor stated on the record that, despite considerable attempts to catch Price on tape plotting to murder Mr. Paulus, there was absolutely no evidence that Price ever engaged in such a plot.

Similar to the threats case, Mr. Paulus's misconduct in this case requires a remedy to safeguard the integrity of the criminal justice system. The system's integrity is more important than any one case or defendant. Remediating Mr. Paulus's misconduct will not exonerate Mr. Price or do anything to erase the punishment he has already suffered due to his conduct in this case. Rather, it will confirm the highest ideals of a justice system that responds appropriately when its most basic ethical principles are violated, and will ensure that Mr. Price's punishment is limited to that which he deserved under the law.

Factual and Procedural Background

In 1990, Mark Price was arrested for his alleged role in the shooting death of Michael Fitzgibbon in December 1989. The State contended that after a night of drinking and drug use, Price and two other men, Richard Pease and Todd Crawford, got in an argument with Fitzgibbon, took Fitzgibbon out onto frozen Lake Butte des Morts, shot him, and then cut a hole in the ice and dumped his body.

The State's case against Price rested heavily on the testimony of Todd Crawford, who testified about Price's alleged role in the murder. The trial judge commented at sentencing that "Without Mr. Crawford's testimony there undoubtedly would be no one in this case convicted of this crime" (Sentencing Transcript, p.19). Crawford's testimony portrayed Price and Pease as the two main aggressors against Fitzgibbon. Crawford claimed that Price savagely beat Fitzgibbon in the head and face area for an extended period of time before the murder (Trial transcript, pp.181-182). Crawford testified that while he shot Fitzgibbon after Ritchie Pease, he claimed that Price then took the gun from him and shot Fitzgibbon from point blank range in the back of the head and that Price "looked like he was having a good time" (p.199). Crawford portrayed himself as an unwilling, coerced participant. He testified that Price threatened to kill him if he let

Fitzgibbon out of the car (Trial transcript, p.191) and that after the murder Price threatened again to kill him if told anyone (Trial transcript, p. 201). Crawford also portrayed himself as a witness who, even though he was cooperating with the State, still expected to be convicted and serve time in prison for his role in the crime (Trial Transcript, p.213).

Price testified and told a very different story than Crawford about what happened that night. Price maintained that Pease and Crawford were the primary aggressors (Trial transcript, pp. 514-515). He testified that he did not repeatedly beat Fitzgibbon prior to his death (Trial transcript, pp. 503-504). He testified that he was unarmed but that Crawford was wielding a gun in the car as the men drove out on the lake, and that Crawford and Pease shot the victim and coerced Price into dumping the body. Price testified that he thought that they were going to beat Fitzgibbon up to teach him a lesson. Further, Price testified that he was unaware that the shooting was going to take place and he did not shoot Fitzgibbon (Trial transcript, pp.514-515).

The jury found Price guilty of the following charges:

- Count 1 - Party to the crime of First Degree Intentional Homicide
- Count 2 - Party to the crime of Kidnapping
- Count 3 - Party to the crime of False Imprisonment
- Count 4 - Party to the crime of Point a Firearm
- Count 5 - Endangering Safety by Conduct Regardless to Life

This Court sentenced him to a mandatory term of life imprisonment without possibility of parole for 30 years. Price pursued a direct appeal following sentencing. A hearing was held in December 1991 where the motion was denied. In March of 1994, the Wisconsin Court of Appeals affirmed the trial court's decision. The Wisconsin Supreme Court denied Price's pro se Petition for Review.

Legal Claims

I. Mr. Paulus knowingly elicited perjured testimony from material witnesses.

1. Mr. Paulus elicited false or misleading testimony from at least three key witnesses in order to bolster the validity of the State's case. This included false or misleading testimony from: Coroner Michael Stelter about his examination of the body; Detective Gerald Forseth about the cooperation of key witness Todd Crawford; and Damon Hinkle regarding conversations with Richard Pease.

Coroner Michael Stelter

2. The State claimed that the victim was beaten prior to his death. Crawford and other witnesses testified, and Mr. Paulus repeatedly asserted, that Price severely and repeatedly beat the victim in the head and face during the hour or so period before he was shot (Crawford Affidavit, 5/25/90, Exhibit 1; Preliminary Hearing Transcript, 6/19/90, p.44-72; Trial Transcript, p.31-40, 130-141, 180-225, 768-803; Sentencing Hearing transcript, p.3-20). For this reason, evidence that the victim did or did not have physical signs of a beating would have been very important to the jury's assessment of Crawford's credibility and to the ultimate finding of guilt.
3. Michael Stelter was an important witness on the subject of the victim being beaten. At trial, Paulus elicited testimony from Stelter that he did an initial viewing of the body but then shortly afterward went back for a second viewing (Trial Transcripts, p.66-68, 70, and 76).

Q: Did you go back and see the body?

A: Yes, I did.

Q: Was the body in full view or in the body bag?

A: It was in the body bag in the cooler.

4. Paulus used this second viewing to elicit evidence supporting the State's view that there was evidence of a beating on the victim's body. Paulus elicited testimony from Stelter that during the second examination Stelter found a contusion on the back of the victim's head (Trial Transcript, p.67).

Q: And at that time did you notice anything unusual on the body?

A: I just noticed what I thought would be a small contusion.

Q: And where was that contusion?

A: I think it was behind the left ear, I believe.

5. Finally, Stelter testified that he originally signed the Authorization to Cremate form believing that the body was that of a man that had jumped from a bridge. (Trial Transcripts, p.70)

Q: Now for a body to be cremated you personally have to sign an authorization to cremate; correct?

A: Yes, I did.

Q: You did do that?

A: Yes, I did.

Q: Why?

A: The family wanted the cremation, and at the time I signed the authorization I totally believed that this person either jumped or fell from the bridge at the time when I signed that particular document,

6. Documents analyzed after trial make clear that Stelter was lying about these subjects, that Mr. Paulus knew from previous conversations that Stelter was lying, that Mr. Paulus withheld that information from the defense, and that Mr. Paulus nonetheless elicited perjured testimony in an attempt to bolster the State's case. The proof of this orchestrated perjury

comes from documents memorializing Mr. Paulus's repeated pre-trial conversations with Stelter, in which Mr. Paulus criticized Stelter for authorizing cremation of the body before an autopsy could be conducted. In Exhibit 2, a confidential memo from Detective Gerald Forseth to Mr. Paulus dated July 13, 1990 (after the victim's body was found but before trial), Det. Forseth wrote:

"...it was decided by District Attorney Joe Paulus that we have another meeting with Coroner Stelter. I believe this occurred during the week of May 21-25, 1990. Coroner Stelter came to the office, we confronted him with the facts about the suspicious nature of the wounds and Mr. Stelter had no answers that would explain no autopsy and cremation. Mr. Stelter in my office that day, did say to me as he grabbed the back of his head, his own head with his hands in a clasped position, saying "I never looked at the back of the head, I never looked at the back of his head,"

"The body according to Kevin Arne was never examined by Mr. Stelter for more than 1-1/2 – 2 hours, and there was only one examination."

In a confidential letter, that Mr. Paulus withheld from the defense, from Captain Patrick Busha to Fond du Lac county District Attorney Peter Grimm dated 9/5/90 (Exhibit 3), Captain Busha wrote:

"A second meeting was held between D.A. Paulus, Detective Forseth, Mike Stelter and myself. At this meeting Joe Paulus told Mike Stelter we had received information that Kevin Arne had observed some type of hole or tear behind the left ear of Mike Fitzgibbon. Paulus talked to Mike about this observation. Some time during that meeting I remember Mike saying that "I fucked up and I never looked at the back of his head", (meaning Fitzgibbon's head)."

In Exhibit 4, a report from Winnebago County Sheriff Department's, Detective Penzenstadler, dated 07/22/90, Det. Penzenstadler wrote:

"I talked to Coroner Stelter in the records section of the Sheriff Office and found that the body had been positively identified. There are no signs of foul play, therefore, we can clear our complaint." (emphasis added)

7. It is clear from the above that Mr. Paulus knew Coroner Stelter did not do a second viewing of the body, and did not see a contusion behind the left ear. Stelter told Paulus this, at a meeting witnessed by multiple law enforcement personnel, in late May of 1990. Nonetheless, at Price's trial, Mr. Paulus elicited testimony to the contrary. He elicited Coroner Stelter's perjured testimony that, in fact, he had done a second viewing of the body and seen the contusion behind the left ear. Coroner Stelter was eventually convicted of crimes for his conduct in this case, including obstructing justice, illegally cremating a body, and failing to report a suspicious death. (The legal standard concerning Stelter's perjury, and the accompanying application of that standard to the facts, is provided below.)

Detective Gerald Forseth

8. In addition to the perjury he elicited from Stelter, Mr. Paulus engaged in a continuous and misleading effort to bolster the credibility of his key witness, Todd Crawford. First, Mr. Paulus elicited misleading information from Det. Forseth about whether Crawford was cooperative in initial contacts with police. Mr. Paulus elicited testimony from Det. Forseth that, with the exception of an initial interview in which Crawford denied involvement, Crawford subsequently behaved with "total cooperation" in the investigation (Trial Transcript, p.341). In actuality, shortly after the uncooperative initial interview, Crawford scheduled a time to come in for a polygraph, but he then cancelled the polygraph and told

Det. Forseth that he had retained counsel. In response, Mr. Paulus directed Det. Forseth to contact Crawford and threaten him with no consideration unless he began to cooperate. (Detective Forseth Reports, 5/18/90, Exhibit 5). Thus, when Mr. Paulus elicited Det. Forseth's testimony that Crawford behaved with "total cooperation" after his initial interview, Mr. Paulus knew this was not true.

9. Similarly, Mr. Paulus elicited testimony from Det. Forseth suggesting that Crawford would be convicted and would spend five years in prison for his role in the Fitzgibbon murder, thus suggesting that his cooperation against Price was not going to result in him getting off easy (Trial Transcript, p.353). In fact, Mr. Paulus did not charge Crawford at all for murdering Michael Fitzgibbon.
10. The misleading attempts to bolster Crawford's credibility continued during the post-conviction proceedings. At Price's post-conviction hearing, Det. Forseth and Crawford testified that Crawford had passed a polygraph concerning his statements against Price (Post-Conviction Hearing Transcript, p.68, 276). New analysis shows the polygraph was flawed and inconclusive and raises serious questions about the accuracy and veracity of Det. Forseth's testimony regarding the questions Crawford was asked during the polygraph (Dee Hall letter re: Ted Welch's analysis dated 06/01/2005, Exhibit 6).

Damon Hinkle

11. Mr. Paulus also elicited false testimony from witness Damon Hinkle. Hinkle became involved in the case because Price, as part of his post-conviction motion, proffered new evidence that Richard Pease told Hinkle that Price did not shoot the victim (Hinkle Affidavit dated 06/15/1992, Exhibit 7). Price proffered this as new evidence suggesting he was not guilty of what the State claimed at trial. At Price's post-conviction hearing, however, Hinkle

turned the tables and claimed that Price had forced him to write out a false statement that would help Price. According to Hinkle, if he did not comply, Price threatened to hurt him and his family (Post-conviction transcript p. 282-296). Hinkle testified at the post-conviction hearing that he had never had any conversations with Pease (Post-conviction transcript p. 292). Hinkle's testimony at the post-conviction hearing thus portrayed Price as attempting to mislead the Court by threatening potential witnesses.

12. In 2005, documents surfaced from Mr. Paulus's file that had never been disclosed to Price's attorneys before the post-conviction hearing. The documents first revealed that Hinkle had contacted Mr. Paulus and sought a deal in exchange for providing information harmful to Price (Forseth letter dated 09/25/91, Exhibit 8; Paulus letter dated 9/26/1991, Exhibit 9; Hinkle statement 09/24/91, Exhibit 10). The documents also included a five page confidential report from Detective Forseth to Paulus, Chief Thome, and Captain Busha dated 09/30/1991. The report revealed that Hinkle lied at the post-conviction hearing; though he claimed at the hearing that he had never talked to Pease, the report makes clear that he told Forseth about conversations he actually had with Pease, and provided Forseth with a tape recording of their conversations (Forseth Report dated 09/30/91, Exhibit 11). Thus, when Mr. Paulus elicited testimony from Hinkle that he had never talked to Pease, Mr. Paulus knew that this testimony was false.

Legal Standard

13. The legal standards for eliciting perjured testimony originated in *Mooney v. Holohan*, 294 U.S. 103 (1935), which contained the unequivocal provision, "[D]eliberate deception of court and jury by the presentation of testimony known to be perjured is inconsistent with the rudimentary demands of justice." (*Id.* at 112) The Court expanded this important principle in

Napue v. Illinois, 360 U.S. 264 (1959), when it held that even a prosecutor failing to correct false testimony—and even testimony related solely to a witness’ credibility—would violate Due Process. *See Id.* at 269. Certainly, *Napue* also stands for the principle that a prosecutor who knowingly elicits false testimony about a witness’ credibility would violate a defendant’s Due Process rights. *See Id.* Continuing the trend of expanding what should be viewed as prosecutorial misconduct, the Supreme Court in *Giglio v. United States*, 405 U.S. 150 (1972), ruled that even when a prosecutor is unaware that elicited testimony is false, he may still violate a defendant’s Due Process rights so long as he should have known that the testimony is false. *See Giglio v. United States*, 405 U.S. 150 (1972).

14. The correct remedy for this egregious behavior is necessarily that the verdict will be set aside, so long as there is “any reasonable likelihood that the false testimony could have affected the judgment of the jury.” *U.S. v. Agurs*, 427 U.S. 97, 103 (1976). Unlike the standard for ineffective assistance of counsel, a significant failing that implicates a defendant’s Sixth Amendment rights, the standard for eliciting false testimony does not require a “reasonable probability” that “the result of the proceeding would have been different.” *Strickland v. Washington*, 466 U.S. 668, 694 (1984) (emphasis added). When a prosecutor acts so perniciously as to mislead the jury by presenting false testimony, all that a defendant must show is that it is reasonable to believe that the false testimony “could have affected the judgment of the jury.” (emphasis added) (*See, supra, Giglio*). This bar is so low, and is so easily surpassed, that it has been described as a “hair trigger.” *U.S. v. Gale*, 314 F.3d 1, 4 (D.C. Cir. 2003).

15. Mr. Paulus knew he was eliciting false testimony from Coroner Stelter, Detective Forseth and Damon Hinkle. Regarding Coroner Stelter’s testimony, the documents from July 1990

and September 1990 reveal that Mr. Paulus was aware, months before trial, that Stelter did not examine the body twice and never examined the back of Fitzgibbon's head. Regarding Forseth's testimony about Crawford, Forseth's report from September 1990, again months before trial, clearly demonstrates that Paulus was aware that Crawford was not cooperative; quite the contrary—Crawford was so uncooperative that Paulus himself directed Forseth to threaten Crawford with no consideration if he did not begin cooperating. Finally, it is clear that Mr. Paulus knew that Damon Hinkle had spoken to Richard Pease while in prison as revealed by the report from Detective Forseth dated September 1991, months before Hinkle's testimony in the post-conviction motion hearing in December 1991. On each of these subjects, Mr. Paulus elicited testimony that he personally knew was false. Doing so was an affront to the basic principles of legal ethics and justice.

16. Further, Price satisfies the second aspect of the legal standard for knowing use of perjured testimony, specifically the question of whether there is "any reasonable likelihood that the false testimony could have affected the judgment of the jury." *Agurs*, 427 U.S. at 103. Price satisfies this low bar. As to the Stelter testimony, as previously indicated the issue of whether the victim was beaten was important to the trial. Crawford claimed that Price viciously beat the victim. Price denied this. Coroner Stelter's testimony about the second viewing provided important support for Crawford's story, and thus the State's case. Further, because he did not reveal or correct Stelter's perjured testimony, Mr. Paulus was able to preserve the overall credibility of the State's case in the eyes of the jury. Had Mr. Paulus done as he was required—and revealed or corrected Stelter's perjury—the prosecution's credibility would have been substantially damaged by the knowledge a State actor and State's witness had lied on the stand.

17. The other false testimony also “could have affected” the jury’s judgment. For reasons previously explained Crawford’s credibility was crucial to the outcome. This Court explicitly acknowledged as much at sentencing stating, “Without Mr. Crawford’s testimony there undoubtedly would be no one in this case convicted of this crime” (Sentencing Transcript, p.19). It certainly “could have affected” the jury’s judgment to know that, in fact, Crawford was not “totally cooperative” in initial contacts with police; rather, he cooperated under heavy pressure and incentivizing from Mr. Paulus himself. Similarly, it “could have affected” the jury’s judgment to know that, in fact, Crawford was going to get an entirely free ride for assisting the State. Instead, Mr. Paulus and Mr. Forseth led the jury to believe that Crawford was going to prison for five years, despite his cooperation. Had the jury had an accurate picture of Crawford’s credibility, it is quite likely (and certainly more likely than the low legal standard here) that the jury would have doubted the State’s case against Price.
18. Finally, Damon Hinkle’s perjured testimony “could have affected” the case. On its face, Hinkle’s original statement in support of Price’s post-conviction motion was helpful: it provided exonerating information—Pease’s statement that Price did not shoot the victim—directly contradicting the State’s theory. This information could have warranted reversing Price’s conviction. When Hinkle then turned the tables on Price at the post-conviction hearing, this not only eliminated a viable post-conviction claim, it also damaged Price’s credibility at the post-conviction hearing. It is now clear that Paulus elicited false testimony from Hinkle and hid information about him from Price. Had Paulus not done so, the post-conviction proceedings “could have” come out differently.

II. Mr. Paulus failed to disclose material exculpatory and impeachment evidence to the defense.

19. Mr. Paulus and Detective Forseth did not turn over information to the defense about the benefits they were providing to State's witness, Vernon Weigers. Weigers was important to the State's case because he said he witnessed Price working with Richard Pease to get a chainsaw in order to dispose of the victim's body into the frozen lake.
20. Records obtained since the time of the trial indicate that Weigers was delinquent on his rent at the time of the trial. Mr. Paulus and Detective Forseth contacted his landlord and paid the rent in the sum of \$633.32 (Forseth Note to Paulus 08/19/1990, Exhibit 12; Winnebago County Receipt #7801 dated 09/05/1990 for Winnebago Check #92751, Exhibit 13). This benefit was not disclosed to Price's defense attorney.
21. Mr. Paulus concealed exculpatory evidence as well. Witness Samuel Griffin was incarcerated with Pease, Price's co-defendant, before their trials. Pease spoke to Griffin about what happened during the murder. Griffin has signed an affidavit stating that, according to Pease and contrary to the State's case against Price at trial, Price did not shoot the victim. (Griffin Affidavit dated 02/16/2010, Exhibit 14). Griffin further states in his affidavit that he relayed this information to Mr. Paulus and Det. Forseth, both of whom told him not to reveal this and to maintain that Pease said Price did shoot the victim. (Griffin Affidavit dated 02/16/2010, Exhibit 14).
22. Griffin also describes in his affidavit an extensive attempt on the part of Mr. Paulus and Det. Forseth to hide the nature of the consideration offered to Griffin in exchange for testifying against Pease. (Griffin Affidavit dated 02/16/2010, Exhibit 14) According to Griffin and corroborated by letters to Griffin's attorney in 1990 (Griffin Letter dated 09/24/1990, Exhibit 23), Mr. Paulus and Detective Forseth negotiated extensively with Griffin and promised him

consideration prior to Pease's trial, but then maintained in various court proceedings that no such promises had been made and that there was no consideration (Griffin Affidavit dated 02/16/2010, Exhibit 14).

Legal Standard

23. The United States Supreme Court has held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady v. Maryland*, 373 U.S. at 87 (1963). The prosecutor has a duty to disclose this evidence although there has been no formal request by the accused. *Strickler v. Greene*, 527 U.S. 263, 280 (1999). Evidence is favorable to an accused, when, "if disclosed and used effectively, it may make the difference between conviction and acquittal." *United States v. Bagley*, 473 U.S. 667, 676 (1985). Evidence that is favorable to the accused encompasses both exculpatory and impeachment evidence. *Strickler*, 527 U.S. at 281-82 ("The evidence at issue must be favorable to the accused, either because it is exculpatory or because it is impeaching")(emphasis added); *Bagley*, 473 U.S. at 676 ("Impeachment evidence, however, as well as exculpatory evidence, falls within the *Brady* rule."). The Court has indicated that there is no distinction between the two types of evidence that are "favorable to accused" for *Brady* purposes. *Strickler*, 527 U.S. at 280-82; *Bagley*, 473 U.S. at 676 ("This Court has rejected any such distinction between impeachment evidence and exculpatory evidence.").
24. In order to establish a *Brady* violation, the defendant must, in addition to demonstrating that the withheld evidence is favorable to him, prove that the withheld evidence is "material." *Giglio v. United States*, 405 U.S. 150, 154 (1972) (stating that "[a] finding of materiality of

the evidence is required under *Brady*"). The Court adopted a uniform standard for materiality: "The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." *Bagley*, 473 U.S. at 682. Evidence that impeaches credibility may be subject to disclosure if there is a reasonable probability that it would discredit a witness whose testimony may be determinative of guilt or innocence. *Id.* at 676-77.

25. The fact that Vernon Weigers was receiving a rent payment in consideration for his testimony should have been disclosed to the defendant. It is questionable for a prosecutor to provide that kind of direct pecuniary benefit to a State's witness; but if such a benefit is provided, it is beyond question that the benefit must be disclosed to the defense. Knowledge of the rent payment would have impeached Weigers' credibility with the jury, by demonstrating that he had a motive to cooperate with the State in prosecuting Price. Weiger's testimony about Price's involvement in the disposal of the body was material to Price's conviction.
26. The Griffin testimony would have been both exculpatory and impeachment evidence. The information that Pease disclosed to Griffin about Price not being involved in the shooting was exculpatory and it would have also impeached the testimony of the State's key witness, Todd Crawford. The Griffin information was material to the case as it revealed that Price was not involved in the shooting and it would have refuted the testimony of Todd Crawford. For reasons previously explained, Crawford's testimony was critical to the outcome of the case.

27. Since Price was convicted on testimonial evidence including that of Crawford and Weigers, had the jury doubted their credibility and heard the exculpatory evidence presented by Griffin, it is “reasonably probable” that the outcome at trial could have been different.

III. Newly discovered enhanced photographic evidence reveals that the victim was not beaten prior to death.

28. Before discussing the new photographic evidence, it bears emphasis that Mr. Paulus apparently lost or destroyed numerous photos of the victim’s face and body that may have been able to provide additional clarification about whether or not the victim was beaten prior to death. The testimony of various witnesses at trial and the police report of Detective Charley revealed that multiple photos were taken of the victim (Trial Transcript, p. 751 and Detective Charley Police Report dated 5-25-90, Exhibit 15). This is further supported by two affidavits from the victim/witness coordinator, Sheila Martin Berry (Berry Affidavits, dated 1/14/2004 and 5/7/2004, Exhibits 16 and 17). However, in 2002, when this Court ordered that these photos be released to the defense for testing, it became apparent that Mr. Paulus lost or destroyed all but the one photo he placed into evidence during the trial.

29. In 1994, new photographic enhancement technology, Cognitech, became publicly available. This technology allows experts to examine and enhance photographs and video in order to see things that cannot be seen with the naked eye (Cognitech report, p. 1, Exhibit 18).

30. In February 2002, Video Technician expert Kelly Humphrey used this technology to enhance the single photograph of the victim that was presented as evidence. In her report of March 20 2002, Exhibit 19, Humphrey stated, “The victim’s face in the photograph provided to our office does not appear to have sustained any apparent cuts and abrasions other than what appears to be a small cut near his right eye.” These findings are contrary to the testimony provided by Todd Crawford and other witnesses indicating that the victim had been severely

beaten. This evidence would have gone far to undermine Mr. Paulus' contention that Price savagely beat the victim in the head and face prior to his death.

31. The findings now available via the Cognitech technology are further supported by a newly discovered memorandum from Lt. Michael Brooks to Mr. Paulus dated 07/18/1990 (Exhibit 20) that Paulus withheld from the defense. In the memorandum, Lt. Brooks documents that Joe Paulus contacted him on May 6, 1990 and asked him why the autopsy did not reveal gunshot wounds or signs of a beating. This new report further demonstrates that Mr. Paulus knew that there was no evidence that a beating had occurred.
32. Forensic pathologist Dr. Billy Bauman reviewed Crawford's testimony, evidence pertaining to Price beating the victim, and Humphrey's findings. In September 2003, Dr. Bauman issued a consultation report (Exhibit 21) indicating that, "The victim would have had lacerations, bruises, swelling and facial deformities if he had been beaten to the extent testified to by Crawford." Dr. Bauman's report thus cements the conclusion that Crawford's testimony about the beating was not credible.

Legal Standard

33. To obtain a new trial based on newly discovered evidence, a defendant must meet a five-prong test. *State v. Love*, 2005 WI 116, ¶ 43 & n.18, 284 Wis. 2d 111, 700 N.W.2d 62. The defendant must prove by clear and convincing evidence that: (1) the evidence has come to the moving party's knowledge after trial, (2) the moving party was not negligent in seeking to discover it, (3) the evidence is material to the issue, and (4) the testimony is not merely cumulative to the testimony that was introduced at trial. *Id.* The fifth prong requires the defendant to show that the new evidence makes it reasonably probable that a different result would be reached at a new trial. *Love*, 2005 WI 116, ¶ 44. This determination "does not have

to be established by clear and convincing evidence, as it contains its own burden of proof.”

Id.

34. The defendant meets the first and second prongs of the test as the technology used in enhancing the photographs was not available at the time of trial and therefore the defendant could not have been negligent in seeking to discover it. The Cognitech technology used was not made available to the public until 1994 and thus was not available at the time of Price’s trial or at the time of his post-conviction motion. The memorandum from Lt. Brooks to Joe Paulus was not obtained until 2007, well after the trial and post-conviction hearing.
35. The defendant meets the third prong of the newly discovered evidence test as the question of whether or not the victim was beaten prior to death was key to the credibility of the State’s witness without whose testimony the trial judge commented at sentencing “there undoubtedly would be no one in this case convicted of this crime” (Sentencing Transcript, p.19).
36. The defendant meets the fourth prong of the newly discovered evidence test as this testimony is not cumulative because prior to the new technology becoming available in 1994, Price had no knowledge of the new evidence, and the jury heard no testimony regarding this new photographic evidence at trial.
37. The defendant also meets the fifth prong of the newly discovered evidence test. Had the jury heard evidence that contradicted the State’s case that the victim had been severely beaten prior to death, this evidence would have called the credibility of the State’s key witness Todd Crawford into substantial question. Price employed a private investigator, Cheryl Fountaine, to interview members of the jury from Price’s trial to find out what impact the reported beating of the victim had on them when determining Price’s guilt. Fountaine provided each jury member with a survey that consisted of various articles and newly discovered evidence

that had been developed that refuted the fact that Price had beaten the victim. Based on that information, two jurors indicated they no longer have confidence in their guilty verdicts (Juror Surveys and Results, Exhibit 22). Without the credibility of Crawford it is reasonably probable a different result would be reached.

IV. In the alternative, Price is entitled to a new trial in the interest of justice.

38. Even if this Court concludes that Price is not entitled to a new trial based on prosecutorial misconduct or newly discovered evidence, this Court should still order a new trial in the interest of justice. This Court has statutory and inherent authority to order a new trial in the interest of justice if the real controversy has not been fully tried or if it is probable that justice has for any reason miscarried. Wis. Stat. § 805.15(1); *State v. Armstrong*, 2005 WI 119, ¶¶110-113, 283 Wis. 2d 639, 700 N.W.2d 98; *State v. Harp*, 161 Wis. 2d 773, 775, 469 N.W.2d 210 (Ct. App. 1991).¹

39. The claims and evidence described above require a new trial in the interest of justice. First the real controversy was not fully tried, because Mr. Paulus actively misled the Court and the jury about the credibility of important witnesses, including Todd Crawford and Michael Stelter. Without full, accurate information about those witnesses, the jurors were not in a position to assess the version of the facts the State presented. Instead, the jurors accepted the

¹ In *State v. Henley*, the Wisconsin Supreme Court held that a circuit court may not invoke its inherent authority to entertain a freestanding interest of justice claim untethered from any other claim or procedural mechanism, in collateral proceedings. 2010 WI 97, ¶75-77, 328 Wis. 2d 544, 787 N.W.2d 350 (2010). According to the *Henley* court, “§§974.02 and 974.06, by their terms, provide the primary statutory means of postconviction, appeal, and post-appeal relief for criminal defendants.” *Id.* at ¶39. Consequently, a criminal defendant may raise an interest of justice claim pursuant to §974.06, so long as (1) the interest of justice claim “involved one of the types of claims allowed by [§974.06]” and (2) “was associated with a more specific ‘sufficient reason’ allowing it to pass the Escalona bar.” *Id.* at ¶63, n.25. Price’s interest of justice claim satisfies both of these requirements. First, the claims are not standing alone, but are “tethered” to other legitimate claims of constitutional dimension. Second, Price has “sufficient reason” for not raising the § 974.06 claims earlier: the newly discovered evidence and Brady portions of Price’s interest of justice claim were not available at the time of trial, or during Price’s direct appeal. See *Escalona*, 185 Wis. 2d at 181-82.

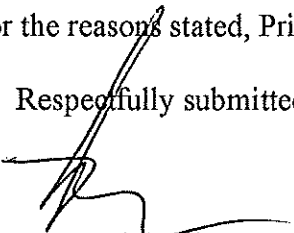
State's version without knowing that important State's witnesses suffered from crippling credibility problems.


40. Second, it is more than probable that justice miscarried. The blatant prosecutorial misconduct described above—eliciting perjured testimony and withholding exculpatory evidence—clearly constitutes a miscarriage of justice. The result of that miscarriage of justice is that Mr. Price has been punished more harshly than warranted by the facts. Thus, a new trial is warranted in the interest of justice.

Conclusion

41. For the reasons stated, Price moves this court to vacate his conviction and order a new trial.

Respectfully submitted this 4th day of February, 2014.


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Attorney for Mark H. Price


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cc. Winnebago County District Attorney

Table of Exhibits

<u>Exhibit #</u>	<u>Description</u>
1	Todd Crawford Affidavit, 05/25/1990
2	Memo from Det. Gerald Forseth to Mr. Paulus, July 13, 1990
3	Letter from Capt. Patrick Busha to Fond du Lac County District Attorney Peter Grimm, 9/5/90
4	Report from Winnebago County Sheriff Department's, Det. Penzenstadler, 07/22/90
5	Det. Forseth Reports, 5/18/90
6	Dee Hall letter re: Todd Welch's analysis dated 06/01/2005
7	Hinkle Affidavit, 06/15/1992
8	Det. Forseth letter, 09/25/91
9	Paulus letter, 9/26/1991
10	Hinkle statement, 09/24/91
11	Det. Forseth Report, 09/30/91
12	Forseth Note to Paulus, 08/19/1990
13	Winnebago County Receipt #7801, 09/05/1990 for Winnebago Check #92751
14	Griffin Affidavit, 02/16/2010
15	Detective Charley Police Report, 5-25-90
16	Sheila Berry Affidavit, 1/14/2004
17	Sheila Berry Affidavit, 5/7/2004
18	Cognitech report, p. 1
19	Kelly Humphrey report, March 20, 2002
20	Memo from Lt. Michael Brooks to Paulus, 07/18/1990
21	Dr. Bauman consultation report, September 2003
22	Juror Surveys and Results
23	Griffin Letter dated 09/24/1990

TODD CRAWFORDS AFFIDAVIT OF MAY 25, 1990

NOTE: The following cited paragraphs are excerpts taken from Todd Crawford's affidavit and relate to the beating Price supposedly gave to Mike Fitzgibbon.

Mike was talking with Mark and said that he had a problem for ripping somebody off and Mark started raising his voice at this time. Mark said to Mike, "Everytime you're around you're in trouble." Mike then said that he had gotten ripped off and he had nothing to do with it. Mark then said, "What the hell are you, Mike, a narc?" Mark started pushing Mike. At this point Mark started beating Mike. Mark stopped for a minute, took off his jacket he was wearing and Mike got up and tried to make it out the door. At this point, Mark grabbed him and started beating on him again. While this was going on Richie Pease was sitting at the table smiling the whole time. In fact, he said, "I don't have to get my hands dirty, I don't have to punch anybody, I have other people take care of my dirty work."

The fight continued in the kitchen towards the other room. Mark threw Mike on the kitchen floor. Mark then stuck the gun by Mike's head and said, "I'll fucking kill you." Then Mike said, "Just go ahead and shoot me." And then Mark fired the gun right above Mike's head and the gun went off and the bullet went into the wall just above the kitchen windows. Mike got real scared again. Mark Price pulled Mike up and Mike got weak and went back down to his knees and Mike grabbed at my legs. I kicked to try and get away from him. Price then lifted him up again and started beating on him some more. That's when Richie said, "Go stick him in that corner" and he pointed towards Joe Berger's room which is in the far right corner of the kitchen.

Mike kept saying, "I just want to go home, I just want to go home." Mark Price said, "If you want to go home there's the window." Price then went over to Mike, beat on him a couple more times and slammed him back into the chair. Then Mark came back and sat at the kitchen table. Everybody was drinking. Richie Pease said, "I'm not going down for another one of these beatings." Then Mark said the same thing.

Mike's face was all swollen up and he was bleeding by his lip and by his nose. Somebody upstairs gave him a cloth or rag to take with him and he was slumped over in the car and just continued to say, "All I want to do is go home."

Richie then said, "Everybody out of the car." Mike did not want to get out of the car so Mark Price ripped Mike out of the car and started beating on him again on the ice as Mark had done all the way out to the ice. He continually beat on him. Mark Price continued to beat on and kick on Mike and they went actually around the car and wound up on the driver's side of the car next to Richie Pease.

We layed Mike on the ground and Mark started kicking him again and laughing like he was having a good time. Mark then dragged Mike over to the hole and stuck him in kind of butt first and tried to kick him down into the hole with his foot.

AFFIDAVIT

I, TODD CRAWFORD, wish to state that an event took place that I was involved in on or about December 27 or 28 of 1989. The date was after Christmas because I returned home on December 25 from a one week vacation.

I was with Joe Pease at his apartment above the Sixth Street Flyer Tavern. We were having a couple of beers. At this time, Richie Pease and Mark Price showed up. After about ten or twenty minutes Mike Fitzgibbon showed up. Also present in the background was Joe Berger. We all sat around drinking for approximately ten or twenty minutes. Mark Price at this point began speaking with Mike Fitzgibbon as they were sitting at the end of the table in the kitchen. Mike was talking with Mark and said that he had a problem for ripping somebody off and Mark started raising his voice at this time. Mark said to Mike, "Everytime you're around you're in trouble." Mike then said that he had gotten ripped off and he had nothing to do with it. Mark then said, "What the hell are you, Mike, a narc?" Mark started pushing Mike. At this point Mark started beating on Mike. Mark stopped for a minute, took off his jacket he was wearing and Mike got up and tried to make it out the door. At this point, Mark grabbed him and started beating on Mike again. While this was going on Richie Pease was sitting at the table smiling the whole time. In fact, he said "I don't have to get my hands

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dirty, I don't have to punch anybody, I have other people take care of my dirty work."

The fight continued in the kitchen towards the other room. Mark threw Mike on the kitchen floor. Mark then stuck the gun by Mike's head and said, "I'll fucking kill you." Then Mike said, "Just go ahead and shoot me." And then Mark fired the gun right above Mike's head and the gun went off and the bullet went into the wall just above the floor beneath the kitchen windows. Mike got real scared again. Mark Price pulled Mike up and Mike got weak and went back down to his knees and Mike grabbed at my legs. I kicked to try to get away from him. Price then lifted him up again and started beating on him some more. That's when Richie Pease said, "Go stick him in that corner" and he pointed towards Joe Berger's room which is in the far right corner of the kitchen. Mike kept saying, "I just want to go home, I just want to go home." Mark Price said, "If you want to go home there's a window." Price then went over to Mike, beat on him a couple more times and slammed him back into the chair. Then Mark came back and sat at the kitchen table. Everybody was drinking. Richie Pease said, "I'm not going down for another one of these beatings." Then Mark said the same thing. Another fifteen or twenty minutes passed, Richie Pease then said to Joe Pease get me a rope or a belt. We're going to tie this guy up so he doesn't get away. Joe Pease then went looking all over the house for a rope or a belt and he got a belt. Richie said, "He can't walk if his legs are tied." Then he turned and looked at me and pointed his finger at me and said, "You're coming with us." Then we started out the door.

Mark Price was first and he had picked up a steak knife from the

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kitchen. Mark Price was followed by Mike Fitzgibbon, me, and Richie behind me. The gun I'm talking about looks like a small .45 caliber handgun, but it was really a .25 caliber handgun because Mark Price told me it was. The gun was black with a brown handgrip, semi-automatic. This is the same gun Det. Forseth showed me today. I knew it to be a semi-automatic because I'm familiar with guns because I was in the service.

We then went down the stairs out through the porch, to the left and back around between the garage and the back of the Sixth Street Flyer Tavern to Richie Pease's car. The car was a green 4-door sedan, 1978 or 1979. This is the same car Det. Forseth showed me today. When I saw the car with Det. Forseth, I noticed a piece of carpet covering the inside of the trunk that was not present the night Mike died. The car trunk opened with a screw driver, it had no lock. I said to Richie, "Why do I have to go with you?" Richie said "Because you're sitting in the back seat with Mike so that Mike doesn't get out." Just before we got in the car, Mark said to Mike, "If you try to run I'll cut your fucking balls off." Then Richie and Mark got in the front seat of the car and Richie gave Mark the gun and Mark Price then reached over the back seat. I was seated behind the driver, Mike was seated behind the passenger and Mark pointed the gun directly at me and said, "If he gets out of this fucking car, you're dead." Mike continued to say, "I just want to go home."

* Mike's face was all swollen up and he was bleeding by his lip and by his nose. Somebody upstairs had given him a cloth or rag to take with him and he was slumped over in the car and just continued to say, "All I want to do is go home. I'm not going to say nothing,

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"just want to go home." At this point we drove away and we drove towards Fleet Farm because I remember passing it. We were supposedly going to somebody's house to see if Mike was a narc. Then we took the following path that Det. Forseth and I determined to be the same path that we did take that night to Lake Butte des Morts. We took County Trunk E to Highway FF which is known as Reighmoor Road. We took Reighmoor Road to the intersection of Leonard Road West and turned right onto this road. There is a large field that I could remember to my right. At this point I saw the lights, the large two rows of yellow luminous lights at Samers Bay. We turned left and entered into Samer's Bay between the two long rows of lights and drove out on the boat landing right onto the ice. We drove out quite a distance past the ice shoves. I would estimate when I looked back to shore we were out about 3/4 of a mile or better.

Richie then said, "Everybody out of the car." Mike did not want to get out of the car so Mark Price ripped Mike out of the car and started beating on him again on the ice as Mark had done all the way to the ice. He continually beat on him. Mark Price continued to beat on and kick on Mike and they went actually around the car and wound up on the driver's side of the car next to Richie Pease. Mike continued to say, "All I want to do is go home." Mike was now laying face first on the ice. Richie now had the gun, he had gotten it from Mark. Richie walked over to Mike, got real close to him and stuck the gun right next to Mike's head less than an inch away from his ear, behind the ear at the base of the skull. He pulled the trigger, I saw the muzzle flash and I saw Mike's body tighten up and twitch. Mike did not move any more.

*See p 75
of Discovery
Where in
Crawford's
"original statement"*

When did they determine the path? 5-25 Some day they did this

" See p 52 of June 19th hearing

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I was crying, I couldn't control myself, I was trying to say something. The words weren't coming. It was at this time that Richie then turned and pointed the gun at me and said, "You're next." I didn't know what he meant, I thought he meant he was going to shoot me too. While Richie was pointing the gun at me, he said, "I'm not going to be the only one who shot this guy. I'm not going down for the murder. This way you're involved." He handed me the gun and indicated that I should shoot him. I was about two feet away from Mike standing between the car and Mike, when I shot at Mike. I don't even know if I hit him. I figured he was already dead. I felt I really had no choice because if I didn't shoot Mike they were going to shoot me. I really figured I was next. Richie then said, "Mark you're next." Mark was really anxious to get the gun, then Mark took the gun from Richie, knelt on Mike's back and stuck the gun up tight right next to the base of his skull and shot Mike. I again saw the muzzle flash. Richie then went to the car, got a screw driver to open the trunk because there is no lock, popped the trunk and then he said to Mark, "Give me the gun, I know how to get rid of it."

Richie then told Mark and me to put Mike in the trunk. I took Mike's feet, Mark took his head and we put him in the trunk. We then drove off the ice back through Samers Bay and took a right on Leonard Point Road, drove to Reighmoor and turned right on Reighmoor and went to Reighmoor tavern. Richie Pease bought a six-pak of Pabst. We left the tavern and took Springbrook to Omro near some trailers and then turned onto Krenz Road and went to 805 Krenz. The place that Detective Forseth and I drove to today is the same place that I was that evening in December. I remember specifically looking at a sign

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saying, "The dog bites," because there was a pit bull dog there.

This turned out to be the home of Beaver. I knew him from over at Joe Pease's house. Richie then had us all go into Beaver's house and he told us before we went in there, "Keep your fucking mouth shut." He also said, "I have to get some warm clothes."

He got like a hunting suit for himself and got me an old ripped up red snowmobile suit because I was dressed in light weight clothes. We had a Pabst beer at Beaver's house and then Richie said, "Come on we're all going to go out on the ice in the ice car." They had an old car that they used to ride out on the ice. At this point, we all went outside and we all went into the garage through a side door next to either a pop machine or a refrigerator. Richie looked around and got a red and white chain saw. He threw the chainsaw in the back seat of his green car and then we all got in the front seat. I was in the middle and Richie was driving and Mark was passenger. As Richie had said, "You ride in front with us because it is warmer." Mark kept saying to me all the time, "If you fucking say anything, I'm going to fucking kill you." We then drove down Krenz Road past the trailer park and turned onto Springbrook Road and went back to Samers Bay. We drove back out onto the ice, over the ice shoves and Richie said, "stay in the car." He took the screw driver along with him and also the chainsaw and I heard the chainsaw start up and he started cutting a hole in the ice.

When Richie finished cutting a hole in the ice which was really a triangle about 2 feet by 2 feet by 2 feet, Richie got back into the front seat of the car. He had already opened the trunk with a screw driver. Richie then told Price and me, "Get your fucking asses out

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of the car and take him out of the trunk." Then Richie came out with us. We layed Mike on the ground and Mark started kicking him again and laughing like he was having a good time. Mark then dragged Mike over to the hole and stuck him in kind of butt first and tried to kick him down into the hole with his foot. That's when Mike made a kind of a woosh sound like the air was coming out of his lungs. His head slipped through first and Mark seemed to be having a really good time acting like a kid with a new toy. Richie got a pole of some kind and reached down with the pole to make sure that Mike was under the ice and Richie said, "Yeah, he's under the ice." Then they put the chainsaw back in the trunk of the car and Richie said, "Get back in the car." I wound up in the middle of the front seat again. Then Mark Price stuck the gun in my face and again he said, "If you fucking say anything, I'll fucking kill you," while he was shaking me by the collar of the shirt. At this time Richie said, "Yeah, you got a nice looking wife, I wouldn't want to see anything happen to her or your family." He then drove off the ice. We left the lake by the boat landing through Samer's Bay and came back the same way to Oshkosh. They dropped me off at Joe Pease's house at the Sixth Street Flyer. The tavern was closed.

I went upstairs to see Joe Pease. I went into the kitchen and started slamming down a bottle of some kind of booze. I heard Joe call me from the bedroom and he said, "Is that you, Todd?" I went back to Joe's bedroom as I was very angry and upset.

In the bedroom, Joe Pease asked me, "Is it done?" I said, Yes, it's done." I then went down the stairs outside where I threw up.

Then I got in my truck and I went home.

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Sometime during the evening, I don't recall where or when, Mark Price had Mike's wallet and looked in the wallet and said, "The fucker doesn't even have any money for me to take." Somehow, I think he, Mark, threw the wallet in the hole in the lake.

The picture Det. Forseth showed me today is definitely Mike Fitzgibbon and he is wearing the same clothing he had on the night he died.

Dated: 5/25/90

Todd Crawford
Todd Crawford

Subscribed and sworn to before
this 25th day of May, 1990.

Gerald Forseth
Gerald Forseth
Notary Public, Winnebago County, Wis.
My commission expires: 5/8/94

July 13, 1990

Joseph F. Paulus
District Attorney
Winnebago County
Oshkosh, WI 54902

CONFIDENTIAL

Re: Michael Stelter
Investigation of the Death of Michael T. Fitzgibbon

Dear Mr. Paulus:

Detective Forseth began an investigation into the mysterious death of Michael T. Fitzgibbon under Complaint No. 90-04943 on May 8, 1990. After taking a statement from Joe Berger on May 10, 1990, Detective Forseth became suspicious of the fact that there could be foul play involved, and more than likely was, and notified District Attorney Joe Paulus. At this time I requested the Death Certificate and Medical Notes of Coroner Michael Stelter. Upon receiving a copy of the Death Certificate, Detective Forseth became suspicious of the fact that the manner of death or immediate cause was drowning-hypothermia, but that Box 38 manner of death was undetermined. Also, the body according to the Death Certificate which was recovered March 21, 1990 was taken to the Central Wisconsin Crematory on March 23, 1990 only two days after the body was recovered and evidently was cremated according to the report

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there that day. I became very suspicious of that and thought that we should bring in Mr. Stelter and see if we could get some answers to some questions. I had also gone through Mr. Stelter's personal notes and found that his notes state twice the body should be posted. In other words, there should be an autopsy done on it and this also was puzzling to me. I also brought this to the attention of the District Attorney Joe Paulus. There was also one note that was almost illegible, but we were able to make out under should be posted, in Mr. Stelter's notes, notify Madison, possibly being the word being Huntington and we thought we would like to questions Mr. Stelter about this. During the week of May 7 - 11, Mr. Stelter came in, I'm not sure of the exact date and we had a meeting in the Conference Room in the Oshkosh Safety Building. Attending that meeting were myself, Captain Busha, Mr. Paulus the District Attorney and Coroner Michael Stelter. When we asked him about the fact that his notes referred to two different times that an autopsy should be done, Mr. Stelter said, "It's my screw up, I fucked up, I should have had an autopsy, I didn't, I just fucked up." When I asked him specifically about the writing and Dr. Huntington in Madison, he looked at it and stated, Yes, that's exactly what it is, it's Madison, Dr. Huntington. I don't know why I didn't post him. I've written in here twice. I posted him. I just don't know why I wouldn't have an autopsy if I'd written twice on my notes about an autopsy why I would not have an autopsy done. I just don't know.

I then told him that the thing that bothered me was that the immediate cause of death was drowning hypothermia and yet Box Number 38, the matter of death, is undetermined. I asked him to explain this and Mr. Stelter said, "It's just my screw up." Mr. Stelter had no explanation as to why an autopsy was not done and that was the end of that meeting.

* During this meeting I also asked Coroner Stelter, how long the body could have been in the water, because my investigation showed that Mr. Fitzgibbon's had been placed in the water December, 1989. Mr. Stelter stated, "No way, that body was not in the water for more than 5 - 7 days." Mr. Stelter assured me that he had seen enough bodies recovered from the water, that Mr. Fitzgibbon could not possibly have been in the water since December, that he would have been in the water only 5 - 7 days, two weeks at the most.

On May 17, 1990 it was found through Detective Schauz that a Kevin Arne, who work for Seefeld Funeral Home, that during the examination of the body without Coroner Stelter present Kevin noticed what appeared to be a puncture wound in the back left side of Mr. Fitzgibbons' head. It was described about two inches beneath the back of the head and the ear lobe and it had a puncture mark. It appeared to be approximately one-half inch or less in diameter, slightly jagged puncture wound and did not appear to be perfectly round or cylindrical and that there was slight swelling and tear marks around the diameter of the puncture wound. Mr. Arne at that time told Detective Schauz that this appeared to be suspicious and at that time he stated he called Coroner Michael

Stelter's at his residence and he related he spoke with Michael Stelter and advised him of his concerns. He advised the coroner of the puncture wound on the back left side of the victim's head and advised the coroner it did not look like a normal puncture wound and that the wound was jagged and appeared somewhat unusual and Kevin requested the coroner come back and look at it, Coroner Stelter according to Mr. Arne advised Arne that he had already noticed the wound earlier. Stating he believed it must have been done by a gaff hook used by the fireman to draw the body ashore. Arne stated to Coroner Stelter he hoped that the victim Mr. Fitzgibbon was going to be posted. Meaning that he hoped there was going to be an autopsy performed on the body. Mr. Stelter assured Arne that that would be the case. There was no autopsy and the body was subsequently cremated at the Wisconsin Crematory in Ripon.

* It should be pointed out that Detective Forseth was present at the scene of the river when the body of Michael T. Fitzgibbon was brought into shore on March 21, 1990 and I do not recall seeing any gaff hook used by the Fire Department personnel.

Because of this new evidence of Mr. Arne emphatically stating he had notified Mr. Stelter of the circumstances of a suspicious wound to the head and that the coroner also assured him he would have an autopsy it was decided by District Attorney Joe Paulus that we have another meeting with Coroner Stelter. Again, I do not have the specific date. I believe that this occurred during the week of May 21 - 25, 1990. Coroner Stelter came to the office, we confronted him with the facts about the suspicious nature of the wounds and Mr. Stelter had no answers that would explain no autopsy and cremation. Mr. Stelter in my office that day, did say to me as he grabbed the back of his head, his own head with his hands in a clasped position, saying "I never looked at the back of the head, I never looked at the back of his head," referring to Michael Fitzgibbon.

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 Further, during the Preliminary Hearing for both Mr. Pease and Mr. Price which was a combined hearing, Mr. Stelter on the witness stand made the statement that he examined the body twice and noticed the wound and also said he did approximately, I believe, a 4 - 4-1/2 hour examination of the body of Michael Fitzgibbon and I don't believe this was possible. The body according to Kevin Arne was never examined by Mr. Stelter for more than 1-1/2 - 2 hours, and there was only one examination.

These are the facts, the best that I can remember them and they are true and factual to the best of my ability.

Det. Gerald N. Forseth
 Det. Gerald N. Forseth

City of Oshkosh
Police Department

CONFIDENTIAL



*File
Stelter*

September 5, 1990

Mr. Peter Grimm
Fond du Lac County District Attorney
160 South Macy Street
Fond du Lac, WI 54935

ZH

Dear Mr. Grimm:

In reference to our earlier conversations at the Oshkosh Police Department, I am writing this correspondence, to the best of my recollection, what I remember from various meetings that I attended where Michael Stelter, the Winnebago County Coroner, was present, regarding the death of Michael Fitzgibbon.

The first informal meeting I can recollect would be on March 22, 1990, the day after Michael Fitzgibbon's body was pulled from the Fox River. Mike Stelter came to my office and a discussion was held regarding the fact that back on March 16, 1990, allegedly a person had jumped off the Oshkosh Avenue bridge and it was thought that maybe this was Fitzgibbon. During that day, I contacted the two (2) witnesses who had been driving in an automobile, going across the bridge, when they saw a person jump over the railing, down into the water and disappeared and got the exact location from the two witnesses on that day where they had seen the person go over the railing.

In talking with the two witnesses, they both were emphatic over the point that the subject was wearing a red jacket, in his late teens or early 20's, and blue jeans. As far as what he was wearing for shoes, they weren't positive. Further on that day, I had contact again with Mike Stelter and asked him what Fitzgibbon was wearing when he was pulled out of the water near the Rockwell plant and I was informed that he was wearing brown Oshkosh B'Gosh coveralls that covered the entire body and that he had no red jacket on. My report does not reflect, but I do know, that I told him at that time that I did not feel it was Fitzgibbon because the clothing description did not fit with what the two witnesses told me. Further, I had spoken with Officer Perry and after listening also to the tape from the radio, that the officers, in fact, did not believe that anyone had jumped in as the river was wide open and the people fishing there would have heard a splash if someone would have jumped off the bridge. It was determined that no one jumped into the river. The subject in the red jacket had jumped onto the gravel bank and not into the water.

Mr. Peter Grimm
September 5, 1990
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The first meeting held in early May, after we felt there was foul play, was in the Oshkosh Police Department conference room with Coroner Mike Stelter, District Attorney Joe Paulus, Detective Gerald Forseth and myself. It was at this meeting that Mike Stelter was informed that we had believed that Fitzgibbon had been possibly murdered and that we were investigating this case as a homicide. A copy of the death certificate was reviewed and it showed that death was undetermined and that he had died from hypothermia and that an autopsy had never been performed. During the meeting, Mike Stelter made the comment more than once that he had "fucked up" and never did an autopsy on the body and didn't know why he did not do one.

Stelter was also telling us that the body could not have been in the water more than two (2) weeks as it had not shown signs of some type of deterioration. Had it been in the water a lot longer, according to Stelter, the body should have been deteriorating more than it had. I remember Detective Forseth talking with Stelter quite extensively about the medical report and the fact of undetermined death and why no autopsy could be performed and Mike never gave a clear-cut answer other than he, as he put it, "fucked up" and he does not know why he did not have an autopsy done as he had in his notes to post, etc. and to contact Madison but could never give us an answer as to why it wasn't done.

A second meeting was held between D.A. Paulus, Detective Forseth, Mike Stelter and myself. At this meeting, Joe Paulus told Mike Stelter we had received information that Kevin Arne had observed some type of hole or tear behind the left ear of Mike Fitzgibbon. Paulus talked to Mike about this observation. Some time during that meeting I remember Mike saying that "I fucked up and I never looked at the back of his head", (meaning Fitzgibbon's head). Mike made a comment that Fitzgibbon maybe hit the ice when he jumped and that caused the tear.

The third meeting held in the conference room again was, as I recall, with District Attorney Paulus, Detective Forseth, Mike Stelter and myself. It was at this meeting that District Attorney Paulus informed Stelter that we were now positive that Fitzgibbon had been murdered, that he had been shot behind the left ear and also in the back of the head and that we had information given to us by a third party, by the name of Todd Crawford, who told us what had actually happened and verified the bits and pieces of information we had prior to that as to how the murder actually occurred and where it occurred.

Mr. Peter Grimm
September 5, 1990
Page Three

CONFIDENTIAL

LH

In late May, I don't know the exact date, I received a phone call at my residence from District Attorney Paulus at approximately 7:00 p.m. requesting that I come to his office, that he was having a meeting with Mike Stelter and that he wanted me present at this meeting. Upon arrival at the meeting between D.A. Paulus, Stelter and myself in Joe Paulus's office, Joe had the State Statute book open to the section that evidently refers to the responsibility of the coroner to report any suspicious deaths to the District Attorney's office and that he told Stelter that he (Stelter) had not reported the death to him and read him the State statute that compelled him to do this whenever there was a suspicious death. Upon reading him the State statute, Paulus also read Stelter the penalties for failure to comply with this statute and Paulus then made a comment that he was receiving contacts from sources, he did not name who the sources were, to charge Stelter for not reporting this death. However, Mr. Paulus never did say he was going charge Stelter, only that he had received phone calls urging him to do so.

Mr. Paulus also made a comment to Mr. Stelter about a previous meeting that they had about problems Marge Dahms brought to Mr. Paulus's attention regarding Stelter's reporting procedures. However, I did not know exactly what they were talking about when this was brought up.

After Joe Paulus read him the State statute and there was a slight discussion, Mike asked Joe if he should resign or not and Joe stated that he would leave it up to him. Mike Stelter asked me my thoughts on the matter and, at this time, I told him my exact feelings, that I felt that the entire matter, when the body was pulled from the water was fucked up, and, as I told him, that everybody was so sure that the body that was being pulled out was that of the victim who had drowned on New Year's Eve, and that they hastily notified the victim's wife that he had been found and then, finally, discovered that they had made an error and that, in fact, it was not the victim who had drowned on New Year's Eve but rather it was Michael Fitzgibbon.

I further told him that we, at no time, ever had a missing person report or anything on Fitzgibbon, and had no knowledge that he was missing or had disappeared and that I felt Stelter should have done a autopsy on the body and, to this day, I still don't know why it wasn't done. I also told Mike Stelter that I was not a politician and that I felt if he was trying to determine if he should resign or not, that he should check with his people that back him as they would be able to help him make this decision as to what he should do, if he should resign or continue in his capacity as coroner, and that I would not tell him either way as to what to do regarding this issue.

CONFIDENTIAL

Mr. Peter Grimm
September 5, 1990
Page Four

The talk continued for a little while and at the end of the meeting Joe Paulus brought up to Mike that he felt that he really had three (3) options regarding this matter. The first option was he could resign effective immediately. The second option, he could finish out his term and not run for re-election and the third option was that he could do nothing and continue in his capacity and run for re-election. After this was all said and done, Joe asked Mike Stelter if he would please get back to Joe the next day to give him his answer as to what he was going to do as far as making up his mind about staying in office or not.

The meeting ended then and Mrs. Fitzgibbon and her son were waiting in the hall. Mike left Joe's office and stood in a different office and closed the door until the Fitzgibbons' had come in as it was felt at that time that Mike and the Fitzgibbons' didn't need to see each other. Mike then left the office.

Respectfully submitted,

James F. Thome
Chief of Police

LH



Patrick J. Busha
Captain - Investigative Services Bureau
OSHKOSH POLICE DEPARTMENT

PJB:jmb

Exhibit 4 SUPPLEMENT REPORT

ORIGINAL

ORIGINAL

COUNTY SHERIFF'S DEPARTMENT

OSHKOSH, WISCONSIN

AT
A, WILLIAM M

2. TOWNSHIP

3. COMPLAINT NO.

4. PAGE NO.

90002129

4

5/22/90 DETECTIVE C. PENZENSTADLER W61

I talked to Coroner Stelter in the records section of the Sheriff Office and found that the body has been positively identified. There are no signs of any foul play, therefore, we can clear our complaint.

bjk

1. COMPLAINANT

2. COMPLAINT NO.

3. DATE/TIME

4. PAGE NO.

FITZGIBBONS, MICHAEL

9004943

5/18/90

52

ASSIST WCSD (DEAD BODY)

not look at the body but does remember talking to a young man from the Seefeld Funeral Home, talking about a wound at the base of the skull in the back of the head, but he can't remember whether he looked at it or not, he didn't think he did because the body had been "released" by the coroner and once a body has been released all medical work has been done, and they didn't feel that they needed to inspect the body whatsoever. The body then was taken to Central Wisconsin Crematory in Ripon, 748-2623. I talked to the secretary there. Their records indicate he was burned with all of his clothing on, the ashes were mailed back to Mr. Ted Westgor. I talked to Ted, and he in turn gave the ashes to the mother, she was to take them and place them in a mausoleum on Highway 41 next to the Super Slide on Highway 41. The ashes are unknown at this time. I have NOT contacted the mother.

I had a meeting this date also with District Attorney Joseph Paulos, myself, Captain Busha, and Coroner Mike Stelter. We will be obtaining the medical records to obtain the blood type of the deceased, Michael Fitzgibbons.

I further wish to state in this report that on this date Todd Crawford had a confirmed appointment for a polygraph lie detector test on 5/18 at 9:30AM. He called this date to Detective Forseth at 8:30AM to cancel. He stated at this time he wished not to take a lie detector test, he decided to consult with an attorney, and was cancelling.

Note: On 5/16 during last contact with TC he said he would call them 5/17. TC called to cancel polygraph on the morning of 5/18, thus somebody must have contacted TC or vice versa on 5/17 to verify appointment on 5/18, however, no where is said contact cited in machine reports. I mention this because it is just another contact TC had with Det/DA and Det testified after last contact TC was totally cooperative. Lie!

FORSETH 241

Jed

SUPPLEMENT REPORT

OSHKOSH POLICE DEPARTMENT

OSHKOSH, WISCONSIN

1. COMPLAINANT	2. COMPLAINT NO.	3. DATE/TIME	4. PAGE NO.
FITZGIBBONS, MICHAEL T.	9004943	5/18/90	55

ASSIST WCSO (DEAD BODY)

On this date Detective Forseth along with District Attorney Joe Paulos signed an affidavit and search warrant prepared by District Attorney Joe Paulos and took that search warrant to Judge Crane and had Judge Crane sign and authorize to pick up a 1979 Pontiac Catalina 4 door automobile, two tone green in color, WI license #BFE208, VIN #2L69YP251064, at 540 ^{W. 9th St} School.

The officers met Nolte's Service Station personnel, and the car was impounded and brought to the impound area, where it is currently locked and sealed. All of the doors are sealed with tape, also the ^{trunk} truck. Pictures were taken of the car sealed, and the officers made sure that no one can enter the area.

The Crime Lab will be notified on Monday. We have already notified them on a temporary basis that we will be requiring their coming down and searching the vehicle either on Monday or Tuesday.

The officers did attempt to make contact with Mr. Richard Pease Jr. We went to 540 ^{W. 9th St} School. There are various apts. there. We talked at one apt. with Susan Paulin, 233-7085. She stated the fellow she thought we were looking for, the guy who owned the green car in the back, who also drives a white Chevy El Camino, has been living with Shaun LNU. I believe that to be Shaun E. Murphy because I got that off of a 1979 Chevy van with license #AC88-573 a couple of days previous. We went to the apt. that is supposed to be occupied by Shaun, where we found an Elizabeth Roman. She states she had no idea where Richard Pease was, she hadn't seen him for days, she thought he was in jail in Green Bay. We feel that this is not true because Richard has been driving the car and has been seen in the area a couple of days. According to Susan Paulin, Elizabeth Roman is on probation. We will check that on Monday. According to Susan Paulin the apt. there is owned by Clarence Koch of Lampert Street, and she said she and her children have been scared to death, there have been nothing but Zodiacs day and night at the apt.

I then at the direction of the District Attorney notified Todd Crawford that if we didn't hear from him and who his attorney was we would not be offering him any kind of consideration in this complaint whatsoever. He stated his attorney is David Sparr.

FORSETH 241

Rec. # 400 52
24
5/18/90

June 1, 2005

Mark Price #173621
Green Bay Correctional Institution
P.O. Box 19033
Green Bay, Wis.
54307-9033

Dear Mark:

Sorry for the long delay in getting this material to you. My editor quit to take a new job, and the other editors have been too busy to read the story, but I believe I am now back on track to getting it published in the next few weeks.

Enclosed is the documentation I got under the Public Records Law regarding Todd Crawford's polygraph. I got a verbal opinion from Tedd Welch (Theodore Welch and Associates, Inc., Yahara Professional Building, Suite D, 4801 Cottage Grove Road, Madison, Wis., 53716; phone (608) 221-3000 and (608) 221-3600 -- fax). He has more than 30 years of experience administering polygraphs. The following are some of the things he said about the test:

He said the examination was so flawed the results must be considered "inconclusive," meaning it's unclear whether Crawford was lying or telling the truth.

"There's no way those charts say Mr. Crawford is being truthful. No opinion can be rendered based on these."

At the request of the State Journal, Welch spent four hours examining the records of the polygraph administered to Crawford on May 25, 1990. Welch, who was not paid for his work, cited numerous errors in the test, including:

- A malfunctioning instrument that squirted blobs of ink on the paper and styluses that skipped in several locations;
- Insufficient "comparison" questions against which to gauge deception;
- Notations that indicate two of the three times Crawford was questioned, the questioning ended at 11:03 a.m., which would be impossible; and
- Some key questions that were asked only once - rather than twice - as required by the American Polygraph Association.

Because of the flaws, Welch said it's his belief it would be impossible to "render any opinion as to Mr. Crawford's truthfulness or lack thereof." He said about 15 percent of polygraph examinations reach such inconclusive results.

Welch also looked over Forseth's testimony in the post-conviction hearing and said he didn't see the questions Forseth mentioned as having been asked during the polygraph examination.

Looking over the charts and records, Welch said, "This testimony (by Forseth) isn't the same as the questions asked during the examination."

At the request of my editor, I have sent the charts and related documents to two more polygraph experts in Wisconsin -- one who works for the Public Defender's Office and another who's a detective in the Marinette County Sheriff's Department. I should hear from them (I hope) sometime later this week or next. Because of the widespread problems, I expect they'll come to the same conclusion as Welch.

How this could help in your appeal, I'm not sure. However, Sheila and Mike Balskus both said they thought it was significant, and Balskus said he'll be asking the Department of Justice to look into the polygraph as they examine Paulus' tenure in Winnebago County.

Starting later this week, I will be taking the summer off, as planned. However, I will check my voice, snail mail and e-mail frequently so feel free to send along whatever you like. I've also told Byron Lichstein to keep in contact with me regarding your cases. Best of luck, and I'll send the story when it's printed.

Sincerely,

Dee J. Hall
reporter
Wisconsin State Journal

STATE OF WISCONSIN CIRCUIT COURT WINNEBAGO COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

MARK H. PRICE,

Defendant.

Case No. 90 CF 226

AFFIDAVIT OF DAMON HINKLE, SR.

STATE OF WISCONSIN)
)ss.
COUNTY OF DANE)

Damon Hinkle, Sr., the undersigned, do swear and affirm that the following information provided is true:

1. My name is Damon Hinkle, Sr.; I am presently incarcerated in the Wisconsin prison system, Kettle Moraine Correctional Institution.
2. I believe I will not be released and/or paroled until March, 1993, although there is an outside chance I may receive further consideration after my appearance in front of the Parole Board in July, 1992.
3. I am the person who testified at the post-conviction hearing in the matter of State v. Mark H. Price, a first degree murder case in Winnebago County, in December, 1991.

4. At this time, I do have additional information, which I will provide to the Court in a question and answer form, which I believe has great bearing on the issues to which I testified in December, 1991. I wish to state at this time that I fear reprisals for said testimony, not only to me personally, but to my family, and I feel that if I spell out specifically what it is that I have to say about my testimony, my meetings with authorities, my expectations, promises made, etc., I will suffer reprisals.

5. It is my wish to give further testimony relative to my participation in this case; I feel that my testimony is important in that it will shed light on the character of Mark Price as well as that of investigating and prosecuting authorities.

6. That at the time I testified, I was fearful of reprisals, and I wish to supplement my testimony, but I do not wish to do so until I am out of prison where I cannot suffer reprisals.

7. This affidavit is made freely and voluntarily, and at the request of Attorney Daniel P. Dunn, defense counsel for Mark H. Price.

Damon Hinkle Sr.
Damon Hinkle, Sr.

Subscribed and sworn to before me
this 15 day of June, 1992.

Lose A. Oleivier
Notary Public, State of Wisconsin
My commission 3-20-94

I received info from Self to call Sgt Karen Riddle at Columbia Con. 608-742-9100 Ext 353, re: info on a "Hit" on our D.A. and Coroner.

3:25P I called Sgt. K. Riddle, she said she had a C.I. who told her that the C.I. met w/ Mark Price (unintentional) last night in law library at Columbia Con. and told C.I. that he was putting a hit on the Wembley D.A. and Coroner. That Price had contacts on the outside that would do the hit.

also that Price met w/ Pease somehow when they were both at Green Bay Con. and made a tape that cleared Price of the murder he & Pease were convicted of, and that there was some other crime committed that Todd Crawford and a female know of and Price also said that will get him a new trial.

The C.I. wants to talk to the D.A. in person and wants to cut some kind of deal - what is unknown??

Sgt Riddle said she can probably arrange a meeting w/ me or D.A., I told her I'd let D.A. decide.

9:25 3:45P I met w/ D.A. Paulus told him of the above - said I'd leave it up to him - he said he'd take care of it and decide who would talk w/ C.I. - I left tel. # and name w/ him - ref Columbia Con.

D.A. also said to contact X-coroner which I said I would

3:55P I called Stanley Jones 715-341-0050 was told Stalter was off today, called for home phone # he was told he don't have one in St. Pt. but has one in Cmo. asked if he had Roger - said no.

answer machine - w/ T. beats, a my name & #

9-26 10:30A Never heard from Stelter called Stanley again spoke w/ same female as yesterday. She said Stelter did not answer at work yet - had no idea when he'd arrive I left my name & # asked to have him call me - she said OK.

9-26 10:55A Stelter met w me (via phone) I told him in person the info I had and if I heard any more I'd call him - he said he appreciated it and thanked me

[Handwritten signature]

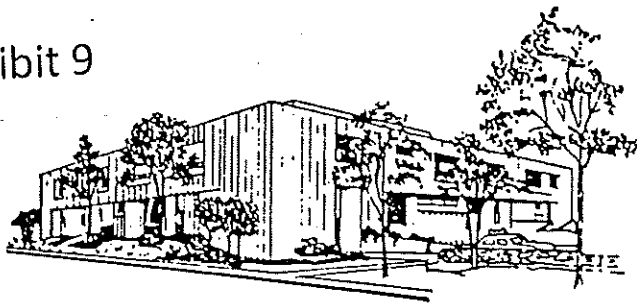
Deputy District Attorney
VINCENT R. BISKUPIC

Exhibit 9

Assistants
ROBERT L. SAGER
JOANNE B. EVANS
THOMAS J. GRITTON
JOHN M. DANIELS

Investigator
RICHARD P. NEEBEL

Victim Witness Coordinator
TERRI S. VAN DELLEN



Public Safety Building
420 Jackson Street
P. O. Box 2808
Oshkosh, WI 54903-2808
Oshkosh (414) 236-4977
Fox Cities (414) 727-2880

Winnebago County
Office of District Attorney
JOSEPH F. PAULUS
DISTRICT ATTORNEY

September 26, 1991

TO WHOM IT MAY CONCERN

Dear Sir:

Please be advised that Oshkosh Police Detective Gerald Forseth was the primary investigator in the first degree murder prosecutions of Richard M. Pease, Jr. and Mark H. Price. Detective Forseth and I have worked closely on these cases both before and after the trials.

We have received information that Mark H. Price is planning or has planned to do physical harm to myself and former coroner Michael A. Stelter. I have asked Detective Forseth to travel to Columbia Correctional Institute and speak with any individuals who may have information pertaining to this report.

Detective Forseth will promptly return to me and inform me of any information available. Any individuals who have information pertaining to this matter are encouraged to cooperate fully with Detective Forseth. In the event you wish to speak with me personally, I will make arrangements to come to Columbia Correctional Institute within the next week. At that time we could discuss the information you possess and how we can ensure your safety in the prison system.

Thank you for your cooperation.

Very truly yours,

Joseph F. Paulus
District Attorney
Winnebago County, Wisconsin

JFP:sh

Joe's
Copy

9-24-91

1:00 pm. Library c.c.F.

conversation between mark
Price and myself.

He told me how he use to
beat people up when they
didn't pay their mancey on
time for drugs.


He told me that he had
this guy in a house and
described what he did. He
said he grabbed the front
of his shirt and pointed gun
at his head and said I
ought to kill you, and he
said he fired the gun but
missed his head on purpose
and bullet went in wall.

mark said something to
the fact that because the
guy was a snitch that he
cut his throat and said
he won't talk no more,

~~mark told me this he said
that if I would write
up a statement for him
saying how R. Pease had
told me in oct of 1990
at DCI that he didn't
even know about what was
going to happen to this
mike that he would see
to it that I do my
remainder 17 months com-~~

comfortable, meaning he would
make sure I had pot to
smoke always and money
in my account and he
could arrange for me to
get a visit 3 days a
week. I told him I was
married, and that I quit
smokin pot but the money
I could use he said then
once he got out he would
pay me 5,000.00 for my
statement. But he also
said if I went against
him I could end up like
mike.

This conversation came
about when mark first




came to C.C.I. And I seen
his name tag. I asked him
if he was the one hooked
up with Pease he said
yes, I then said it was
at DCI with Pease last
year and that he was
bragging on what they
had done, I told him that
Pease told me he got off
on doing it.

mark then started talking
to me daily and then he
brought this to me today

mark says that if he
don't get a re-trial that
he was going to escape
and he told me how he
would do this, and it
would work.

He says he has good
friends inside and out,
and that he can still
have people taken care
of, he said this wasn't
his first job, he said
something else about some
kid but our time ran
out and we had to go
back to the unit.

He wants me to give
him a couple of addresses



of family on the streets
to protect his ass incase
I go against him this
way if I couldn't be
gotten too he could hurt
my family.

This guy is crazy,
very crazy.

He stated that the DA
who did his case is a
fag & takes it up the
ass and that that's
where he's goin' to get
it first, so there must
be a ~~conspiracy to kill~~
~~the DA~~

He also said that if this coroner don't come to prison he was going to be cremated himself, he said that if the body of Mike would of been autopsied it would of proved his story.

I sat there and listened to all he had to say and I agreed to help him.

I was afraid of him and I already have enough of my own problems and he told me some of the guys he knows in the system and they have life or better themselves. I had to sit there and listen what can

ya do ya can't go right
up to the man and say
hey this man just confessed
to a murder and because
I was with a co-defendant
he wants me to write up
a statement for him if
not pow, pow!

shot at the 6th street flyer

CONFIDENTIAL REPORT

Exhibit 11

Type of Original Report:

Date of Original Report:

Complaint Number:

Victim or Complainant:

Location of Original Occurrence:

Date and Time of This Report: 09-30-91

The information on this report is confidential and should be routed by the officer making it to the Bureau or person(s) recorded here: D.A. JOE PAULUS, CHIEF THOME, CAPTAIN BUSHA

REF: MARK PRICE & RICHARD PEASE

INVESTIGATION OF ALLEGED THREATS AGAINST D.A. PAULUS AND FORMER CORONER MICHAEL STELTER.

On 09-26-91 Det. Forseth was contacted by D.A. Joe Paulus who informed me that according to Lt. Karen Radtke of Columbia County Correctional Institution in Portage, WI, phone 608-742-9100 ext. 353, she had information from an inmate that there was conversation between the inmate and inmate Mark Price and also the name Richard Pease had come in the Michael Fitzgibbon murder appeals where Mr. Price allegedly told this inmate there was a "hit" out on the D.A. and former Coroner. At Mr. Paulus' request I talked with Sheriffs Burton and Captain Goggins reference the fact that Lt. Karen Radtke had contacted them on 09-25-91 at 3:30PM reference information regarding the documenting of the statement above. They had done some preliminary investigation, but because of the fact that I was familiar with the case they thought it would be best that I would go and talk with the inmate.

On 09-27-91 Det. Forseth went to the Correctional Institution and I met there with Damon F. Hinkle, DOB 04-26-57, 34 yr. old M/W from Janesville. He is in prison for a parole violation on armed robbery. He also has two charges pending against him through Janesville under Habitual Criminal Repeater Act; one for resisting and one for battery. He stated to me that he had been originally at the Dodge Correctional Institution and at that time he had been

- Page 2 -

in a holding cell with Richard Pease Jr. He had a conversation with Richard Pease Jr. and basically during this conversation Richard Pease was bragging how he had killed a man in a mafioso style shooting; he did not go on to explain. He said that Richard seemed to be very aloof and bragging about it and seemed to get off on telling the story about how he had executed a person.

The next contact Mr. Damon had with anyone was approx. two weeks ago when he was where he is now at the Columbia Correctional Institution in Portage. He saw a man in the yard with the name Price on the name tag. He had followed the Price and Pease murder of Mike Fitzgibbon in the paper and asked Mark Price if he (Mark) was the same person that had been with Richard Pease in the Michael Fitzgibbon case. He stated yes he was and they began to do a lot of talking. During this time Price confided to Pease that he had been in Green Bay prison correctional facility just before arriving at Columbia. He had been there for about two weeks. He had been transferred there and he walked into the chow hall and he couldn't believe it he saw Richard Pease eating. He had plenty of opportunities to talk to Richie Pease Jr. and also many times to collaborate and talk with Richie during yard recreation and also library. According to Price telling Mr. Damon Hinkle, Price stated that Richie made a 25 minute tape and an 8 page document, supposedly notarized, absolving or removing Mark Price from the murder of Mike Fitzgibbon. Supposedly his girlfriend (believed to be Karen Hansen) most likely has the copy of the tape.

Damon went on to state that he and Mark Price had many more meetings and that on 09-24-91 in the library Mark had told him about how he used to beat people up when they didn't pay for their drugs. He told him basically the whole story on the Michael Fitzgibbon case and he did portray himself as actually being the person who was party to this crime. He even stated when they were on the ice, they being Mark Price, Todd Crawford and Richie Pease, that Mark actually took a contact shot to the back of the head and this and the shot of Richie Pease are what killed him and that Todd actually fired away and they don't even know if he hit them.

Damon said of all his conversations with him he believes this guy is very crazy. Mark Price had stated the D.A. who did his case is a fag and takes it

CONFIDENTIAL REPORT

- Page 3 -

up the ass and that's where he's going to get him first. He said if the Coroner doesn't get convicted and come to prison he's going to be cremated himself.

We also talked about Sabrina Bloechl, his girlfriend, and he stated that "The bitch lied on the stand about being gutted like a deer, but if I ever get out of here I will gut her like a deer and hang her by her toes." Price then stated what he was going to do was write out a letter and then wanted Damon to copy this letter and sign his name to it and get it notarized. Basically it was a letter written by Mark Price, which I have a copy of and it is his handwriting, and as is follows:

"I, Damon Hinkle, am writing this statement to tell about a conversation I had with Richie Pease at DCI in _____ (he has written above the line "figure out the month") of 1990.

Then it goes on about how Pease had supposedly told Damon that Mark Price didn't have anything to do with it, he never shot anybody, and he was just puking all over the ice. One of the giveaways in the letter is in the last paragraph. Mark Price does spell a lot of phonetics and the word testify in the third line from the bottom is testiphy instead of fy. Damon was very afraid of Mark Price and he had showed me the letters, the four copies he had written out from the basis of the letter supplied to him by Mark Price and that he was going to get them notarized by the librarian and give them back with the original letter because Price didn't want a copy of that floating around. I xeroxed a copy of Damon Hinkle's letters and also the letter written by Price to Damon.

The inmate Damon Hinkle also gave me an entire tape in his own voice of what Richie Pease had told him. I also have that on tape. I told him I would do what I could to insure his safety in the prison system. I met with Lt. Radtke and her Captain and we discussed the fact that they would be insuring Damon's safety and that he (Damon) was going to spend at least one more night in the ward with Mr. Price just so he (Price) would not become suspicious. Damon also states Price wanted Hinkle's family's address so that he could insure the fact that if Damon talked to the police that Price could get at his

CONFIDENTIAL REPORT

- Page 4 -

family.

On 09-30-91 I was contacted by Diana Hinkle, wife of Damon Hinkle and she states she lives at 1545 Sharon Avenue, Janesville, 608-756-9371. On Saturday past, 09-28-91, she was at visitation at Columbia with her husband and she had her daughter's there and Mark Price kept staring at her. She said he has very penetrating eyes and she was absolutely afraid for herself. I told her I would contact the Janesville Police and have something set up for them going by their house. I assured her the prison system is aware of what is going on and we would make sure we would take every effort to insure her husband's safety.

I have not contacted the prison yet to find out if there was any further information. I told Damon that I did not want him to go back as a plant acting as an agent of the police. If he wished to continue talking with Mr. Price that was alright but I did not give him any other information. Mr. Damon Hinkle also stated that Price told him that this was not the first one he had done, he talked about meaning killed. He talked about some kid but he kind of dwindled off in the conversation and he never did find out what that was involving. He said he was going to go back and see if he could get Mr. Price to talk about that. This was not my suggestion, this was Mr. Hinkle's suggestion.

Price also indicated that he had a lot of money through his girlfriend and that he could get Damon \$5000 when he got out of prison for the letter allegedly by Damon where allegedly Pease tells him at DCI that Price had nothing to do with the murder.

Damon also stated Price told him if he doesn't get out on an appeal he will somehow escape some place. He even outlined a plan where he was going to drink some toilet bowl cleaner and become violently sick. He knew it couldn't kill him but that Price would have to be taken to a hospital because there are no facilities to treat poison within the prison system and that he would have a time and a place and they would have a car outside waiting either to have an accident or cause the ambulance to stop. He would be rescued by his buddies. This information was passed on to Green Bay and evidently there may be

CONFIDENTIAL REPORT


- Page 5 -

something of this nature set in motion for Green Bay with Richie Pease drinking poison or toilet bowl cleaner and trying to escape also. It is unknown at this time if that is true or not, however, it is being documented here because the prison system is aware of it and will do everything they can to make sure the situation does not happen.

The D.A. in Janesville is a Brenna Zachowski. Evidently the charges against Mr. Hinkle are for a battery to his wife and resisting arrest when the officers came to the house. This was on an episode when he was on probation. In speaking with Damon and his wife neither of them wished charges to go forward and what transpired that evening was under the influence of drugs and his real need is drug treatment and not incarceration.

Respectfully submitted,

OSHKOSH POLICE DEPARTMENT

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

DET. FORSETH 241



CITY OF OSHKOSH

Date 8-29-90 JCE:rr

To: D.A. JOE PAULOS
From: DET FJASER
Subject: VERNON WHIGGS

DAVID JANTA, LANDLORD FOR
1230 WALNUT CALLED, NO DEALS.

HE WILL HAVE \$300.00 SECURITY
DEPOSIT AND RENTETS \$150.00 ON
9/1/90 OR HE WILL B.I.R. US.

OWNER WHO LIVES IN
ARIZONA HAS MORTGAGE PROHIBIT
TO MOVE AND WILL NOT WAIT
UNTIL AFTER TRIAL AND HAS
NO SYMPATHY FOR PARTIN INVOLVED

J. J. J.



CITY OF OSHKOSH

Date 8/28/92 2nd PM

To: D. A. JOE PAULUS
From: DET. FORKIN
Subject: VERNON WRIGERS

VERNON WILL GET A BILL FOR
HOUSE AT 21ST (DIT) FROM LAROLD
MATT MOORE AND BANG BILL W.
HE DOES NOT HAVE EXACT AMOUNT KNOWN.

AS FAR AS DAVID FANKE
AND HOUSE ON WALNUT ST.
I WILL BE TALKING TO HIM
TOMORROW (AM) AND OFFER DEAL
OF (1) month RENT AT END of TERM.

THANKS
Denny Forkin

OFFICE OF DISTRICT ATTORNEY
WINNEBAGO COUNTY
Wisconsin

No 7801

Cashless, WI September 5 19 90

RECEIVED OF Office of the District Attorney, Winnebago County
County of Winnebago Check No. 927154 in the amount of \$633.32
FOR Matthew J. Moore

[Handwritten signature]
Matthew J. Moore

IF PAYMENT IS MADE BY CHECK, THIS RECEIPT IS NOT VALID UNTIL CHECK HAS CLEARED ALL BANKS.
STATE UNIFORM SYSTEM - FORM 1298 U.S. MULLER COMPANY



COUNTY OF WINNEBAGO

415 JACKSON STREET
P.O. BOX 2808
OSHKOSH, WI 54803

FOR QUESTIONS CONCERNING THIS PAYMENT PLEASE
CONTACT THE COUNTY FINANCE DEPARTMENT:

CHECK

NO. 927154

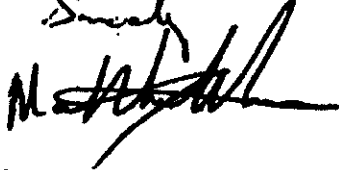
	\$633.32		State vs. Richard Pease, Jr. (Witness relocation expense)
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DETACH AND RETAIN AS YOUR RECORD

To: Detective Foreath

I am the landlord at 2041 Doty St where I have rented to Pam Brescia + Vern Wagers + Ron Anns. I am aware of the situation with Vern testifying. Pam and Vern's share of the 475.⁰⁰ security deposit is \$316.66. Their share of the first months rent is \$316.66.

If you have any questions feel free to contact me.

Sincerely

Matthew J. Moore

6. That I wrote Attorney Frank on September 24, 1990, and told him about my meeting with D.A. Paulus and Detective Gerlad Forseth and that Attorney Frank should contact Paulus to work out a deal on my behalf.

7. That on September 26, 1990, I again wrote Attorney Frank and told him about my conversation with D.A. Paulus and what I could say at trial regarding my conversation with Richard Pease and that I wanted my sentence reduced to 3 years.

8. That on October 20, 1990, I again wrote Attorney Frank after receiving Frank's letter of October 5, 1990, and I requested Attorney Frank contact D.A. Paulus about a deal for my testimony.

9. That before the Richard Pease trial, I had met with Detective Gerlad Forseth and told him in detail about my conversation with Richard Pease in the Winnebago County jail and the fact that Richard Pease had confessed to shooting Michael Fitzgibbons first and that Todd Crawford shot second and that Mark H. Price had turned coward and had not shot.

~~X~~ ~~X~~ *Spoke out J.A.*
10. That detective Gerald Forseth told me that I could not say that Richard Pease had stated Mark H. Price was a coward and had not shot Fitzgibbons since this was not consistent with the statements made by Todd Crawford and that if I wanted the deal, I would have to go with the State's version of the story: that Richard Pease had shot first, Todd Crawford shot second and the Mark H. Price shot third.

11. That I was also told about certain facts of the case which Richard Pease had not told me about; namely, that Michael Fitzgibbons had been beaten on the lake; that Fitzgibbons was down on the ice on the lake begging like a baby to go home; that Pease knelt over Fitzgibbons and then shot Fitzgibbons; that Detective Forseth actually demonstrated how he wanted me to demonstrate how Richard Pease allegedly demonstrated to me in the Winnebago County jail how the shooting took place when in fact Pease had never demonstrated this to me at all.

12. That Detective Gerald Forseth also told me about how Richard Pease had allegedly filed the murder weapons barrel down and sold it for drugs in a bar in Menasha or Neenah, Wisconsin, for some drugs.

13. That Richard Pease had never told me about this at all and Detective Forseth made me testify about this fact if I wanted the sentence reduction.

14. That during the trial, Attorney Brian Mares had questioned me about getting a deal for my testimony which I was told by D.A. Paulus and Detective Gerlad Forseth to deny since it was not in writing and they did not want me looking like my testimony was bought for an agreement to provide testimony against Richard Pease.

15. That during the trial, I did deny that I was granted a deal or consideration for my testimony when asked directly by Attorney Brian Mares since D.A. Paulus looked right at me when I was asked this question "did you get any consideration" which I denied.

16. That Detective Gerald Forseth and D.A. Paulus also told me that if I was ever questioned later about a deal, I was told to only admit I would be transferred from one prison to another for my own protection but really I would be getting a large reduction in my sentence.

17. That I told D.A. Paulus during phone conversations and also to Detective Gerald Forseth that I needed some sign of good faith and wanted certain property that was seized returned to my wife which D.A. Paulus and Detective Forseth arranged prior to my testimony in State vs. Pease to show they would live up to our deal.

18. That during my testimony in State vs. Richard Pease, I did slip up when being cross examined by Attorney Brian Mares since I had not been told by Richard Pease about the filing of the murder weapons barrel; that Detective Gerald Forseth had written in his report that I told him Richard Pease had told me about filing of the weapon's barrel; that I did not know this and Detective Forseth's report was false when it stated: I told Detective Forseth that Richard Pease had told me that he had filed down the murder weapon's barrel when in fact this is what Detective Forseth told me to testify about since this was consistent with their case.

19. That on October 25, 1990, I wrote Attorney Ted Frank informing him that I had testified for the state in the case of State vs. Richard Pease. I was also told by D.A. Paulus and Detective Gerald Forseth that he should proceed to finalize the deal for me ... but the deal had already been made prior to my testimony with the amount of time credit to be granted to be determined.

20. That on November 30, 1990, I wrote D.A. Joe Paulus after being informed by Attorney Ted Frank that D.A. Paulus was not going to reduce my sentence to three years but would be willing to grant some reduction.

21. That on January 4, 1991, Attorney Ted Frank wrote D.A. Joe Paulus sending a copy of a sentence modification and stressing that fact that D.A. Joe Paulus had promised to reduce my sentence for my testimony.

22. That letters, file notes from Attorney Ted Frank, which I have given Attorney John H. Wallace III permission to disclose, show D.A. Paulus agreed, before testifying against Richard Pease, to time served but 5 years was too low and Paulus was concerned the Hon. William Crane would not go along with that amount of reduction.

23. That I was later told by Attorney Ted Frank, despite numerous calls to D.A. Paulus about joining in a motion to reduce my sentence, that Attorney Ted Frank had had no success and would request a local attorney be appointed to appeal my case and challenge D.A. Paulus to give me credit for my testimony.

24. That Attorney Ted Frank that he might need to testify for me in my case since D.A. Paulus did not live up to the sentence modification and that there were notes where D.A. Paulus had agreed to time served prior to my testimony in the Richard Pease trial.

25. That on December 8, 1991, I did receive a letter from Attorney Ted Frank that Attorney

John H. Wallace III would be my new attorney and that Judge Robert Hawley had been assigned to preside on my appeal and sentence modification. That Attorney Frank had also told me about problems he had with Judge Robert Hawley's court as if they were attempting to keep me from proceeding with any motion to modify my sentence and had threatened Attorney Ted Frank.

26. That I subsequently met with Attorney John H. Wallace III who indicated that attorney Frank's notes indicated D.A. Paulus agreed to modify my sentence to time served.

27. That I told Attorney Wallace about the agreement I had made to testify against Richard Pease but never told Attorney Wallace about how I had been coached and made to testify by D.A. Paulus and Detective Gerald Forseth at the Pease murder trial about facts that I did not know.

28. That after several months, Attorney Wallace spoke with D.A. Paulus and informed me that Paulus would agree to time served but that I would have to wait several months so that the Hon. Robert A. Hawley would approve the sentence modification.

29. That Attorney Wallace informed me there was no legal basis to modify my sentence since there was no "new factor" that would allow the court to reduce my sentence by ten to fifteen years and that any such request had no legal basis.

30. That I had written D.A. Paulus a letter after Attorney Wallace was appointed indicating that I expected him to live up to our deal or I would have Attorney Wallace come after him and disclose the nature of our deal although Attorney Wallace had no idea of what had taken place regarding my fabricated testimony in State vs. Richard Pease.

31. That several weeks, Attorney Wallace called indicating Paulus had indicated that we should proceed to file our motion to modify sentence and that co-operation was the basis to have my sentence modified and that we should proceed.

32. On February 7, 1992, a motion hearing was held reducing my sentence from 28 years to 16 years without the Hon. Robert A. Hawley questioning the motion and without D.A. Paulus objecting all based upon my co-operation which was never fully disclosed.

33. That I spoke to Attorney John H. Wallace during the first week of October, 1997, in which Wallace questioned me about State vs. Mark Price which I did not testify at but for which Wallace had been appointed to review by the State of Wisconsin.

34. That I told Attorney Wallace that I knew the truth about Mark H. Price but would not be willing to talk about anything until I was off of parole..

35. That I wrote Attorney Wallace a letter on October 15, 1997, after Attorney Wallace had unwittingly helped me gain my release from prison and told him I would assist Price in his efforts to gain his release from prison after being released from parole.

36. That Attorney Wallace contacted me in January 2010 at which time I told Wallace that

I wanted to clear my soul and tell the truth about what Richard Pease had told me ... that Mark H. Price turned coward and had not shot Michael Fitzgibbons and that D.A. Paulus and Detective Gerlad Forseth told me never to admit to this but claim that Richard Pease had stated that Mark H. Price shot Michael Fitzgibbons when in fact Richard Pease never said this.

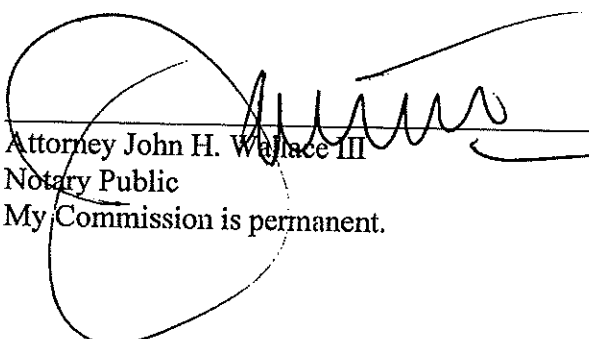
37. That I was also told never to admit to any deal or consideration for my testimony since doing so would make me look non-credible to the jury and that I would have to testify the way Detective Forseth told me to or I would not get the deal to reduce my sentence.

38. That this affidavit is the truth and I have wanted to clear my soul and conscious since I was always concerned about holding back on what Richard Pease had told me in the Winnebago County jail about Mark H. Price's not shooting Michael Fitzgibbons.

Dated the the 16th of February, 2010.

Samuel Griffin

Subscribed and sworn before me
this the 16th of February, 2010.


Attorney John H. Wallace III
Notary Public
My Commission is permanent.

SUPPLEMENT REPORT

Exhibit 15

OSHKOSH POLICE DEPARTMENT

OSHKOSH, WISCONSIN

1. COMPLAINANT	2. COMPLAINT NO.	3. DATE/TIME	4. PAGE NO.
FITZGIBBON, MICHAEL T.	90-04943	5-25-90	76

On the above date and time DET. CHARLEY transported to MADISON the cremated remains of MICHAEL FITZGIBBON. These were first taken to the UNIVERSITY HOSPITAL where they were examined by forensic pathologist, DR. HUNTINGTON. Also taken were 8 by 10 enlargements of the color photographs taken of MR. FITZGIBBON'S body upon its recovery from the FOX RIVER by the WCSO.

DR. HUNTINGTON examined these photographs and also caused the cremated remains to be x-rayed. He thereupon, after consulting also with colleagues, made the following comments: He stated the body had been, in his opinion, in the water definitely longer than 5 to 7 days, how much longer was quite frankly unknown at this time. He also stated the tentative date of 12-27-89, assigned by DET. FORSETH, was reasonable for this body and that the body was in effect "in cold storage".

Reference the ashes, upon examining the x-rays, he indicated that there were a lot of zipper parts visible, however, nothing that could be identified at this time as a bullet. Also he stated there was no evidence of a bullet wound in the photographs shown him and thus he had no basis to make a judgment at this time as to the cause of death. He also indicated he desired the ashes to be left at the CRIME LAB.

Subsequently, therefore, DET. CHARLEY took the cremated remains to the STATE CRIME LAB in MADISON and turned them over to KEN OLSEN. The remains had been sealed in the standard fashion and a property evidence transmittal form had been filled out prior to coming to MADISON.

MR. OLSEN advised he would examine the matter. He stated he would need from the OPD the dental records of the deceased, he also stated he desired to have the data relating to the temperature achieved in the cremation process. He also indicated he may have to grind the remains in order to carry out his purpose, therefore, will need permission from the next of kin.

Also present at this time was CRIME LAB expert RON DIEDRICHS(sp?), who indicated he would desire to have the bullets removed from the apartment over the tavern sent in, as he might be able, upon examination, to provide useful data.

Two of the x-rays, which had been caused to be taken by DR. HUNTINGTON, and receipts for the cremated remains were returned to the OPD and turned over to DET.

GERALD FORSETH.

DET. CHARLEY 242

AFFIDAVIT

SHEILA MARTIN BERRY, having been duly sworn on oath, deposes and says as follows:

1. I am an adult resident of the Commonwealth of Virginia.
2. During the period between July 1, 1988 and November 21, 1990, I was employed as Victim/Witness Coordinator in the Winnebago County, Wisconsin District Attorney's Office.
3. During my tenure in that position, Joseph F. Paulus ("Mr. Paulus") was the District Attorney.
4. During my tenure, Mr. Paulus prosecuted Richard Pease and Mark Price for the premeditated murder of Michael Fitzgibbon, which occurred during December, 1989 in Winnebago County, Wisconsin.
5. Richard Pease was tried with a jury during October, 1990.
6. During the prosecution phase of the trial, Mr. Paulus assigned me to take Richard Pease's girlfriend, Angela Case ("Ms. Case"), to a motel on the day before she was scheduled to testify. I was directed by Mr. Paulus to keep Ms. Case at the motel and not let her have personal or telephone contact with anyone, and on the next day, to bring her to the court to testify.
7. Mr. Paulus told me that he believed criminals associated with Mr. Pease would contact Ms. Case and threaten her to keep her from testifying at Richard Pease's trial. He said this was a precaution to keep Ms. Case from being intimidated.
8. As instructed, I brought Ms. Case to a motel that was located along Highway 41, near Lake Butte des Morts, in Winnebago County, Wisconsin.
9. Ms. Case told me that Mr. Paulus had threatened to have her children taken from her if she did not testify at trial as Mr. Paulus had instructed her to do. She further told me that it

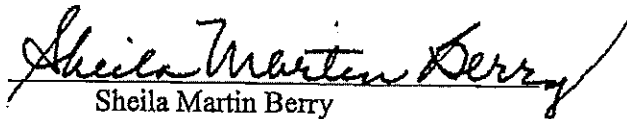
was her belief Mr. Paulus had already ordered her children picked up by social workers and that her children were being held until after she testified.

10. Ms. Case was extremely upset and concerned about her children. Contrary to Mr. Paulus' instructions, I allowed Ms. Case to telephone her home, where she was able to determine that her children were in her mother's care and to speak with them.

11. Although her children were not being held by social workers, Ms. Case remained fearful of losing custody of them. Ms. Case told me that she believed Mr. Paulus would make good on his threat to remove her children.

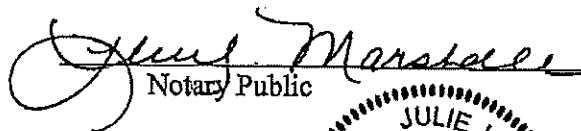
12. Ms. Case subsequently testified at Richard Pease's trial. It is my understanding that Ms. Case testified at Mark Price's trial in 1991 as well. Her children were not removed from her care and custody.

FURTHER YOUR AFFIANT SAYETH NOT.


Sheila Martin Berry

COMMONWEALTH OF VIRGINIA
CITY OF RICHMOND, to-wit:

Subscribed and sworn to before me, a Notary Public in and for the above-named jurisdiction, this 31st day of March, 2010, by Sheila Martin Berry.


Notary Public

My Commission expires: 3/31/2012

Notary No. 220299



STATE OF WISCONSIN : CIRCUIT COURT : WINNEBAGO COUNTY

STATE OF WISCONSIN,

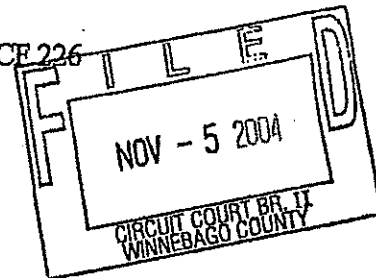
Plaintiff,

v.

MARK H. PRICE,

Defendant.

Case No. 90 CF 226



AFFIDAVIT

SHEILA MARTIN BERRY, having been duly sworn on oath, deposes and says as follows:

1. I am an adult over the age of eighteen and a resident of the Commonwealth of Virginia.
2. From approximately July, 1989 until approximately December, 1990, I was employed in the Winnebago County District Attorney's Office as Victim/Witness Assistance Coordinator.
3. In my employment, I worked closely with prosecutors, as well as victims and witnesses in criminal cases. I utilized the prosecution files in all cases, and did not maintain separate files of my own.
4. During my employment, District Attorney Joseph F. Paulus directed me, as well as other staff members, not to write notes or memoranda regarding case information or case related conversations with investigators, prosecutors, witnesses or crime victims. Mr. Paulus instructed me to "never make a record" because "records are discoverable".
5. In June, 1990, Richard Pease and Mark Price were charged with First Degree Intentional Homicide, Kidnapping, False Imprisonment, Endangering Safety and Reckless Endangerment in the death of Michael Fitzgibbon, which occurred on or about December 1, 1989.
6. During the pendency of the Pease and Price cases, Mr. Paulus warned me and other staff members not to look at the post-mortem photographs of Mr. Fitzgibbon which were contained in the prosecutor's file. Mr. Paulus described the photographs of Mr. Fitzgibbon's face as "horrible" and "sickening" due to a severe beating Mr. Fitzgibbon had sustained prior to his murder. The photographs were contained in a large, clearly marked envelope within the file. Based on Mr. Paulus' representations, I did not view the photographs.

7. On or about October 16, 1990, at the beginning of trial in *State of Wisconsin v. Richard Pease*, Mr. Paulus directed me to take witness Angela Case to a motel on Omro Avenue in Oshkosh, Wisconsin and stay with her there that night and each subsequent night if necessary, until Ms. Case had testified. Mr. Paulus told me he was concerned Ms. Case would be threatened and dissuaded from testifying, and he instructed me to not allow Ms. Case to use the telephone.

8. When I brought Ms. Case to the motel, she told me Mr. Paulus had told her she did not testify at Richard Pease's trial or if her trial testimony differed from the statement she had given investigators and Mr. Paulus, that Mr. Paulus would have her children taken away from her. Ms. Case was concerned that her children may have already been taken into custody, and she wished to phone them to make sure they were well and at home. I allowed her to phone her children. Ms. Case subsequently testified at trial the following day.

9. During the Pease trial, technicians with the Wisconsin State Crime Laboratory waited in my office until they were called to testify. One of the technicians was Coila ("Jo") Wegner. Ms. Wegner told me she was concerned because she had examined the trunk of the car in which Mr. Fitzgibbon's body had allegedly been placed after his murder, and she had been unable to find any indication of blood or bodily fluids in the trunk. Ms. Wegner stated even if the trunk had been thoroughly cleaned, given the extreme beating Mr. Fitzgibbon allegedly sustained prior to his death, she expected to confirm the presence of blood or bodily fluids utilizing luminol reagent.

10. When Mr. Paulus came to my office during a break in trial proceedings, Ms. Wegner told him of her concern regarding the absence of a positive luminol reaction where she expected to obtain a confirmatory reaction. Mr. Paulus told her this was not a problem because the trunk had been thoroughly cleaned. Ms. Wegner testified at the Pease trial; however, she was not among the prosecution witnesses at the Price trial.

11. At trial in both the Pease case and in the Price case, prosecution witness Todd Crawford testified that Michael Fitzgibbon was brutally beaten by Mark Price over an extended period of time, both in the automobile in which Mr. Fitzgibbon was taken to Lake Butte des Morts and on the ice after arrival at the lake. Mr. Crawford testified at both trials that Mr. Fitzgibbon's face was badly damaged due to this beating.

12. Following Richard Pease's conviction on or about October 18, 1990, I prepared a Victim Impact Statement which was filed on or about November 13, 1990. In preparing the Victim Impact Statement, I utilized the prosecution file. Mr. Paulus again warned me to "look out for" the post-mortem photographs of Mr. Fitzgibbon because the photographs were so "horrible". Again, I did not view the photographs.

13. During the early months of 2000, I was contacted through a third party by Mark Price, who indicated he wished me to write to him. I did so and we subsequently established regular correspondence. In the course of our correspondence, Mr. Price forwarded me copies of post-mortem photographs of Mr. Fitzgibbon. In reviewing these photographs, I observed no

evidence of trauma to Mr. Fitzgibbon's face, contrary to Mr. Paulus' repeated claim that Mr. Fitzgibbon's face had been severely beaten.

FURTHER YOUR AFFLIANT SAYETH NOT.

Sheila Martin Berry
Sheila Martin Berry NOV - 5 2004
FILE
CIRCUIT COURT BR. II
WINNEBAGO COUNTY

COMMONWEALTH OF VIRGINIA

CITY OF PETERSBURG, to-wit:

Subscribed and sworn to before me, a Notary Public in and for the aforementioned jurisdiction, by Sheila Martin Berry this 14th day of January, 2004.

Pamela B. Scott
Notary Public

My Commission expires: 3/31/07

STATE OF WISCONSIN : CIRCUIT COURT : WINNEBAGO COUNTY

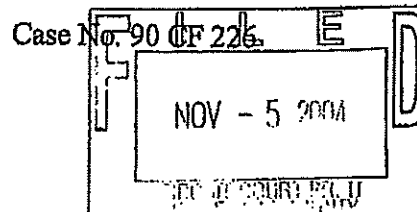
STATE OF WISCONSIN,

Plaintiff,

v.

MARK H. PRICE,

Defendant.

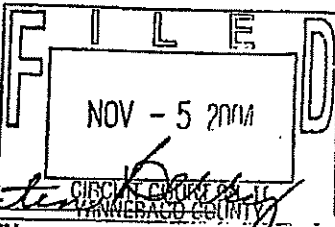
SUPPLEMENTAL AFFIDAVIT

SHEILA MARTIN BERRY, having been duly sworn on oath, deposes and says as follows:

1. I am an adult over the age of eighteen and a resident of the Commonwealth of Virginia.
2. On May 6, 2004, I was contacted by John Wallace, ^{of South} Esquire who represents Mark H. Price with regard to the captioned matter. Mr. Wallace asked me to clarify statements made in ¶¶ 12 and 13 of my previous Affidavit in this case.
3. In the course of preparing the Victim Impact Statement dated October 18, 1990 in *State of Wisconsin v. Richard Pease*, I utilized the Winnebago County District Attorney's file. At that time District Attorney Joseph Paulus warned me to "look out for" the post-mortem photographs of Michael Fitzgibbon because the photographs were so "horrible". Mr. Paulus used the plural form, photographs. He pointed out a 5" x 7" manila clasp envelope containing the photographs. The envelope was approximately ½" thick, a thickness consistent with it containing more than one photograph. Based on Mr. Paulus' representations, I did not view the photographs.
4. In approximately 2001, Mark Price forwarded me copies of a post-mortem photograph of Michael Fitzgibbon which he had received from his attorney, Mr. Wallace. I was shocked to see no evidence of trauma to Mr. Fitzgibbon's face, contrary to Mr. Paulus' claims in 1990.
5. When I determined Mr. Price had sent me several copies of the same photograph, I was puzzled. Based on the thickness of the envelope of post-mortem photographs and Mr. Paulus' use of the plural term, photographs, I had expected to receive six to ten post-mortem photographs of Mr. Fitzgibbon.

6. My expectation of receiving six to ten post-mortem photographs of Mr. Fitzgibbon's body was further based on the normal practice in Winnebago County at the time of Mr. Fitzgibbon's death of using a full 12-exposure roll of film when photographically documenting evidence of a crime or suspicious event. Scene photographs of the recovery of Mr. Fitzgibbon's body would account for some of the exposures, but the subject of the majority of the photographs would have been Mr. Fitzgibbon's corpse.

FURTHER YOUR AFFLIANT SAYETH NOT.

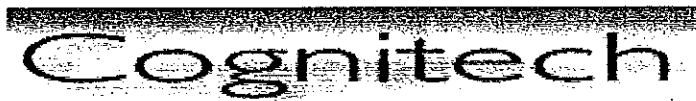
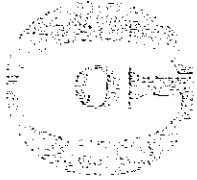

Sheila Martin Berry

COMMONWEALTH OF VIRGINIA
CITY OF PETERSBURG, to-wit:

Subscribed and sworn to before me, a Notary Public in and for the aforementioned jurisdiction, by Sheila Martin Berry this 7th day of May, 2004.


Notary Public

My Commission expires: 8/31/2006



Cognitech® , Inc.

Cognitech, Inc. was founded in 1988, with headquarters in Pasadena, California.

Cognitech, Inc. is a leading developer of real-time image and video processing and analysis software tools, lossless video acquisition cards, and integrated workstation systems for professional use by the thousands of registered users in forensics, law enforcement, bio-identification, vehicles-identification, intelligent CCTV systems, department of defense, homeland security, geo-intelligence (GEOINTEL) and surveillance fields. Cognitech also designs and distributes unique proprietary integrated hardware / software systems with lossless video acquisition for applications that require no loss of imaging information, i.e. bio-medical video acquisition and compact storage solutions.

Cognitech was founded to provide the cutting edge image processing and analysis technology for applications in law enforcement, forensics and bio-medical fields. In 1993 Cognitech played a major role in the trials of the four men charged with beating trucker Reginald Denny in the Los Angeles rioting following the verdicts in the Rodney King Case. Photographs and videotapes were enhanced and analyzed with Cognitech's unique proprietary methods and used by the prosecution to positively identify and convict the criminals. Cognitech image processing algorithms and techniques have been approved for use in the Court of Law through a variety of important decisions by US and Canada Federal and State Courts. Besides providing the most advanced software and hardware products to law enforcement agencies worldwide, Cognitech operates the state of the art forensic imaging lab, advancing Cognitech software products by working on challenging forensic cases throughout the United States and Canada.

In 1996 Cognitech, Inc. introduced a revolutionary commercial product: Cognitech® Video Investigator: a comprehensive professional video processing software suite designed for the law enforcement organizations and security agencies. Cognitech® Video Investigator is comprised of over hundred image and video processing Plug-in tools that include novel capabilities to super-resolve low resolution CCTV video (Cognitech® Frame Fusion), restoring images degraded by noise and blur, video stabilization, mosaic, automatic software-based de-multiplexing (a technique first discovered by Cognitech researchers), motion and shape analysis. The Cognitech software suite also contains unique proprietary Video-Photogrammetry tools to measure the true size of people and objects in video and still images and to perform various bio-metric identification tasks.

In 1999 Cognitech, Inc. released Cognitech® Video Active, the first commercially available Real-Time universal video processing software environment. Cognitech® Video Active is comprised of image processing and identification modules that are graphically connected and assembled by the user which then may be turned on to operate as 24/7 autonomous image processing and analysis system. Some of the tasks that this system may handle include Real-Time enhancement, super-resolution, stabilization, motion/change detection and estimation, license plate detection, license plate coding and decoding, 2D/3D shape tracking, 2-D/3Dshape identification and human face 2D/3D based identification. Cognitech® Video Active also contains of a unique comprehensive automatic single and multi-camera Universal Calibration package for use in CCTV and industrial imaging settings. Cognitech® Video Active real-time software replaces expensive and non-software-upgradeable special-purpose video-processing hardware, used by video professionals.

In 2004 Cognitech, Inc. introduced Cognitech®COG-COMPACT technology for Real-Time lossless video encoding that more than doubles video storage capacity for PC users whose applications demand no loss of image information, e.g. bio-medical, forensic and security applications. Cognitech® Video Workstation is a turn-key solution that integrates Cognitech's proprietary software and lossless Cognitech®COG-COMPACT video acquisition hardware for the most challenging of video imaging applications.

Cognitech's unique technology has been profiled by Wall Street Journal (lead Technology Section article) and Business Week Magazine (Technologies to Watch). Cognitech has received numerous coverage by national networks (FOX, CNN, ABC, NBC, Discovery etc.) and participation in several Discovery, Learning Channel, Unsolved Mysteries Specials, with a most recent principal participation in Discovery Channel Special on forensic analysis of the J.F.K. assassination (solving Grassy Knoll Mystery through use of Cognitech's videogrammetry technology).

Cognitech, Inc.

Cognitech, Inc. was founded in 1988, with headquarters in Pasadena, California. Cognitech, Inc. is a leading developer of real-time image and video processing and analysis software tools, lossless video acquisition cards, and integrated workstation systems for professional use by the thousands of registered users in forensics, law enforcement, bio-identification, vehicles-identification, intelligent CCTV systems, department of defense, homeland security, geo-intelligence (GEOINTEL) and surveillance fields. Cognitech also designs and distributes unique proprietary integrated hardware / software systems with lossless video acquisition for applications that require no loss of imaging information, i.e. bio-medical video acquisition and compact storage solutions.

Cognitech was founded to provide the cutting edge image processing and analysis technology for applications in law enforcement, forensics and bio-medical fields. In 1993 Cognitech played a major role in the trials of the four men charged with beating trucker Reginald Denny in the Los Angeles rioting following the verdicts in the Rodney King Case. Photographs and videotapes were enhanced and analyzed with Cognitech's unique proprietary methods and used by the prosecution to positively identify and convict the criminals. Cognitech image processing algorithms and techniques have been approved for use in the Court of Law through a variety of important decisions by US and Canada Federal and State Courts. Besides providing the most advanced software and hardware products to law enforcement agencies worldwide, Cognitech operates the state of the art forensic imaging lab, advancing Cognitech software products by working on challenging forensic cases throughout the United States and Canada.

In 1996 Cognitech, Inc. introduced a revolutionary commercial product: Cognitech Video Investigator: a comprehensive professional video processing software suite designed for the law enforcement organizations and security agencies. Cognitech Video Investigator is comprised of over hundred image and video processing Plug-in tools that include novel capabilities to super-resolve low resolution CCTV video (Cognitech Frame Fusion), restoring images degraded by noise and blur, video stabilization, mosaic, automatic software-based de-multiplexing (a technique first discovered by Cognitech researchers), motion and shape analysis. The Cognitech software suite also contains unique proprietary Video-Photogrammetry tools to measure the true size of people and objects in video and still images and to perform various bio-metric identification tasks.

In 1999 Cognitech, Inc. released Cognitech Video Active, the first commercially available Real-Time universal video processing software environment. Cognitech Video Active is comprised of image processing and identification modules that are graphically connected and assembled by the user which then may be turned on to operate as 24/7 autonomous image processing and analysis system. Some of the tasks that this system may handle include Real-Time enhancement, super-resolution, stabilization, motion/change detection and estimation, license plate detection, license plate coding and decoding, 2D/3D shape tracking, 2-D/3Dshape identification and human face 2D/3D based identification. Cognitech Video Active also contains of a unique comprehensive automatic single and multi-camera Universal Calibration package for use in CCTV and industrial imaging settings. Cognitech Video Active real-time software replaces expensive and non-software-upgradeable special-purpose video-processing hardware, used by video professionals.

EX. 22

In 2004 Cognitech, Inc. introduced Cognitech COG-COMPACT technology for Real-Time lossless video encoding that more than doubles video storage capacity for PC users whose applications demand no loss of image information, e.g. bio-medical, forensic and security applications. Cognitech Video Workstation is a turn-key solution that integrates Cognitech's proprietary software and lossless Cognitech COG-COMPACT video acquisition hardware for the most challenging of video imaging applications.

Cognitech's unique technology has been profiled by Wall Street Journal (lead Technology Section article) and Business Week Magazine (Technologies to Watch). Cognitech has received numerous coverage by national networks (FOX, CNN, ABC, NBC, Discovery etc.) and participation in several Discovery, Learning Channel, Unsolved Mysteries Specials, with a most recent principal participation in Discovery Channel Special on forensic analysis of the J.F.K. assassination (solving Grassy Knoll Mystery through use of Cognitech's videogrammetry technology).

FORENSIC TAPE ANALYSIS, Inc.

Exhibit 19

Steve Cain
President/C.E.O.
Forensic Scientist
M.F.S.; M.F.S.Q.D.;
D.A.B.F.E.; F.A.C.F.E.

Michael R. Chial, PhD
University of Wisconsin
Scientific Advisor
Board of Directors

Evidence Mailing:
638 W. Main St.
Lake Geneva, WI 53147

Tel: 262-348-1313
Fax: 262-348-0037

Free Consultation
Call Toll Free:
1-877-TAPE EXPERT
(1-877-827-3397)

March 20th, 2002

Wallace & Wallace, S.C.
John H. Wallace III
Algoma Bldg., Ste 9
110 Algoma Blvd.
Oshkosh, WI 54901

FTA CASE FILE # 00-074
RE: State v. Mark A Price Photo Enhancement

Dear Attorney Wallace,

Please find enclosed the requested photo enhancements generated from the original court exhibits sent to our office. The printed images are representations of the digitized forms that were used for analysis regarding this case.

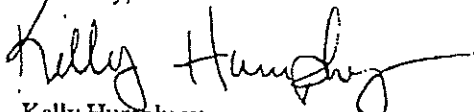
I adjusted the levels of the digitized image in order to better determine if there were obvious injuries, cuts, or abrasions to the face of the victim. As advised per our phone conversation on March 19, 2002 I am unable to draw any medical conclusions, however, the victim's face in the photograph provided to our office does not appear to have sustained any apparent cuts and abrasions other than what appears to be a small cut near his right eye. There is also an area of darkness near the victim's nose that would be consistent with blood although a cut is not apparent.

Please be advised that I was unable to perform any point-by-point comparisons of the deceased with that of a living photograph. To accurately compare the bridge of the nose and other facial features I would need to compare the court exhibit with a living photograph that depicted a profile shot of the victim looking over his left shoulder. However, my preliminary opinion based on the court exhibit alone is that the victim's nose does appear to be intact without any obvious deformities.

I will maintain custody of the original photographs until you advise me to return the evidence to your office. Please feel free to contact me with any further questions or concerns you have concerning this case.

Thank you for the opportunity to assist you in this matter.

Sincerely,



Kelly Humphrey
Video Technician

Toll Free: 1-877-TAPE EXPERT (877-827-3397)

MEMO

TO: Joseph F. Paulus
District Attorney

FROM: Lt. Michael Brooks
Winnebago County Sheriff's Dept.

RE: Death of Michael Fitzgibbon

DATE: July 18, 1990

This memo is in reference to the events surrounding my conversations with you and an informant as they relate to the death of Michael Fitzgibbon.

On May 6, 1990 at approximately 12:20 p.m. I received a phone call from Sgt. Gerry Cottrell of the Winnebago County Sheriff's Department. Sgt. Cottrell related that he had a female informant in his office who wished to give us information on Michael Fitzgibbon's alleged drowning. Sgt. Cottrell states that the female informant related to him that this was not a drowning, but in actuality was a homicide.

At approximately 1:00 p.m. on May 6, 1990, I arrived at the Winnebago County Sheriff's Department where I met with a female informant who related a story to me wherein she states Michael Fitzgibbon was beaten and eventually placed underneath the ice in the area of Oshkosh, Wisconsin sometime in December of 1989. As you will recall at approximately 2:00 p.m. on that date I called you at your residence and advised you of the information that I had received from this informant. Further, I advised you that I would contact you later that evening after I had done some preliminary investigation into this event.

I did speak with you at approximately 7:00 p.m. on the night of May 6, 1990 and filled you in on the story as related to me by the female informant. A quick synopsis is that in December of 1989 Michael Fitzgibbon was at a house party above the Sixth Street Flyer in the City of Oshkosh where he was subsequently beaten by Mark Price, Pease and a third party known only to her as Todd LNU. After the beating took place, the three aforementioned individuals took Mike Fitzgibbon from the residence, cut a hole in the ice in an area near Oshkosh and placed Michael Fitzgibbon's body underneath the ice. The informant went on to state that as the story had been related to her Fitzgibbon either awoke or began to struggle at that point and shots were fired at him. The informant stated it was unknown whether or not Fitzgibbon was struck by any of the bullets. At that point, you questioned if an autopsy had been performed. I advised you that I had been told by Sgt. Steinert of the Oshkosh Police Department that he believed an autopsy had been done on

Michael Brooks

Fitzgibbon. When you questioned me about the lack of gun shot wounds or signs of a beating be revealed at the time of the autopsy I advised you that the informant was not sure that Fitzgibbon had suffered any gunshot wounds. Additionally the reports didn't indicate any signs that the body had been beaten. Further I told you that I had attempted to contact the Coroner Michael Stelter, but Stelter was not in town. I had then contacted Deputy Coroner Lingnofski, who advised me he did not have any records as they would relate to the death of Michael Fitzgibbon. I told you I would be contacting Coroner Michael Stelter on the morning of May 7, 1990 to find out the results of the autopsy.

On May 7, 1990 at approximately 8:30 a.m. I spoke with Coroner Michael Stelter, advised him of the information as previously stated in this memo, and Coroner Stelter stated that he would come to the Sheriff's Department on the a.m. of this date with his reports and discuss this matter. Late in the morning of May 7 at approximately 11:30 a.m., Michael Stelter came to my office and advised me that he had reviewed his notes and found that an autopsy had not been performed on Michael Fitzgibbon. Coroner Stelter further stated to me that he couldn't understand why an autopsy hadn't been done due to the fact that he had written in his notes, "Post," which is a term to indicate that an autopsy should be done. I advised him to contact Cpt. Busha of the Oshkosh Police Department and I subsequently notified you of this information.

Michael Brooks

BILLY J. BAUMAN, M.D.
CONSULTANT-FORENSIC PATHOLOGY

12 BLUE SPRUCE TRAIL
MADISON, WISCONSIN 53717
(608) 829-3575

September 30, 2003

John A. Wallace III, Attorney-at-Law
Wallace & Wallace, S.C.
Algoma Building, Suite 9
110 Algoma Boulevard
Oshkosh, Wisconsin 54901

Re: State of Wisconsin v. Mark Price
Case No. 90CF226

CONSULTATION REPORT

In my 45-year career as a pathologist, sub-specializing in the field of Forensic Pathology for the last 40 years, conducting over 4000 autopsies, serving as a forensic pathology consultant for the Wisconsin State Crime Laboratory, and being involved in at least 2500 forensic death investigations, I consider the death investigation in this case of the murder victim, Michael Fitzgibbons, to be the most incomplete and incompetent of any case in which I have served as a consultant. During our conferences I have discussed with you at length my opinion of the many deficiencies and incompetence of the death investigation and consider it redundant and unnecessary to reiterate these opinions here. The most glaring deficiency, of course, was the lack of a complete autopsy.

The specific questions you requested me to address in this report were in regard to the court testimony given by Todd Crawford who stated he witnessed the victim, Michael Fitzgibbons, to have been struck with fists and kicked in the face and head 30 to 60 times prior to the time he was allegedly shot in the back of the head and again severely kicked in the face and head 30 to 60 times more while the defendants in this matter kicked the corpse through a hole sawed in the ice into Lake Butte des Morts near Oshkosh, Wisconsin.

Upon reviewing and comparing premortem facial photos and the solitary enhanced postmortem right profile facial photo of Michael Fitzgibbons, I do not consider Todd Crawford's testimony credible. If Fitzgibbons' head and face had received the severe pummeling, both antemortem and postmortem as described by Crawford's testimony one would undoubtedly see residuals of blunt force trauma such as lacerations, bruises, swelling, and facial deformity consequent to fractures of facial bones including the nose. The postmortem photograph shows no discernible features indicative of trauma. The apparent swelling of soft tissues about the right eye could merely be postmortem artifact consequent to long immersion in icy water.

Todd Crawford, in court testimony, also stated that prior to Fitzgibbons' beaten body being kicked through a hole in the ice, he witnessed the defendants, Richard Pease and Mark Price, each separately firing a single shot into the back of Fitzgibbons' head with a handgun, the muzzle of which was in contact with the scalp. Coroner Mike Stelter, in court testimony, stated that during his alleged second examination of Fitzgibbons' unclothed body in the funeral home he noted no residuals of facial or body trauma. He also alluded to the fact that he noted wounds in the back of the head; however, he made no effort to describe these wounds. He also stated that he intended to order an autopsy, but, inexplicably, shortly thereafter he authorized the body be cremated, which precluded an autopsy. In view of their conflicting testimonies, I question the credibility of both Todd Crawford and Coroner Mike Stelter.

Moreover, I consider it pertinent to comment that Dr. Robert Huntington, forensic pathologist and professor of pathology at University of Wisconsin Medical School and Hospitals, according to court trial transcript testified that he could discern no evidence of trauma or injury residuals in the postmortem facial photograph of Michael Fitzgibbons.


Billy J. Bauman, M.D.

BILLY J. BAUMAN, M.D.
CONSULTANT - FORENSIC PATHOLOGY

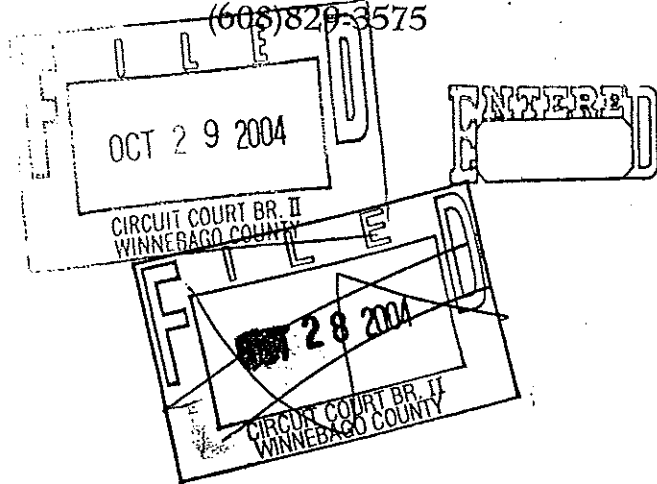
12 BLUE SPRUCE TRAIL
MADISON, WISCONSIN 53717

(608)829-3575

October 26, 2004

John Wallace, Attorney-at-Law
Wallace & Wallace, S.C.
Algoma Building, Suite 9
110 Algoma Boulevard
Oshkosh, Wisconsin 54901

Re: State of Wisconsin v. Mark Price
Case No. 90CF226



Dear Attorney Wallace:

After discussions with you and upon further perusal of data pertinent to this case, especially the court deposition testimony of Michael Stelter, then Winnebago Co. Coroner, we both considered it necessary that I make an addendum report to my Pathology Consultation Report of September 30, 2003, to further clarify my questioning the credibility of Coroner Stelter's court deposition testimony.

Addendum Report to Pathology Consultation Report (9/30/03)


Upon repeatedly reading Mike Stelter's court deposition testimony given during the Preliminary Examination on June 19, 1990, I consider his testimony to be vague, conflicting, confusing, implausible, and, in part, unbelievable. He reportedly was Winnebago Co. Coroner for fourteen years and certainly should have been capable of performing a satisfactory death investigation, including a thorough examination of the body. On page 38 of the deposition testimony he asserts that he actually performed two examinations of the body. The first examination at the scene where the body was pulled from the Fox River on March 21, 1990, took about two hours. The second examination about an hour later was at the funeral home and also took about two hours. Thus, he states that he examined the body for over four hours (page 39 of deposition testimony). Earlier in the deposition testimony (page 31) he states that he examined the body in the funeral home, at that time making definitive identification and noting evidence of a "contusion" on the back of the head behind the left ear, which he attributed to blunt trauma.

I received information (not elicited in deposition testimony) from Attorney John Wallace that Coroner Stelter, while visiting the mother of the deceased in Neenah, Wisconsin, received a phone call from a funeral home assistant at about 6:15 p.m. on March 21, 1990, at which time he authorized the release of Michael Fitzgibbons' body for funeral and cremation. He then reportedly returned to the funeral home at about 6:50 p.m. on March 21, 1990, and according to deposition testimony further examined the naked body for about two hours noting the previously described wound in the back of the head. When questioned if he noted any wounds consistent with a gunshot wound he answered, "I'm not sure how to answer that."

I am indeed puzzled by Stelter's assertion that he examined the body a second time in the funeral home. If he then first noted a wound in the back of the head which could possibly have been a bullet wound, why did he not rescind the authorization for release of the body for funeral and cremation which he had done about an hour previously? Moreover, it seems incredible that he did not change the cause of death on the death certificate from drowning to suspicious and order a complete autopsy. I, therefore, really doubt that he examined the body a second time in the funeral home.

If any further clarification is needed, please let me know.

Sincerely,


Billy J. Bauman, M.D.
Forensic Pathologist

Fontaine Consulting Services

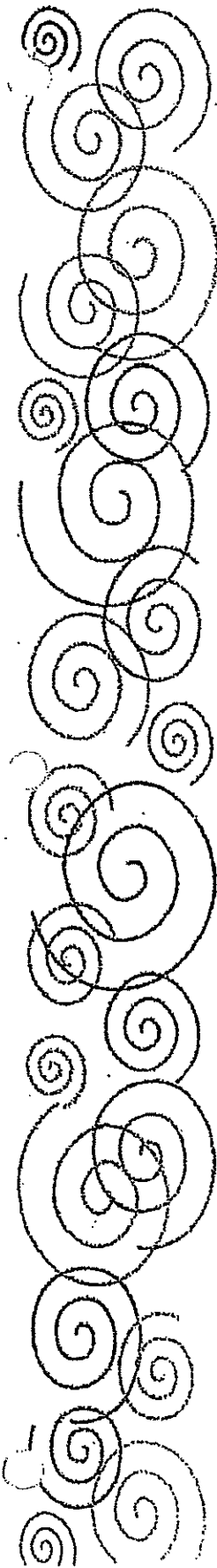
414 South Marr Street
Fond du Lac, WI 54935

Phone Number (920) ~~924-0811~~ ²³⁸⁻⁹⁵⁰⁰
Fax Number (920) ~~924-0987~~
Cell Number (920) 226-1599

Email: CSEKInvestigator@aol.com

Fax Transmittal Form

To: Sheila Martin-Berry
 From: Cheryl Fontaine-Kempf
 Date Sent: 7/30/06
 Phone: () _____
 Number of Pages: 6 including cover sheet
 Fax: (804) 780-1813



JUROR SURVEY

NAME: Colleen Rala DATE: 2-18-05

ADDRESS: 4108 Banks Dr

La Crosse, WI 54601

TELEPHONE: 608.788-6326

After reviewing the attached documents, I feel if this evidence had been presented to me at the trial I would have;

VOTED THE SAME

CHANGED THE WAY I VOTED

UNDECIDED

COMMENTS:

All the evidence must be heard
by the jury for a fair trial. But
because of my muscle syndrome
I would be unable to be a juror
again.

We want you to understand that you are not obligated to speak with us regarding this matter or fill out this form these are strictly voluntary on your behalf and we greatly appreciate your opinion and time you have given us in this case.

Colleen Rala
Signature

2-18-05
Date

JUROR SURVEY

NAME: Arthur Engb DATE: 11-11-04
ADDRESS: W5911 Apple Orchard Lane
Lafayette, La 70501
TELEPHONE: 608-788-4917

After reviewing the attached documents, I feel if this evidence had been presented to me at the trial I would have;

- VOTED THE SAME
 CHANGED THE WAY I VOTED
 UNDECIDED

COMMENTS:

We want you to understand that you are not obligated to speak with us regarding this matter or fill out this form these are strictly voluntary on your behalf and we greatly appreciate your opinion and time you have given us in this case.

Arthur Engb
Signature

11-11-04
Date

JUROR SURVEY

NAME: Frances Ellefson DATE: 11-11-04

ADDRESS: N 1775 Birchview Rd.
La Crosse, Wi.

TELEPHONE: (608) 788-1490

After reviewing the attached documents, I feel if this evidence had been presented to me at the trial I would have:

VOTED THE SAME

CHANGED THE WAY I VOTED

UNDECIDED

COMMENTS:

We want you to understand that you are not obligated to speak with us regarding this matter or fill out this form these are strictly voluntary on your behalf and we greatly appreciate your opinion and time you have given us in this case.

Frances A. Ellefson
Signature

11-11-04
Date

Dodge
414-324-5577

9/24/90

To: Ted N. Frank
Attorney at Law
310 South Iowa St.
Dodgeville, Wis. 53533

From: Samuel L. Griffin #73452
P.O. Box 661
Waupun, Wisconsin. 53963

Dear Mr. Frank,

I am writing this letter to inform you that the Oshkosh District Attorney was here to visit me today to discuss a deal. This deal involves my giving testimony in an upcoming murder trial which is scheduled for Oct. 17, 18 and 19.

Would you please contact Mr. Paulus and inform him that I'm willing to deal providing he puts his offer in writing.

If you need to talk to me you can set it up through my social worker here. Her name is Janet Bloodow.

If you need to convey any messages to me, you may also do so, by contacting my wife, Jennifer Rohr. Her phone number is 414-233-5723. She comes here regularly.

Sincerely yours
Samuel Griffin

I am waiting to hear from you. Thank
you for your anticipated cooperation.

Sincerely yours,
Samuel Griffin #3456

Sept 26, 1990

To: Ted Frank
Attorney at Law
310 Iowa St.
Dodgeville, Wis. 53533

From: Samuel Griffin #3452
P.O. Box 661
Waupun, Wisconsin. 53963

Dear Mr. Frank,

I am in the process of negotiating a deal with Joe Paulus. I spoke with him on the 26th by phone. At that time, I expressed a willingness to testify providing certain conditions were met. One of the conditions involve the modification of my sentence. I am asking that my sentence be changed from 28 yrs. to 3 yrs. Mr. Paulus indicated that I should have you file the motion citing my co-operation in the Pease trial as grounds for the modification. Further, if this can be worked out, I will drop my appeal, providing the sentence I receive is 3 yrs.

Also, there is a letter in Yolanda Springfield's possession from Richard Pease. This letter is of an exculpatory nature. This letter should have some kind of impact on the nature of my case. If you can get it from her it may help.