

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

Richard Allen Masterson, Petitioner

VS.

The State of Texas, Respondent

CAPITAL CASE
MR. MASTERSON'S EXECUTION IS SCHEDULED FOR
JANUARY 20, 2016, at 6:00 pm CST

PETITION FOR A WRIT OF CERTIORARI TO
THE TEXAS COURT OF CRIMINAL APPEALS

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QUESTION PRESENTED

When the State presents false, or misleading, evidence in a capital case regarding cause of death, does due process require that Petitioner be given an opportunity to develop the issue through a fact-finding proceeding?

LIST OF PARTIES

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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

Richard Allen Masterson, Petitioner

VS.

The State of Texas, Respondent

**PETITION FOR A WRIT OF CERTIORARI TO
THE TEXAS COURT OF CRIMINAL APPEALS (TCCA)**

Petitioner respectfully prays that a writ of certiorari issue to review the TCCA's dismissal of his subsequent writ of habeas corpus

OPINION BELOW

TCCA's denial of petitioner's subsequent writ of habeas corpus appears at Appendix A.

JURISDICTON

The TCCA has explicitly established that it maintains exclusive jurisdiction over a capital conviction and sentence of death. *State ex rel. Holmes v. Third Court of Appeals*, 885 S.W.2d 389, 395-96 (Tex. Crim. App. 1994). However, that court has refused to consider petitioner's claims through a writ of habeas corpus, leaving petitioner with no other option for state court review. This petition is timely and the jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

Fourteenth Amendment to the United States Constitution: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioner was found guilty of capital murder and sentenced to death. Petitioner filed a subsequent writ of habeas corpus alleging, among other things, that petitioner's due process rights were violated because the State presented false, or misleading, evidence regarding the complainant's cause of death. The TCCA found that the pleading did not meet the requirements, under state law, for a subsequent writ and denied the pleading without considering the merits.

REASONS FOR GRANTING THE PETITION

The TCCA's dismissal of petitioner's subsequent writ without consideration of the merits or remand for fact-finding violates petitioner's right to Due Process under the Fourteenth Amendment of the United States Constitution

Under the Eighth Amendment, "the qualitative difference of death from all other punishments requires a correspondingly greater degree of scrutiny of the capital sentencing determination." *Caldwell v. Mississippi*, 472 U.S. 320 (1985). And it is as much the duty of the State to refrain from improper methods calculated to produce a

wrongful conviction as it is to use every legitimate means to bring about a just one. *Berger v. United States*, 295 U.S. 78 (1935).

In 2009, the Court of Criminal Appeals found that even the unknowing use of false testimony by the State violates a defendant's due process rights. *Ex parte Chabot*, 300 S.W.3d 768, 770 (Tex. Crim. App. 2009). The State's theory at trial was that Petitioner strangled the complainant during the course of a robbery. Petitioner has never denied that he restricted the complainant's airflow, but only that it occurred during a consensual sexual encounter. When the complainant's body was found, he was nude. His face and shoulders were resting on the floor, while his legs and lower torso were on the bed. Due to gravity, the blood in the complainant's body had pooled into his face and upper extremities. There were no signs of forced entry or a struggle. (Appendix B).

Pertinent facts raised in petitioner's subsequent writ

Dr. Paul Shrode testified that the complainant died from external neck compression and that the manner of death was homicide. Dr. Shrode reached this conclusion from petechial hemorrhages in the eyes. (Appendix B; RR XVIII 205). But petechiae in the eyes are supportive of manual strangulation only when there are other findings in the neck. (Appendices C, D).

Dr. Shrode also testified that there were very small hemorrhage areas on the complainant's windpipe, which would be consistent with manual strangulation. (RR

XVIII 205). However, the autopsy report noted no internal neck injuries and no discoloration of the tissue, and no internal petechiae. (Appendix B).

To support his theory that the complainant's death was intentional, Dr. Shrode pointed out that abrasions and contusions on the complainant's left hand were consistent with a struggle "prior to his death." (RR XVIII 206). Yet, there was no physical evidence to support this. Dr. Shrode did not testify to the color or size of the injuries, and there is no documentation in the autopsy report of contusions on the hands. (Appendix B; RR XVIII 205, 206). The complainant's body was in a state of pronounced lividity at the time of the autopsy, making interpretation of any contusions difficult unless they were incised into. (Appendix C). Dr. Shrode did not note or testify that he incised the injuries to determine whether the discoloration was from lividity or truly a contusion. (Appendix C). No microscopic sections were taken for dating. (Appendix C). Even if bruising was present, there is no reliable way to determine how old they were and whether they were caused near the time of death. (Appendix C).

Whether the contusions actually existed and their apparent age is critical, as the reference to them may have led the jury to believe that the complainant had offensive injuries consistent with an altercation. This inaccurate conclusion supported the State's theory that the death was intentional.

Dr. Shrode's report exhibits a "general lack of knowledge [regarding] heart pathology." (Appendix C). Dr. Shrode ruled out that the complainant died from a

heart attack because there was no hemorrhaging in the heart muscle. (RR XVIII 207, 209, 210). However, there would be no visual findings of the event in the heart tissue if one died immediately from that event. (Appendix C). And no independent examination can be conducted because the doctor failed to retain microscopic sections of the heart. (Appendix C).

Dr. Shrode's misleading testimony is especially concerning given the more recent revelations regarding his employment history. The doctor testified in the 1997 capital murder trial of Richard Nields in Ohio. (Appendix E). Mr. Nields was accused of murdering his girlfriend by strangulation. (Appendix E). The jury convicted Mr. Nields and sentenced him to death based, in part, on Dr. Shrode's testimony. (Appendix E).

In 2010, a clemency hearing was conducted. Dr. Robert Pfalzgraf supervised Dr. Shrode at the Hamilton County Coroner's Office in Cincinnati, Ohio from December 1996 to June 1997. (Appendix F). He also signed the autopsy report for the complainant. (Appendix F). Prior to the clemency hearing, he reviewed Shrode's testimony for the first time. (Appendix F) Although Dr. Pfalzgraf agrees with the autopsy findings, he disagrees with several conclusions Dr. Shrode testified to during the trial. (Appendix F). A summary of the testimony and contradictions follow.

Dr. Shrode testimony	Dr. Pfalzgraf's affidavit
Injuries to the c/w's head were inflicted 15 min-6h prior to strangulation.	The age of bruising can only be estimated by evidence of healing. The c/s's bruises showed no evidence of healing. No conclusions can be drawn regarding the age of the injuries.
Dated the bruising by relying on rigor mortis. He also attempted to establish a gap between the c/w's injuries and her death using the onset of rigor mortis.	Rigor mortis has no relevance to when trauma is sustained. "The only thing that can be scientifically established from rigor mortis is that it occurs after a person is dead."
The c/w's injuries indicate that she lost sustained a concussion and lost consciousness. This explains the lack of defensive wounds.	Fractures and bruising are indicative of injuries, not a loss of consciousness. There is no evidence the c/w sustained a concussion or lost consciousness.
The c/w was unconscious when she was strangled to death.	Shrode's testimony that the c/w was beaten 15min-6h before her death was incorrect. This could have occurred in a single act or two separate attacks.
The lack of DNA evidence from the c/w's fingernails indicates she lost consciousness.	Incorrect. It is rare for the fingernails to collect evidence during a crime.
Used the presence of petechial to determine time of death.	Incorrect. The only thing petechial may be indicative of is strangulation.

(Appendices E, F)

Mr. Nields was initially indicted for murder, a crime that is ineligible for the death penalty under Ohio law. (Appendix E). Based upon what Dr. Shrode would testify to, the case was re-indicted, exposing Mr. Nields to the death penalty. (Appendix E). It was not until the State learned what Nields would testify to did they believe they could establish prior calculation and design. (Appendix E). Without Dr. Shrode's flawed testimony, the State's entire approach would have been different.

The State also relied on the timeline established by the doctor throughout the guilt phase of the trial. (Appendix E). Significantly, the trial judge relied heavily on Dr. Shrode's findings when imposing the death sentence. ("The uncontroverted facts and exhibits reveal that the defendant first brutally beat the decedent, and at some time at least fifteen minutes later, the defendant returned to strangle Patricia Newsome to death."). (Appendix E). As a result of the evidence adduced during the clemency hearing, Nields' sentence was commuted from death to life in prison. (Appendix E).

Dr. Shrode's tendency to outright lie, or exaggerate the truth, continued. On May 27, 1997, Dr. Shrode applied for a position with the Harris County Medical Examiner's Office. (Appendix G). There, the doctor claimed to have a paralegal degree from Southwest Texas State University. (Appendix G). Years later, when applying to the El Paso County Medical Examiner's Office, Dr. Shrode changed his credentials. On that application, he claimed that he obtained a graduate law degree from Southwest Texas State University. (Appendix H). In 2007, the doctor testified that he has a "degree in law from the graduate school of political science." (Appendix I). He also claimed to have attended one year of law school. (Appendix I). However, according to the University, the doctor attended the school for only one semester and did not obtain a degree. (Appendix J).

While employed with the Harris County Medical Examiner's Office, Dr. Shrode was reprimanded several times for his work. Mistakes included rendering an

incorrect opinion regarding the cause of death. (Appendix K). The doctor also had a difficult time keeping up with the demands required of his job. He was reprimanded for maintaining a significant backlog and was even prohibited from conducting any new autopsies for three days in order to address the issue. (Appendix L).

In 2010, an El Paso County judge publicly stated that he has “lost confidence in Dr. Shrode.” (Appendix J). Due to the doctor’s history of dishonesty and the results in the Nields’ case, Dr. Shrode was eventually fired as the Chief Medical Examiner in El Paso County. (Appendix M).

The requirements to raise an issue in a subsequent writ under the
Texas Code of Criminal Procedure

A court may not consider the merits on a subsequent writ of habeas corpus application unless the application contains sufficient specific facts establishing that: “(1) the current claims and issues have not been and could not have been presented previously in a timely initial application or in a previously considered application filed under this article or Article 11.07 because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application.” TEX. CRIM. PROC. CODE ANN. § art. 11.071 (West 2013).

Additionally, an applicant may bring a claim in a subsequent writ if there is new scientific evidence that was not available during the person’s trial, or new scientific evidence contradicts evidence adduced at trial. Relief may be granted if:

(A) relevant scientific evidence is currently available and was not available at the time of the convicted person's trial because the evidence was not ascertainable through the exercise of reasonable diligence by the convicted person before the date of or during the convicted person's trial; and

(B) the scientific evidence would be admissible under the Texas Rules of Evidence at a trial held on the date of the application; and

(2) the court finds that, had the scientific evidence been presented at trial, on the preponderance of the evidence the person would not have been convicted.

TEX. CRIM. PROC. CODE ANN. § art. 11.073 (West 2013).

The TCCA did not firmly recognize that the State violates due process when it unknowingly offers false testimony in a trial until 2009. *Chabot*, 300 S.W.3d at 771; *see Ex parte Chavez*, 371 S.W.3d 200, 207 (Tex. Crim. App. 2012) (in context of determining whether Chavez had overcome bar on successive writs, explaining that *Chabot* constituted “new, previously unavailable legal basis” by recognizing due-process claim based on State’s unknowing use of false evidence).

Petitioner’s claim was a valid subsequent writ under article 11.073 because, a preponderance of the evidence establishes that, had the jury considered this newly available scientific evidence, it would not have convicted applicant of capital murder. Petitioner has made a *prima facie* case that this newly available evidence contradicts what was available during trial and at the time the initial writ of habeas corpus was filed. *See Ex Parte Robbins*, No. WR-73,484-02, 2014 WL 6751684, at *8 (Tex. Crim.

App. Nov. 26, 2014), *reh'g granted* (May 13, 2015) (Medical examiner's post-trial reconsideration regarding the cause and manner of death was new scientific evidence that contradicted evidence the State relied upon at trial.

Like the judge in El Paso County, no Court can have confidence in Dr. Shrode's testimony. Because the TCCA had not yet expressly recognized the type of claim at issue in this case as of the time of petitioner's prior habeas proceedings, and because his claim is based on new facts and science that have emerged since the time of his trial and subsequent writ, the TCCA's refusal to consider the merits of the claim, or remand the cause for fact-finding, violated petitioner's right to due process.

CONCLUSION

For the reasons stated above, this Court should grant petitioner's writ of certiorari.

Respectfully submitted,



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Appendix A



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-59,481-03

EX PARTE RICHARD ALLEN MASTERSON, Applicant

**ON APPLICATION FOR POST-CONVICTION WRIT OF HABEAS CORPUS
AND MOTION TO STAY THE EXECUTION IN CAUSE NO. 867834
IN THE 176TH JUDICIAL DISTRICT COURT
HARRIS COUNTY**

Per curiam. ALCALA, J., would stay the execution.

ORDER

This is a subsequent application for a writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071 § 5, and a motion to stay applicant's execution.

In April 2002, a jury found applicant guilty of the offense of capital murder. The jury answered the special issues submitted pursuant to Texas Code of Criminal Procedure Article 37.071, and the trial court, accordingly, set applicant's punishment at death. This Court affirmed applicant's conviction and sentence on direct appeal. *Masterson v. State*,

155 S.W.3d 167 (Tex. Crim. App. 2005). This Court denied relief on applicant's initial post-conviction application for a writ of habeas corpus, and it later dismissed applicant's first subsequent writ application. *Ex parte Masterson*, No. WR-59,481-01 (Tex. Crim. App. Aug. 20, 2008)(not designated for publication) and *Ex parte Masterson*, No. WR-59,481-02 (Tex. Crim. App. Dec. 19, 2012)(not designated for publication).

On December 29, 2015, counsel filed in the trial court this second subsequent application for a writ of habeas corpus, in which he raises six claims. After reviewing applicant's subsequent application, we find that he has failed to satisfy the requirements of Article 11.071 § 5. Accordingly, the application is dismissed as an abuse of the writ without reviewing the merits of the claims, and the motion to stay the execution is denied. Art. 11.071 § 5(c).

IT IS SO ORDERED THIS THE 11th DAY OF JANUARY, 2016.

Do Not Publish

Appendix B

Joye M. Carter, M.D., FCAP
Chief Medical Examiner



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FAX: (713) 796-6842

OFFICE OF THE MEDICAL EXAMINER OF HARRIS COUNTY
JOSEPH A. JACHIMCZYK FORENSIC CENTER
1885 OLD SPANISH TRAIL
HOUSTON, TEXAS 77054-2098

AUTOPSY REPORT

Case 2001 - 307

January 28, 2001


ON THE BODY OF

Darrin Honeycutt
1218 Jackson Boulevard, #7
Houston, Texas

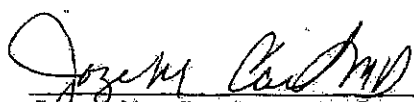
CAUSE OF DEATH: External neck compression

CONTRIBUTORY FACTOR: Atherosclerotic cardiovascular
disease

MANNER OF DEATH: Homicide


Paul W. Shrode, M.D. 22 FEB 2001
Assistant Medical Examiner MMDDYY

Reviewed and signed by:


Joye M. Carter, M.D., FCAP 02/27/01
Chief Medical Examiner MMDDYY

POSTMORTEM EXAMINATION ON THE BODY OF

Darrin Honeycutt
1218 Jackson Boulevard, #7
Houston, Texas

HISTORY: This 35 year old Caucasian male was found dead at 1218 Jackson Boulevard, #7, Houston, Texas, at 9:45 a.m., on January 27, 2001.

AUTOPSY: The autopsy is performed in the Joseph A. Jachimczyk Forensic Center of Harris County by Assistant Medical Examiner Paul W. Shrode, M.D., pursuant to Article 49.25, Texas Code of Criminal Procedure, beginning at 8:30 a.m., on January 28, 2001.

The name and medical legal case number on the Investigators Report corresponds to the name and number on the toe tag.

CLOTHING: At first view, the deceased is received in a sealed red plastic body bag.

EXTERNAL EXAMINATION: The seal was broken by the autopsy assistant under my supervision and reveals the undressed body of an adult Caucasian male, measuring 71 inches, weighing 190 pounds, and whose appearance is consistent with the stated age of 35 years. Rigor is absent. Lividity is fixed to pressure, and present anteriorly. The hands are bagged, and there is heavy mascara, false eyelashes, and a gold colored choker is around the neck. The scalp is covered by wavy light brown hair up to 3 inches in length. The ears are normally positioned. The eyes have cloudy corneae and hemorrhagic sclerae. Both palpebral and bulbar conjunctivae are congested. The nasal bone is intact. The nostrils are patent. The tongue is without trauma or lesion. The neck has palpable adenopathy. The trachea is in the midline. The chest and abdomen are symmetrically formed. The abdomen is flat. The external genitalia are those of a normally developed male. The back and buttocks are symmetrical. The anus shows normal anatomic features without trauma. The upper and lower extremities are symmetrically formed. The nail beds are pink-purple.

NOTE: On the polaroid shots of the scene, the deceased is wearing a wrist watch on the left wrist, a bracelet on the right wrist, a ring on the left ring finger, possibly another ring on the right hand; however, when the bags are removed, the wrist watch, bracelet, and rings are not present.

IDENTIFYING MARKS AND SCARS: On the right lateral lower leg is a colored rose tattoo.

EXTERNAL EVIDENCE OF INJURY: There is a desiccating, 1-1/2 inch, curvilinear, scrape abrasion over the right lateral eyebrow. There are multiple petechial hemorrhages of both bulbar and palpebral conjunctivae (right and left). There is a 5 inches by 1 inch area of three, linear, superficial abrasions over the right upper buttocks. One acrylic nail (left ring finger) is partially torn off and has a reddish-brown material (blood to be ruled out by lab tests) under the painted white tip.

INTERNAL EVIDENCE OF INJURY: None.

EXTERNAL AND INTERNAL EVIDENCE OF MEDICAL CARE: None.

INTERNAL EXAMINATION: The usual Y-shaped incision exposes the organs of the thorax and abdomen to be in their normal anatomic relationships. There is moist subcutaneous abdominal fat averaging 3/4 inch at the level of the umbilicus. The pericardium and diaphragm are intact. The serosal surfaces are wet, smooth, and glistening. There are no appreciable fluid accumulations.

CARDIOVASCULAR SYSTEM: The 360 gram heart is normally positioned with a smooth, glistening, and intact epicardium. The chambers are of a proportionate capacity. The coronary arteries have a right dominant distribution, pursue normal courses but the left anterior descending is greater than 90 percent narrowed along its proximal one-third. The coronary ostia are normally located and are patent. The valve leaflets are thin and translucent. The valve measurements are within normal limits. The great vessels are normally formed and positioned. The heart musculature is uniformly tan-brown and is without focal abnormality. The aorta is of normal caliber and follow a normal course through the thoracic cavity and was intact. The large veins are normally distributed, thin-walled, and patent.

RESPIRATORY SYSTEM: The 890 gram right lung and the 780 gram left lung are normally formed. The mucosa is pink-tan and intact. The parenchyma is diffusely congested and edematous. The tracheobronchial tree has a white froth and is lined by an intact pink-tan mucosa. The visceral pleurae are pink-tan with anthracotic stippling. The parenchyma is diffusely congested without specific or focal change. The pulmonary vasculature is free of thromboemboli. Hilal lymph nodes are soft and not enlarged.

HEPATOBIILIARY SYSTEM: The 2300 gram liver is normally formed. Glisson's capsule is intact. The parenchyma is soft to palpation and compression. It is uniformly dark brown and of a normal lobular architecture. The extra-hepatic biliary tree is patent. The gallbladder is thin-walled and contains milliliters of bile. No calculi are present.

ENDOCRINE SYSTEM: The pituitary gland rests normally within the sella turcica. The adrenal glands are in normal positions and configurations and have tan-brown cortical and thin gray medullary zones. The lobes of the thyroid are symmetrical without focal change. The 220 gram pancreas is normally positioned without lesion, and the ducts are patent.

HEMATOPOIETIC SYSTEM: The 425 gram spleen is normally formed and is covered by an intact dusky-gray capsule. Its parenchyma has the usual trabecular and follicular markings. The thymus appears involuted. Bone marrow, where visualized, appears normal.

GENITOURINARY TRACT: The 190 gram right kidney and the 190 gram left kidney are normally formed and positioned. The cortical regions are smooth and brown, and have clear demarcation of the cortical and medullary regions. The renal pelves are nondilated. The ureters follow normal courses to the bladder. The bladder contains 25 milliliters of urine and has an intact gray-tan mucosa. The prostate and testes are of normal size and shape without abnormality. The second testicle is identified.

GASTROINTESTINAL TRACT: The esophagus follows a normal course through the thoracic cavity and is intact; its mucosa is gray-white. The stomach contains approximately no measurable material. The stomach lining is intact. It continues in the usual fashion into a normally positioned small bowel and colon.

MUSCULOSKELETAL SYSTEM: The general musculature is normally formed. There are no fractures or anomalies of the axial or appendicular skeleton.

NECK: The neck is dissected in layers. There is no discoloration of its soft tissues. The hyoid bone and thyroid cartilage are intact. The laryngeal mucosa is gray-tan and intact. There are no petechiae of the larynx or trachea.

HEAD AND CENTRAL NERVOUS SYSTEM: The galeal and subgaleal tissues contain no focal discoloration. The skull is intact without evidence of fracture. There is no epidural, subdural, or subarachnoid hemorrhage. The leptomeninges are translucent and cover an underlying normal gyral architecture. The cerebral hemispheres, brainstem, and cerebellum are symmetrical. All anatomic midline structures remain midline. The vessels of the

circle of Willis are normal. The dura is stripped revealing normal bony features of the calvaria and cranial fossae. The first portion of the spinal cord viewed through the foramen magnum have normal anatomic relations. Serial examination of the gram brain demonstrates that the ventricles are of normal size and have a glistening ependymal lining and a watery content. The cerebral hemispheres have a normal cortical ribbon without lesion or atrophy. The pigmented areas of the substantia nigra and locus ceruleus are normal. The basal ganglia are intact without lesion. The midbrain, pons, and medulla appear normal.

EVIDENCE: A rape kit consisting of rectal swab, penile swabs, oral swabs, and the removal of the acrylic nails are submitted between 8:45 a.m., and 8:57 a.m. The gold colored choker is removed and submitted for possible latent prints. Additionally with the rape kit, loose scalp hair and loose pubic hair as well as pulled scalp and pulled pubic hair are submitted. A bobby pin is recovered also from the hair and submitted. Also received in the body bag is a brown small envelope with evidence tape labeled 01-0307, the medical legal case number on this particular deceased. The paper bags which were wrapped around the hands are also submitted.

PATHOLOGICAL FINDINGS

1. Evidence of external neck compression
 - a. Bilateral bulbar petechial hemorrhages
 - b. Bilateral palpebral petechial hemorrhages
2. "Blood" stain under fingernail
3. Atherosclerotic cardiovascular disease
4. Hepatosplenomegaly

Appendix C

**CJ Consulting of America, LLC
Christena Roberts, MD
7332 N Nature Trail
Hernando, FL 34442
352-562-1397**

Attorney Work Product

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

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

The following information has been reviewed:

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

Background Information/Timeline:

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

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

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

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

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

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

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

Review of the Autopsy Report:

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

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

General:

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

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

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

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

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

Blunt Force Trauma:

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

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

Trial testimony:

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

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

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

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

Negative Findings:

The nasal bone is noted to be intact. The lips and tongue have no traumatic injury.

Evidence of Manual External Neck Compression:

There is no documentation in the autopsy report of evidence of external neck compression.

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

It should be noted that petechial hemorrhages when found with other findings in the neck are "supportive" of a diagnosis of strangulation and are not "diagnostic" of strangulation¹. See discussion below. Petechial hemorrhages are caused by increased pressure in the vessels in the eyes which results in rupture of the tiny capillaries. This can occur in various types of manual strangulation (see discussion below) but can also be seen in natural disease processes such as fatal heart disease. Petechial hemorrhages can be found in positional asphyxia (upside down position) secondary to pooling of the blood, increased pressure and rupture of the vessels.

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

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

Negative Findings for Manual External Neck Compression:

There is no external bruising on the skin of the neck.

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

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

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

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

Trial Testimony:

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

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

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

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

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

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

Natural Disease Processes:

Heart:

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

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

Liver:

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

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

Lungs:

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

Trial testimony:

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

If a person suffers an ischemic event of the heart tissue (commonly called a heart attack) and survives then as the body attempts to heal the injured heart muscle findings are visually evident³. As early as 4-12 hours (survival) one can see some dark discoloration and microscopically see heart muscle necrosis (cell death). Noticeable dark mottling (red discoloration) of the heart muscle is seen after 12-24 hours. Mottling with a yellow tan center isn't seen until 1-3 days after the event. Scarring that is seen as dense white tissue is seen > 2 weeks after the ischemic event. *The reference included here is standard text cited from a medical school pathology book.*

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

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

Evidence:

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

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

Toxicology:

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

Discussion:

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

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

The variation called the lateral vascular neck restraint (LVNR) is where the anterior neck is held in the antecubital fossa (front of the elbow) and the forearm is pulled towards the arm, compressing the vessels in both sides of the neck. This is basically a pincher movement with both sides of the neck between the arm and forearm and is commonly called a sleeper hold. If the victim is struggling and twisting then the hold can turn into a combination of the two choke holds. In this type of hold it takes less pressure to compress the veins in the neck and more pressure to compress the carotid arteries. Studies have shown that unconsciousness can occur in 30-40 seconds if the veins are compressed. If the arteries are completely occluded unconsciousness can occur as early as 10-15 seconds¹. Another consideration with this type of hold is compression of the carotid sinus which can result in bradycardia (very slow heart rate) and rarely cardiac arrest. Generally this vagal stimulation only causes mild bradycardia and excessive stimulation is likely limited to individuals with significant cardiovascular disease as seen in this case.

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

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

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

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

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

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

The left anterior descending artery is referred to as "the widow maker" as it's a large coronary artery supplying the anteriorlateral wall of the left ventricle, the apex of the heart and the interventricular septum. Since it supplies such a large portion of the left ventricle it's considered the most critical artery in supplying oxygen to the heart. Unfortunately, often the first sign of heart disease is sudden death. Often family will report that their family member had no history of heart disease or controlled high blood pressure and they die suddenly. At autopsy significant coronary artery disease is discovered. Even under normal activity one can die secondary to a fatal ventricular arrhythmia. When the body and therefore the heart are stressed by physical exertion the oxygen demand of the heart muscle increases and an acute ischemic can trigger a fatal arrhythmia⁴.

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

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

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

Summary:

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

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

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

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

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

REFERENCES:

- ¹DiMaio, VJ and DiMaio, D: Forensic Pathology, 2nd ed. Boca Raton, FL: CRC Press; 2001; (8) *Asphyxia*. 229-277.
- ²Dolinak, D, Matshes, EW and Lew, EO: Forensic Pathology, Principles and Practice. Burlington, MA: Elsevier Academic Press; 2005; (8) *Asphyxia*. 201-225.
- ³Robbins, SL and Cotran, RS: Pathologic Basis of Disease, 7th ed.: Elsevier Saunders; 2005; (12) *The Heart*. 555-618.
- ⁴Huikuri, H., Castellanos, A.; et al. *Sudden Death due to Cardiac Arrhythmias*. N Engl J Med, 2001. Vol 345, No 20. 1473-1482.
- DiMaio, VJ and DiMaio, D: Forensic Pathology, 2nd ed. Boca Raton, FL: CRC Press; 2001; (2) *Time of Death*. 21-41. Generally cited.

Appendix D

Asphyxial Deaths and Petechiae: A Review

REFERENCE: Ely SF, Hirsch CS. Asphyxial deaths and petechiae: a review. *J Forensic Sci* 2000;45(6):1274-1277.

ABSTRACT: Conjunctival and facial petechiae, although nonspecific findings, are considered hallmarks of asphyxial deaths. Consensus in the literature suggests that their pathogenesis is related to the combined effects of increased cephalic venous pressure and hypoxic damage to endothelial cells. Despite the common knowledge that they are neither predictable findings in all asphyxial deaths nor rare in natural, nonasphyxial deaths, the belief persists that petechiae are corroborative evidence of asphyxia. We suggest that a clear, physiologically based understanding of the pathogenesis of petechiae of the head is critical for their appropriate interpretation. We present a review of the literature and the basis of our conclusion that conjunctival and facial petechiae are the product of purely mechanical vascular phenomena, unrelated to asphyxia or hypoxia.

KEYWORDS: forensic science, petechiae, asphyxia, conjunctival petechiae, facial petechiae

Conjunctival and facial petechiae have been regarded as classic signs of asphyxial deaths (1-11). First described by Tardieu in the nineteenth century, external and visceral petechiae have since been interpreted as hypoxia-related sequelae of asphyxia, sometimes being attributed in part to "mechanical obstruction of the upper airway" (12,13). Despite consensus in the literature that cephalic petechiae are not found in all asphyxial deaths, and that they are observed commonly in natural deaths without an asphyxial mechanism (2-7,13-15), the view that petechiae and asphyxia are causally linked continues to be perpetuated, without regard to the inherent inconsistencies central to that theory. Potential confusion generated by the foregoing misconception bears out most precariously in courts of law, where forensically and scientifically sound pathogenetic conclusions are critical for the proper adjudication of criminal proceedings. In that setting, the presence of conjunctival and facial petechiae traditionally has been used as compelling evidence in support of an asphyxial death, while their absence has cast serious doubt on that possibility. We suggest that a clear understanding of the pathogenesis of petechiae of the head increases the likelihood of their appropriate interpretation.

Many authors have described the incidence of conjunctival petechiae in nonasphyxial and asphyxial deaths, but there is a dearth of literature comprehensively addressing their pathogenesis. Furthermore, much of the literature on petechiae cannot be compared and contrasted because studies report petechiae as either present or absent, one being as good as a million. Such an either/or criterion disregards the reality of common experience and equates a single,

subtle conjunctival red dot with showers of conjunctival and facial petechiae too numerous to count. Granted, in rare instances, an isolated petechia may be an important finding in the context of a complete case study, but to base our understanding of an entire subject on three standard deviation outliers is the equivalent of a tiny tail wagging a large dog. Therefore, this paper describes the pathogenesis of conjunctival and facial petechiae on the basis of mechanical phenomena in order to clarify inconsistencies and vagaries in the literature. First we present a review of the literature and then our conclusions regarding petechiae of the head as they pertain to asphyxial and nonasphyxial deaths. We will not address the pathogenesis of visceral petechiae in our review.

Definition

Asphyxia is broadly defined as the interference with the intake or utilization of oxygen, combined with the failure to eliminate carbon dioxide (6). Although all end organs are ultimately affected by asphyxia, the brain is most sensitive to its effects. The array of circumstances leading to asphyxial deaths varies widely. Together, they present some of the more vexing challenges in medicolegal death investigation and include such disparate mechanisms as cervical vascular obstruction, lower airway obstruction, smothering, chest compression, suffocation by asphyxiant gases, entrapment, and drowning.

Literature Review

Tardieu was the first to describe minute hemorrhages due to rupture of small blood vessels on the surfaces of the lungs, heart, and other body parts, and regarded them as "characteristic of death from suffocation" (12). The discussion within the forensic community that followed (10,16-21) became the forerunner of the controversy and confusion that remains today, including that surrounding the pathogenesis of the thoracic visceral petechiae sometimes observed in Sudden Infant Death Syndrome (SIDS). There does exist, however, wide agreement today that what are now known as "Tardieu spots" are the result of intense lividity, leading to post-mortem rupture of dependently engorged blood vessels, entirely unrelated to asphyxia or any other mechanism of death. The occasional reference still made to them in the literature as antemortem petechiae or "asphyxial signs" betrays a misconception of their current meaning (6-7,10,21).

Luke was the first to propose that increased intracranial vascular pressure is the basis for the development of petechiae of the head in deaths involving compression of the neck or chest. In his 1967 review of strangulations in New York City, he reported that external petechiae, found in approximately 50% of the cases reviewed, were more prevalent on the conjunctivae than the face, slightly more prominent on the face than on the scalp, and seemed to be enhanced by the use of a ligature (14). He later theorized that the in-

¹ Office of Chief Medical Examiner of the City of New York, New York University School of Medicine, Department of Forensic Medicine, New York, NY. Received 11 Oct. 1999; and in revised form 10 Dec. 1999; accepted 21 Dec. 1999.

creased prevalence of petechiae in ligature strangulations was due to the probability that "disproportionate venous/arterial compromise may be more effectively accomplished" with a ligature than with the hands alone (15). He explained that these petechiae occurred as a result of impairment of intracranial venous egress while arterial flow to the head continued, a "practically universal" phenomenon in ligature strangulations, partial suspension hangings, and thoracic compressions (1). Despite his seeming understanding, however, he went on to say that the pathogenesis of petechiae in these deaths had yet to be fully elucidated. In 1985, Luke and his colleagues elaborated on this theme in a retrospective study of hanging deaths (15). They concluded that the small vessel and intracapillary pressures in the head leading to the formation of petechiae of the conjunctivae and face should reflect the extent of carotid and vertebral artery occlusion, and that this, in turn, was dependent upon the amount of compressive ligature pressure produced by the degree of body suspension. The effects of the consistency and size of the ligature were not specifically addressed. Other authors have supported this contention, but have further suggested that the petechiae result from elevated venous pressure combined with hypoxic injury to endothelial cells caused by venous stasis and tissue acidosis (2,4,5,9,10,13,16,18,22).

Rao and Wetli were the first to apply the mechanical theory of the formation of conjunctival petechiae to nonasphyxial deaths in which there is increased cephalic venous pressure without neck or chest compression, *per se* (13). They included sudden cardiovascular deaths, particularly those with acute right heart failure, and instances in which individuals die with their faces prone as examples. They found, in fact, in their review of 5000 autopsy reports over nearly a two-year period, that conjunctival petechiae were observed most frequently in deaths due to natural causes. Their study contained no information or description of the number of petechiae observed in "positive" instances. When seen in asphyxial deaths, however, specifically, "homicidal asphyxiation" and mechanical chest compression (traumatic asphyxia), they agreed with other authors' contentions that the petechiae resulted from a combination of hypoxia and increased cephalic vascular pressure. This theory was further applied to nonasphyxial deaths in a study by Hood et al. that described the presence of conjunctival petechiae in individuals who had undergone attempted cardiopulmonary resuscitation prior to death (2). All decedents had petechiae of the conjunctivae, eyelids, and/or cheeks that were felt to be caused by perimortal resuscitative efforts, and unrelated to the mechanisms of death. Interestingly, the causes of death that were thought to be unrelated to the development of the petechiae in these decedents included atherosclerotic cardiovascular disease with an acute myocardial infarct, epilepsy, and gunshot wounds to the head, all known occasionally to be associated with conjunctival petechiae (5,13). The authors concluded that petechiae of the head occurred when repeated forceful resuscitative chest compressions caused increased pressure in small blood vessels that had been damaged as a result of hypoxia in a dying individual, leading to vascular rupture and blood extravasation into the surrounding tissues. They went on to say that hypoxia alone, without increased vascular pressure, was insufficient to produce such petechiae. They suggested that the combined amount of hypoxia and pressure needed to produce conjunctival petechiae was "not great," even in the living subject. They based this contention on a study in which healthy volunteers were placed in a head-down, vertical position as a means of determining the ocular manifestations of gravity inversion (23). After only one minute of inversion, the resultant ocular findings included orbital congestion, conjunctival hyperemia, and petechiae of the conjunc-

tivae and upper eyelids. However, no subject lost consciousness during testing. Moreover, intraocular pressures were found to reach 80% of their maximal level within ten to fifteen seconds of inversion, and no statement was made suggesting that vascular hypoxic damage was contributory to the development of the petechiae. The forensic literature mentions some of these same physical findings in descriptions of fatalities due to positional asphyxia in victims of accidental, head-down "reverse suspension," but without specific discussions of the pathogenesis of cephalic congestion or petechiae of the head (24,25).

Other scenarios have been described as mechanical causes of conjunctival and facial petechiae in living patients and in victims of natural, nonasphyxial deaths, including status epilepticus, labor and delivery, and severe or sustained episodes of vomiting, coughing, sneezing, or respiratory stridor, as seen in bronchial asthma or croup (5,13,26,27). The underlying pathophysiologic mechanism suggested in these settings is the prolonged and/or forceful abdominal and thoracic muscular contractions resulting in reflux of blood from the right heart, which causes increased pressure in the valveless veins of the head and neck. The mechanical contribution of a concurrently closed glottis in association with thoracoabdominal compression (the Valsalva maneuver) in the production of increased cephalic venous pressures also is mentioned in the literature describing the facial plethora and petechiae accompanying prolonged chest compression in instances of traumatic asphyxia (26,28). The authors of these papers suggest that the glottis closes as part of a "pre-impact fear response" or panic.

The characteristic distribution of petechiae in cases of chest or neck compression has been addressed infrequently in the dermatology and forensic literature (7,26). In a case report describing the pathophysiologic features of traumatic asphyxia, Lowe et al. theorized that it was the lack of tissue support around conjunctival capillaries that accounted for the predictable subconjunctival hemorrhage, a nearly constant feature of traumatic asphyxia.

Asphyxial deaths in which facial and conjunctival petechiae are distinctly uncommon include those due to smothering (facial wedgings, those involving plastic bags or gags, and all forms of homicidal smothering), overlaying of children, choking, suffocating gases, entrapment, and drowning (5,6). Interestingly, however, at least one author has noted the occasional finding of very fine facial/conjunctival petechiae in deaths that involve the gagging or homicidal smothering of elderly individuals; an explanation for this observation, however, was not offered (5). Moreover, in those few deaths due to plastic bag suffocation in which conjunctival petechiae have been observed, neck ligatures usually were used to secure the bag in place; in those deaths without petechiae, no such ligatures were used (22,29). In accidental autoerotic deaths, the presence of petechiae correlates with the mechanism of asphyxia; specifically, in incomplete suspension hangings and ligature strangulations, petechiae more commonly are found, whereas, in deaths involving plastic bags or gags, they are not.

The presence or absence of petechiae is not specifically addressed in textbook discussions of deaths due to carotid sleeper and bar arm control/choke holds. Suggested mechanisms of these deaths include anoxia, particularly with the airway obstruction of bar arm holds, carotid sinus massage leading to an arrhythmia, a catechol surge due to "air hunger," and carotid and/or jugular vascular occlusion (5). Reay and Eisele found conjunctival petechiae, more prominently on the left side, in two cases of carotid sleeper hold deaths that occurred during law enforcement activities (30). In each case, the hold was used for an unspecified "brief" period, during which time an intense struggle took place. An explanation for

the development of petechiae in this setting, however, was not offered.

Discussion

Excluding those related to infectious, coagulopathic, or microembolic etiologies, we conclude that petechiae of the head are the product of purely mechanical vascular phenomena: namely, impaired or obstructed venous return in the presence of continued arterial input. As pressure builds in venules and capillaries, particularly those with little surrounding connective tissue support, such as the conjunctivae and eyelids, vascular rupture produces petechiae. The likelihood of this occurrence is directly proportional to the degree of venous obstruction and inversely proportional to that of arterial compression at or above the level of the heart. Nearly 4.5 lb (2 kg) of pressure is required to compress the jugular veins, whereas 11 and 66 lb (5 and 30 kg) are required to compress the carotid and vertebral arteries, respectively (15,31); therefore, an intermediate amount of force simultaneously applied to both results in venous compression before arterial (2,6,15). This is similarly applicable to the right and left sides of the heart. If the compressive pressure to the chest or neck is great enough to obstruct venous return from the head, but not enough to obstruct arterial flow to it, cephalic venous pressure will rise, as will the probability of small vessel rupture. A violent struggle that increases cardiac output and raises blood pressure therefore enhances the occurrence of petechiae. Alternatively, if the applied force is sufficiently great to obstruct arterial flow, venous engorgement and rupture will not occur. An analogous mechanism resulting in elevated cephalic venous pressure without compression occurs with a precipitous impairment of venous return to the heart, such as that seen in acute right heart failure.

A clinical illustration of this vascular pressure phenomenon has been demonstrated elegantly with the capillary fragility test, or tourniquet test. Although now replaced by laboratory diagnostics, the tourniquet test was used years ago to assess vascular integrity by maintaining sphingomanometric pressure between that of systolic and diastolic for a duration of 5 min on an upper extremity. The number of petechiae observed within a 3 cm diameter distal to the tourniquet served as an indicator of mechanical vascular integrity; the presence of less than five petechiae was considered normal. Since arterial perfusion continued during testing, the petechiae were correctly interpreted as products of vascular rupture due to obstructed venous egress, rather than hypoxia (32).

Most authors agree that increased venous pressure is requisite in the development of conjunctival and facial petechiae, irrespective of whether the death is due to an asphyxial or natural, nonasphyxial cause. This conclusion is supported by the fact that petechiae characteristically and predictably are present in deaths that are preceded by impairment of venous egress from the head, while continuous or intermittent arterial perfusion to it continues. Examples of such deaths include those involving partial suspension hanging, ligature or manual strangulation, traumatic asphyxia/chest crushing injury, plastic bag-ligature suffocation, carotid sleeper holds with a concomitant struggle, acute right heart failure, status epilepticus, and those deaths preceded by a vigorous cardiopulmonary resuscitative effort, or prolonged or violent paroxysms of coughing or vomiting. Equally supportive of the vascular pressure mechanism is the fact that asphyxial deaths either with no impairment of venous return from the head or with arterial obstruction at or above the level of the heart characteristically lack facial and conjunctival petechiae (e.g., full suspension hanging, plastic bag suffocation,

laryngotracheal obstruction, including bar arm holds and choking, asphyxiation by suffocating gases, smothering, overlay deaths in children, entrapment, and drowning).

Considering all of the foregoing observations, it is our contention that no relationship exists between the development of petechiae and the presence or absence of asphyxia. Rather, it is venous congestion without arterial obstruction that pathogenetically links the development of petechiae in these deaths, otherwise often disparate in their causes, mechanisms, and manners. Typically, the more intense the facial plethora, the more florid the petechial eruption. A possible explanation for the occasional observation of conjunctival petechiae in homicidal smotherings of elderly victims is the increased cephalic venous pressure of the Valsalva effect caused by struggling and screaming against an obstructed upper airway. This, together with increased cardiac output, elevated blood pressure, and the fragile vasculature and inelastic surrounding connective tissue of elderly persons, may lead to facial and conjunctival microvascular rupture. Conversely, the occasional absence of facial plethora and petechiae in victims of chest compression (traumatic asphyxia) is best explained by an overwhelming crushing force that effectively compresses the left ventricle and arrests further cardiac output, thereby precluding cephalic venous congestion.

Further support for a purely mechanical basis for the development of petechiae lies in the fact that, when observed on the head, they are more likely to be found on the conjunctivae and eyelids (7,9,14,17,22,26,28). Luke found, in fact, in his 1985 review of hanging deaths, that although conjunctival petechiae were commonly observed as isolated findings, petechiae of the facial skin were never seen without those of the conjunctivae (15). This distribution is best explained by the relative lack of support and resistance offered by the surrounding tissues in and around the conjunctival and palpebral capillaries. As pressure mounts in the microvasculature, the likelihood of rupture is inversely correlated with the tenacity of the surrounding connective tissue and its ability to prevent and/or tamponade blood extravasation. Surely, the capillary endothelium of the conjunctivae and eyelids is no more susceptible to the effects of hypoxia and tissue acidosis than is the capillary endothelium of the thick skin of the face. Yet, petechiae are distinctly more prevalent in the conjunctivae and eyelids.

The literature suggests that it is the combined effects of increased vascular pressure and hypoxic microvasculature that lead to petechiae of the head. Although this is difficult to disprove, the addition of hypoxia to the pathogenetic equation is unnecessary and misleading. Without invoking venous stasis and hypoxia-related increased vascular permeability, the pathogenesis of conjunctival and facial petechiae is sufficiently explained by vascular pressure increases and microanatomy alone; all available data support this mechanism. Moreover, conjunctival petechiae have been observed in surviving victims of attempted strangulation, suggesting cephalic venous congestion, rather than life-threatening asphyxia, as the mechanism of microvascular rupture. A study examining both living and dead victims of strangulation reported conjunctival petechiae in 14 out of 79 surviving victims, only half of whom had suffered sufficient oxygen deprivation to lose consciousness during the assault (33). Some of these surviving victims actually had a more florid and pronounced petechial eruption than that of their deceased counterparts. Despite these data, the speculation that hypoxia must play a role has generated the erroneous conclusion that petechiae and asphyxia are causally related. The perpetuation of this belief betrays an attachment to dogma that has no basis in science or logic. Some authors have actually suggested an instanta-

neous neural mechanism of death (as opposed to complete arterial obstruction) in pale-faced victims of full suspension hangings, as a means of explaining the absence of the expected "asphyxia-induced" petechiae in those cases (8).

We conclude that hypoxia is unrelated to the pathogenesis of petechiae in deaths due to compression of the neck or chest. Facial and conjunctival petechiae develop in a variety of circumstances in which cephalic plethora, not asphyxia, is the final common pathway. We know of no evidence whatever to support the contention that hypoxia of a duration up to a few minutes, i.e., sufficient to be lethal, produces capillary fragility or any hemorrhage-inducing alteration of the physical properties of capillary endothelium in the conjunctivae or any other location. In fact, compelling evidence exists to the contrary. The presence of conjunctival petechiae in living victims of attempted strangulation and experimentally inverted subjects supports our contention that pressure phenomena, not asphyxia or hypoxia, leads to their development. Moreover, hundreds, if not thousands, of persons who have accomplished suicide by placing a plastic bag over their heads, without a concomitant drug overdose, have performed "human experiments" by inducing pure hypoxial deaths. Unless the bag is fastened around the neck by a ligature with sufficient tension to obstruct venous return from the face, in our experience, such persons never have facial or conjunctival petechiae. Persons with tight fastenings around the neck are recognizable instantly by their facial plethora and numerous petechiae. We are aware that some observers may have seen an occasional petechia in rare instances of plastic bag suicide (22). However, we have not seen detailed descriptions of such observations that permit another person to evaluate the variables that might have produced an isolated petechia in a rare victim. Conversely, in New York City, an average of approximately 15 persons per year accomplish suicide by plastic bag, and we never have observed petechiae in a person who did not tightly fasten the bag around his/her neck (19).

The importance of defining the pathogenesis of conjunctival and facial petechiae lies in the potential implications of their misinterpretation. They are simply markers of increased cephalic venous pressure. In and of themselves, they should not be regarded as supportive evidence of asphyxia; in a vacuum, conjunctival and facial petechiae point to no particular cause of death. Only in conjunction with a complete autopsy and thorough death investigation can their potential importance be ascertained, and only with an understanding of their pathogenesis can they lend insight into the circumstances of a death. An erroneous interpretation of this clearly mechanical phenomenon, which can occur in a heterogeneous array of perimortal circumstances, creates a slippery slope. In the best-case scenario, confusion is perpetuated; in the worst-case scenario, the adjudication of criminal cases is severely impaired, and fertile soil having the potential to create false grounds for conviction or acquittal is laid.

References

1. Luke JL. Conjunctival petechiae. *N Engl J Med* 1971 May 13;284(19):1101.
2. Hood I, Ryan D, Spitz WU. Resuscitation and petechiae. *Am J Forensic Med Pathol* 1988 Mar;9(1):35-7.
3. Bell MD, Rao VJ, Wetli CV, Rodriguez RN. Positional asphyxiation in adults: a series of 30 cases from the Dade and Broward County Florida Medical Examiner Offices from 1982 to 1990. *Am J Forensic Med Pathol* 1992 Jun;13(2):101-7.
4. Clark MA, Feczko JD, Hawley DA, Pless JE, Tate LR, Fardal PM. Asphyxial deaths due to hanging in children. *J Forensic Sci* 1993 Mar;38(2):344-52.
5. DiMaio DJ, DiMaio VJM. *Forensic pathology*. New York: CRC Press, 1993.
6. Spitz WU, Fisher RS. *Medicolegal investigation of death: guidelines for the application of pathology to crime investigation*. 3rd ed. Illinois: Charles C Thomas, 1993.
7. Betz P, Penning R, Keil W. The detection of petechial hemorrhages of the conjunctivae in dependency on the postmortem interval. *Forensic Sci Int* 1994 Jan;64(1):61-7.
8. Elfawal MA, Awad OA. Deaths from hanging in the Eastern Province of Saudi Arabia. *Med Sci Law* 1994 Oct;34(4):307-12.
9. Samarasekera A, Cooke C. The pathology of hanging deaths in Western Australia. *Pathology* 1996 Nov;28(4):334-8.
10. Simpson K, Knight B. *Forensic Medicine*. 9th ed. Baltimore: Edward Arnold, 1985.
11. Smith S. *Forensic medicine: a textbook for students and practitioners*. 10th ed. London: J and A Churchill Ltd., 1955.
12. Tardieu A. *Ann Hyg Pub et de med Legale (series II)* 1855;(6):371-82.
13. Rao VJ, Wetli CV. The forensic significance of conjunctival petechiae. *Am J Forensic Med Pathol* 1988 Mar;9(1):32-4.
14. Luke JL. Strangulation as a method of homicide. *Arch Path* 1967 Jan;83(1):64-70.
15. Luke JL, Reay DT, Eisele JW, Bonnell HJ. Correlation of circumstances with pathological findings in asphyxial deaths by hanging: a prospective study of 61 cases from Seattle, WA. *J Forensic Sci* 1985 Oct;30(4):1140-7.
16. Adelson L. *The pathology of homicide (A vade mecum for pathologist, prosecutor, and defense counsel)*. Illinois: Charles C Thomas, 1974.
17. Knight B. *Forensic pathology*. 2nd ed. New York: Oxford University Press, 1996.
18. Maut AK. *Taylor's principles and practice of medical jurisprudence*. 13th ed. New York: Churchill Livingstone Inc., 1984.
19. Polson CJ, Gee DJ, Knight B. *The essentials of forensic medicine*. 4th ed. New York: Pergamon Press Inc., 1985.
20. Gordon I, Shapiro HA. *Forensic medicine: a guide to principles*. 2nd ed. New York: Churchill Livingstone, 1982.
21. Shapiro HA. Tardieu spots in asphyxia. *J Forensic Med* 1955 January-March;2(1):1-4.
22. Haddix TL, Harruff RC, Reay DT, Haglund WD. Asphyxial suicides using plastic bags. *Am J Forensic Med Pathol* 1996 Dec;17(4):308-11.
23. Friberg TR, Weinreb RN. Ocular manifestations of gravity inversion. *JAMA* 1985 Mar 22/29;253(12):1755-7.
24. Lawler W. Death by reverse suspension. *Am J Forensic Med Pathol* 1993 Mar;14(1):87-8.
25. Purdue B. An unusual accidental death from reverse suspension. *Am J Forensic Med Pathol* 1992 Jun;13(2):108-11.
26. Lowe L, Rapini RP, Johnson TM. Traumatic asphyxia. *J Am Acad Dermatol* 1990 Nov;23(5 Pt 2):972-4.
27. Prokop O, Wabnitz R. (Incidence of conjunctival hemorrhage in the living and dead presented in 10 tablets) Vorkommen von Bindehautblutungen bei Lebenden und Toten, dargestellt in 10 Tabellen. *Z Rechtsmed* 1970;67(4):249-57.
28. Landercasper J, Cogbill TH. Long-term followup after traumatic asphyxia. *J Trauma* 1985 Sep;25(9):838-41.
29. Marzuk PM, Tardiff K, Hirsch CS, Leon AC, Stajic M, Hartwell N, et al. Increase in suicide by asphyxiation in New York City after the publication of final exit. *N Engl J Med* 1993 Nov 11;329(20):1508-10.
30. Reay DT, Eisele JW. Death from law enforcement neck holds. *Am J Forensic Med Pathol* 1982 Sep;3(3):253-8.
31. Brouardel P. In: Polson CJ, Gee DJ, Knight B. *The essentials of forensic medicine*. New York: Pergamon Press, 1985.
32. Corriveau DM, Fritsma GA. Hemostasis and thrombosis in the clinical laboratory. Philadelphia: Lippincott Company, 1988.
33. Harm T, Rajs J. Types of injuries and interrelated conditions of victims and assailants in attempted and homicidal strangulation. *Forensic Sci Int* 1981 Sep-Oct;18(2):101-23.

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Appendix E

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

IN RE: RICHARD NIELDS, OSP #A352-374

**STATE OF OHIO
ADULT PAROLE AUTHORITY
COLUMBUS, OHIO**

Date of Meeting: May 10, 2010

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

Richard Nields, A352-374
Death Penalty Clemency Report

IN RE: Richard Nields, OSP #A352-374

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder with specifications, Aggravated Robbery.

DATE, PLACE OF CRIME: March 27, 1997 in Springfield Township, Ohio

COUNTY: Hamilton

CASE NUMBER: B9703305

VICTIM: Patricia Newsome

INDICTMENT: 5/2/1997: Counts 1-2: Aggravated Murder with specification, Count 3: Aggravated Robbery.

TRIAL: Found guilty by jury

DATE OF SENTENCE: 12/22/1997

SENTENCE: Aggravated Murder with specifications: DEATH
Aggravated Robbery: 10 years
* Counts 1- 2 merged for purposes of sentencing.

ADMITTED TO INSTITUTION: December 23, 1997

JAIL TIME CREDIT: 1 day

TIME SERVED: 136 months

AGE AT ADMISSION: 47 years old

CURRENT AGE: 59 years old

DATE OF BIRTH: May 19, 1950

JUDGE: Honorable Thomas C. Nurre

PROSECUTING ATTORNEY: Joseph T. Deters

~~Richard Nields, A352-374~~
Penalty Clemency Report

FOREWORD:

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

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

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

DETAILS OF THE INSTANT OFFENSE (B):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

After deliberation, the jury found Nields guilty as charged.

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

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

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

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CRIMINAL HISTORY:

Juvenile: Unknown

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

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

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

Institutional Adjustment:

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

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

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

APPLICANT'S STATEMENT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARGUMENTS IN SUPPORT OF CLEMENCY:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARGUMENTS IN OPPOSITION TO CLEMENCY:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VICTIMS' REPRESENTATIVES:

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

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

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

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

Richard Nields, A352-374
Death Penalty Clemency Report

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

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

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

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

PAROLE BOARD'S POSITION AND CONCLUSION:

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

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

Richard Nields, A332-374
Death Penalty Clemency Report

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

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

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

- Even though the medical examiner's testimony has been rightly called into question, there is plenty of evidence of prior calculation and design in this case. Nields had threatened Ms. Newsome in the past, including in the time leading up to the murder. Hours before the offense, he told Ms. Dorothy Alvin, a stranger, that, "I'd like to kill her, but I guess I won't do that because I don't want to go to prison."
- Even without the prior calculation and design in this case, the Aggravated Robbery would be sufficient to make Nields eligible for the death penalty. After he killed her, Nields took her car, money, and travelers' checks. Nields was unemployed, without money, and nearly homeless. He needed money, and he went to a person from whom he had stolen in the past. Ms. Newsome wrote in

Richard Nields, A352-374
Death Penalty Clemency Report

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

- Nields has been less than forthcoming about the details of the offense and his prior history of violence. He tried several times to mislead law enforcement while they were investigating the homicide. He said that he regularly drove Ms. Newsome's car when her family and her own notes indicate that he did not. He told the Parole Board that he had never been violent toward women in the past, in spite of his own notes in his AA Inventory.
- Nields has a history of violence against women, including a Domestic Violence conviction against Ms. Newsome after punching her in the face. He also recorded his own acts of violence against women in his AA Inventory. He had left harassing messages on her answering machine, and threatened her. He generated in her enough fear to cause her to keep a "Record of Abuse".
- Given all of these facts, we do not believe that the outcome of the case would have been any different had the court and jury heard more reliable medical testimony. We also believe that the aggravating circumstances in this case make death the appropriate sentence.

RECOMMENDATION:


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

Richard Nields, A352-374
Death Penalty Clemency Report

Adult Parole Authority
Ohio Parole Board Members
Voting Favorable

Ohio Parole Board Members
Voting Unfavorable


Cynthia Mausser, Chair

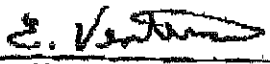

R. F. Rauschenberg


Robert Maszczyński


Bobby J. Bogan, Jr.


Kathleen Kovach


Trayce Thalheimer


Ellen Venters

Appendix F

Feb. 12. 2014 11:01PM

Feb. 11. 2010 2:53PM District 21 medical examiner

No. 08

Affidavit of Dr. Robert Pfalzgraf

State of Florida,

County of Ala., SS:

Dr. Robert Pfalzgraf, after being duly sworn according to law, states as follows:

1. I am a licensed medical doctor in the State of Florida. I am also a diplomat in the of Anatomic and Clinical Pathology as well as Forensic Pathology.
2. I graduated from the Ohio State University College of Medicine in 1984, complete my residency in forensic pathology at the University of Cincinnati Medical Center in 1988 and completed my post-graduate fellowship in forensic pathology at the University of New Mexico School of Medicine in 1989.
3. I have attached to this affidavit, as Exhibit A, my curriculum vitae and bibliography which accurately reflects all of the positions I have held since I became a medical doctor. In addition to my employment, my curriculum vitae also identifies my academic appointments, professional society memberships, as well as the publications I have authored and presentations have given at teaching seminars.
4. I was employed by the Hamilton County Coroner's Office in Cincinnati, Ohio from 1989 to 1992 as a Deputy Coroner. I worked as an Assistant Medical Examiner for District 13 in Tampa, Florida from 1992 to 1996. From 1996 to 2004, I was the Chief Deputy Coroner and Director of Forensic Pathology for the Hamilton County Coroner's Office.
5. As Chief Deputy Coroner, I supervised the fellows in the approach to developing cause and manner of death opinions on their cases, including the use of the autopsy, scene investigation and other information gathering to develop these opinions. In addition, I taught fellows techniques in special dissections, evidence collection and identification of unrecognizable bodies, all of which are unique to the field of forensic pathology.
6. Dr. Paul Shrode was a fellow under my supervision and training at the Hamilton County Coroner's Office from December 2, 1996 to June 27, 1997. In medical terms, a fellowship is the period of training that a physician may undertake after completing his or her residency.
7. I was requested by the Office of the Federal Public Defender for the Southern District of Ohio to review the testimony of Dr. Paul Shrode in *State v. Nields*, Hamilton C.P. No. B97-03305. The attorneys who asked me to review the testimony of Dr. Shrode did so because I was the senior doctor on the case and also signed the autopsy report for Patricia Newsome, the victim in *State v. Nields*.

Feb. 12. 2014 11:02PM

NO. 2200

Feb. 11. 2010 2:53PM District 21 medical examiner

No. 0876 P. 3/5

(2)

8. This is the first time I have ever been contacted to review the testimony given by Dr. Shrode in *State v. Nields*. In reviewing the materials provided to me, I was not working for nor hired by the prosecution or defense counsel. I was simply asked to review the materials provided to me and answer the question of whether or not Dr. Shrode's testimony provided the jury with accurate information relating to the autopsy of Patricia Newsome.

9. To assist me in my review, the Office of the Federal Public Defender for the Southern District of Ohio provided me with the following materials:

- a) the October 7, 1998 affidavit of Dr. Michael Clark,
- b) trial testimony of Dr. Shrode,
- c) trial testimony of Dr. Von Loveren,
- d) crime scene photographs,
- e) crime scene video,
- f) the autopsy report of Patricia Newsome,
- g) photographs of Richard Nields' hands,
- h) autopsy photographs,
- i) excerpts from Hamilton County personnel records,
- j) Texas Medical Board complaint against Dr. Shrode,
- k) 2004 resume of Dr. Shrode,
- l) 2007 resume of Dr. Shrode prior to revisions,
- m) 2007 revised resume of Dr. Shrode.

10. At the time of Patricia Newsome's autopsy, I was the senior/supervising doctor on the case. I was one of the two doctors who signed the autopsy report for Patricia Newsome. The other doctor signing the autopsy was Dr. Shrode, who was under my training and supervision. At the time of the autopsy, Dr. Shrode was completing his fellowship with the Hamilton County Coroner's Office. For purposes of this affidavit, I have reviewed the autopsy report of Patricia Newsome and agree with all of the statements and conclusions contained therein.

11. Dr. Shrode was called as an expert witness by the prosecution in *State v. Nields*. Prior to testifying, Dr. Shrode never reviewed his proposed testimony with me. At the time he testified, Dr. Shrode had completed his fellowship with the Hamilton County Coroner and moved on to other employment. I was not in the courtroom when Dr. Shrode testified in the *Nields* case.

12. Dr. Shrode testified shortly after he completed his fellowship. Therefore, this may have been one of the first times he ever testified. Due to delays between arrest of suspects and subsequent criminal trials, fellows in forensic pathology ordinarily do not have many opportunities to testify during their training. When fellows testify, supervising pathologists often assist in the preparation for trial and observe the fellow during trial. As stated earlier, this did not occur in the *Nields* case.

13. Although I agree with Dr. Shrode's conclusions discussed in the autopsy report, I disagree with several of the findings he later testified to at trial. Specifically, I disagree with:

Feb. 11, 2010 2:53PM District 21 medical examiner

No. 0876 P. 4/5

(3)

- Dr. Shrode's opinion that the trauma and swelling to the victim's head was inflicted fifteen minutes to six hours prior to her being strangled.
- Dr. Shrode's testimony about concussions and unconsciousness.
- Dr. Shrode's testimony regarding the fingernail scrapings of Patricia Newsome.

14. As the supervising doctor in this case, I would not have signed a version of the autopsy report that contained this information. I would not have signed my name to the findings and conclusions Dr. Shrode testified to because they were incorrect.

15. Dr. Shrode, in his testimony, opined that the head trauma and swelling inflicted on the victim occurred fifteen minutes to six hours prior to her death. This statement is incorrect. Dr. Shrode should have answered that he had "no idea when the victim sustained the injury to her eye." You can only age bruising or swelling by viewing evidence of healing. When the healing process begins, the wound will turn from purple to yellow.

16. Dr. Shrode testified that at the time of the autopsy, the bruising on the victim's head had a "black and blue appearance." This shows a lack of healing, making it impossible to age the wounds. No medical doctor can age a wound without evidence of healing. In this case there is no medical evidence to support the conclusion that the victim sustained the trauma and swelling to her head a substantial length of time prior to her death.

17. When testifying concerning the fifteen minute to six hour time period between the swelling and strangulation, Dr. Shrode cited to the issue of rigor mortis. This has no relevance to when the victim sustained the trauma to her head. Dr. Shrode could have possibly confused the issues concerning the time of the eye injury with the time of the death.

18. Dr. Shrode also testified about concussions, without specifically or correctly tying that testimony to the victim in this case. A person, including the victim in this case, could have sustained fractures or bruises to the head and not lost consciousness. That is not an uncommon occurrence. Fractures and bruises to the head are markers of impacts, not markers of lack of consciousness. There is no evidence in the present case that shows the victim sustained a concussion or was ever unconscious.

19. Dr. Shrode also testified about the fingernails of the victim in this matter. Although I have not personally seen the fingernail report, Dr. Shrode testified that the lack of scrapings on her nails supports the theory that she was already unconscious at the time of her death. That testimony is not correct. A lack of evidence on a victim's fingernails tells one nothing. It is actually very rare for a victim's fingernails to collect evidence during a crime.

20. The three issues that I have addressed in this affidavit; the infliction of the bruises and swelling preceding the victim's death by up to six hours, the victim's state of consciousness and the victim's fingernails being used as support for the victim's lack of consciousness were not addressed in the autopsy that I signed. I would not have signed a version of the autopsy that

Feb. 12. 2014 11:03PM

No. 5280 P. 2

Feb. 11. 2010 2:53PM District 21 medical examiner

No. 0876 P. 5/5

4

contained this information because it was incorrect.

Further affiant sayeth naught.

Robert A. Fitzgraf
Dr. Robert Fitzgraf

Sworn and subscribed to me this 11 day Of February 2010.

Pamela N. Dragoon



PAMELA N. DRAGOON
MY COMMISSION EXPIRES August 18, 2011
Notary Public, District 21

Appendix G



HARRIS COUNTY
 PLEASE RETURN APPLICATION TO:
 1310 PRAIRIE, SUITE 200
 HOUSTON, TEXAS 77002-1987
APPLICATION FOR EMPLOYMENT
An Equal Opportunity Employer

Job Hotline
755-5044
Office 755-5250
TDD 755-6870

Position #79

PLEASE READ THE FOLLOWING BEFORE COMPLETING APPLICATION:

Harris County does not discriminate in hiring on the basis of race, color, religion, national origin, sex, ancestry, age, or on the basis of a mental or physical impairment. No question on this application is intended to secure information to be used for such discrimination, or to violate the provisions of the Immigration Reform and Control Act of 1986.

Thank you for applying for employment with Harris County. In preparing the application, we require you to use blue or black ink, write legibly and answer all questions.

NOTE: YOU MAY INCLUDE YOUR RESUME, BUT ALL QUESTIONS MUST BE ANSWERED.

In compliance with the Immigration Reform & Control Act of 1986 you will be requested to verify employment eligibility (Form I-9) if hired.

YOUR APPLICATION WILL NOT BE FORWARDED WITHOUT A PERSONAL INTERVIEW

Print Your Full Name	First PAUL	Middle W.	Last SHRODE	Maiden Name
Present Address	Street	City	State/Zip	How Long Home Phone
Previous Address	Street	City	State/Zip	How Long Business/Alternate Phone
Are you between 18-21 yrs. old <input type="checkbox"/>	Social Security No.	Are You: citizen or national	Or an alien lawfully admitted for permanent residence <input type="checkbox"/>	
Are you over 21 yrs. old <input checked="" type="checkbox"/>		of the United States <input checked="" type="checkbox"/>	(Alien Number _____)	
Or an alien authorized by the Immigration and Naturalization Service to work in the United States <input type="checkbox"/>				
(Alien Number or _____)	Admission Number _____	Expiration of employment authorization, if any. _____		

**DATE OF BIRTH REQUIRED FOR BACKGROUND CHECK IF APPLYING FOR
 JUVENILE PROBATION, PRE-TRIAL SERVICES OR
 COMMUNITY SUPERVISION & CORRECTION**

POSITION DATA

Date you can start	01 JULY 1997	Referred by	
EDUCATION			
NAME AND ADDRESS OF INSTITUTIONS	DATES FROM Mo-Yr.	TO Mo-Yr.	MONTH/YEAR GRADUATED
HIGH SCHOOL CLARKE CO. HIGH, ATHENS, GA.	1/64	5/67	5/67
COLLEGE INDIANA CENT. UNIV.	1/69	5/72	5/72
COLLEGE SOUTHWEST TX ST. UN. SAN MARCOS TX	1/79	5/79	5/79
OTHER TX TECH UNIV. SCHOOL OF MED. WURCK	5/87	5/91	5/91
TYPE OF DEGREE/DIPLOMA RECEIVED			
L.B. ARTS			
BA			
PARALEGAL			
MD			
Note: Transcripts from ALL Colleges may be Required.			
MAJOR SPANISH LANG/HISTORY	No. HOURS	24/EACH	MINOR ENGLISH LT
GPA 3.4	ON A	4.0	SCALE
LIST SCHOLASTIC HONORS, OFFICES HELD AND ACTIVITIES IN SCHOOL AND COLLEGE			Total College Hours: 124
EPSILON SIGMA ALPHA HONOR SOCIETY GRAD CUM LAUDE			

GENERAL DATA

Answer Items 1 through 6 by placing an "X" in the proper column. Give details in No. 12 below.

YES NO

1. Are you now working for or have you previously worked for Harris County?		X
2. Do you or does your spouse have any relatives presently working or holding office in Harris County Government?		X
3. Are you aware of any reason which would keep you from being bonded?		X
4. Are you licensed to operate a motor vehicle? If yes, give Driver's License No. and State in No. 12 below. (Will not be considered unless related to job for which you are applying)	X	
5. Are you willing to work any hours assigned to you?	X	
6. Have you ever been convicted of an offense? Please include driving while intoxicated or driving under the influence of drugs (exclude minor traffic violations). Give details and date in No. 12 below.		X
7. FOREIGN LANGUAGE SKILLS Speak <input checked="" type="checkbox"/> Read <input checked="" type="checkbox"/> Write <input checked="" type="checkbox"/>	X	
8. MACHINE AND EQUIPMENT SKILLS: (Word Processing, P.C.'s, etc) Give details in No. 12 below.	Typing <u>50</u> WPM	Shorthand <u> </u> WPM
9. SPECIAL QUALIFICATIONS AND SKILLS. Use this space to indicate any additional experience, skills, licenses or certificates, etc. which in your opinion would qualify you for the position you seek. Give details in No. 12 below.		
10. GENERAL REMARKS. You may wish to include civic or community activities, membership in professional or scientific societies, Publications, Copyrights, Patents or Inventions, Honors, Awards and Fellowships. Give details in No. 12 below.		

11. If you are a veteran, indicate branch served in: N/A
 Dates: From To
 Are you an orphan or surviving spouse of a veteran? Yes ☒ No

12. SPACE FOR DETAILED ANSWERS, INDICATE ITEM NUMBER FOR WHICH ANSWERS APPLY

ITEM	ANSWERS	ITEM	ANSWERS
4	TEXAS: <u> </u>		
7	SPANISH		

EMPLOYMENT HISTORY

Name of Last Employer (or Present) Employer <u>HAMILTON Co. CORONER'S OFFICE</u>		Supervisor and Title <u>CARL PARROT, MD. Co. CORONER</u>	
Address: City/State/Zip (Include Street No. & Name) <u>3159 EDEN AVE. CINCINNATI, OH. 45219</u>		Your Title <u>FORENSIC PATH FELLOW</u>	
From: Month & Year <u>7/96</u>	To: Month & Year <u>7/97</u>	Starting Salary <u>36000</u>	Final Salary <u>36000</u>
Reason for Leaving <u>COMPLETED FELLOWSHIP TRAINING</u>		No. of Persons Supervised <u> </u>	
Describe Your Duties <u>DEPUTY CORONER FOR HAMILTON Co PERFORMED POST MORTEM EXAMINATIONS, SUPERVISED SCENE INVESTIGATIONS, FINALIZED DEATH REPORTS</u>		Phone No. <u>513.221.4524</u>	

Name of Employer SCOTT & WHITE HOSPITAL		Supervisor and Title STEVE BEISNER MD, PhD		
Address: City/State/Zip (Include Street No. & Name) 2401 S. 31st TEMPLE TX		Your Title PATHOLOGY RESIDENT		
From: Month & Year 7/91	To: Month & Year 7/96	Starting Salary 26000	Final Salary 32000	No. of Persons Supervised —
Reason for Leaving COMPLETED PATHOLOGY RESIDENCY		Phone No. 817.774.2111		
Describe Your Duties THE REQUIRED ANATOMIC & CLINICAL PATHOLOGY CORE CURRICULUM				

Name of Employer SCOTT & WHITE HOSPITAL		Supervisor and Title FRANCISCO PEREZ GUERRA MD		
Address: City/State/Zip (Include Street No. & Name) SOME		Your Title SLEEP DISORDERS LAB TEL		
From: Month & Year 8/84	To: Month & Year 7/87	Starting Salary 18000	Final Salary 21000	No. of Persons Supervised —
Reason for Leaving BEGAN MEDICAL SCHOOL		Phone No. —		
Describe Your Duties MONITORED & SCORED SLEEP PATTERNS OF PATIENTS SUFFERING FROM APNEA, NARCOLEPSY SEIZURES, IMPOTENCE, ETC.				

Name of Employer LEGAL AID SOCIETY OF CENTRAL TEXAS		Supervisor and Title NICOLAS SERNA		
Address: City/State/Zip (Include Street No. & Name) 513 S. MAIN, BELTON TX.		Your Title PARALEGAL		
From: Month & Year 5/79	To: Month & Year 8/83	Starting Salary 15000	Final Salary 18500	No. of Persons Supervised —
Reason for Leaving WENT BACK TO UNDERGRADUATE SCHOOL		Phone No. —		
Describe Your Duties REPRESENTED CLIENTS IN ADMINISTRATIVE LEGAL CASES (e.g. SOC. SECURITY, INS, AFDC), DREW UP WILLS & RESEARCHED CIVIL CASES				

REFERENCES

LIST THREE PERSONS WHO ARE NOT RELATED TO YOU AND WHO HAVE DEFINITE KNOWLEDGE OF YOUR QUALIFICATIONS FOR THE POSITION FOR WHICH YOU ARE APPLYING. DO NOT REPEAT NAMES OF SUPERVISORS LISTED UNDER EMPLOYMENT HISTORY.

FULL NAME	HOME OR BUSINESS ADDRESS AND PHONE NUMBER (NUMBER, STREET, CITY, STATE, ZIP)	BUSINESS OR OCCUPATION	YEA ACQUA
JOHN D. HONARD MD	PIERCE CO. M.E. (206) 591-6494 2619 PACIFIC AVE; TACOMA WA. 98408-7929	CHIEF MED EXAMINER PIERCE CO., WA.	1 1/2
ROBERT BAX MD	BEYAR CO. FORENSIC SCI. CENTER (210) 615-2100 1331 LOUIS PASTEUR; SAN ANTO. TX. 78229	DEPT CHIEF M.E. BEYAR CO., TX.	3
SANDRA COMBES MD	FOR. PATH SECTION, MED. UNIV. OF S.C. CAROLINA 171 ASHLEY AVE; CHARLESTON. SC. (803) 797-3501	PROF & DIR. FOR. PATH.	21

I AUTHORIZE INVESTIGATION OF ALL STATEMENTS CONTAINED IN THIS APPLICATION.

I certify that there are no willful misrepresentations, omissions or falsification in the foregoing statements and answers to questions. I am aware that should an investigation disclose any misrepresentation, omission or falsification, my application may be rejected, or if already employed, my employment may be terminated. References and previous employer will be contacted to confirm statements unless otherwise indicated.

YOUR APPLICATION WILL NOT BE CONSIDERED UNLESS SIGNED AND ALL QUESTIONS ANSWERED.

DATE 29 MAY 97 APPLICANT'S SIGNATURE [Signature]

Date _____ Alpha _____ Num. _____ Spell. _____ Date _____ WPM _____ / _____ Date _____ WPM _____ / _____

Date _____ Alpha _____ Num. _____ Spell. _____ Date _____ WPM _____ / _____ Date _____ WPM _____ / _____

VETERANS PREFERENCE INFORMATION

The "Veteran's Employment Preference" (Ch. 657 of the Texas Code) relates to the appointment or employment of veterans who served during a national emergency, an individual classified as surviving spouse who has not remarried or an orphan of a Veteran. To determine if you are entitled to the Veteran's Employment Preference, the following information must be answered.

A veteran qualifies for a veterans employment preference if the veteran:

Served in the military for not less than 90 consecutive days during a national emergency declared in accordance with federal law or was discharged from military service for an established service-connected disability; was honorably discharged, and is competent.

Do you qualify for this preference?

- ☐ Yes
☐ No

A veterans surviving spouse who is not remarried or an orphan of veteran qualifies for veterans preference if:

Veteran was killed while on active duty, veteran served in military not less than 90 days during a national emergency and spouse or orphan is competent.

Do you qualify for this preference?

- ☐ Yes
☐ No

"Veteran" means an individual who served in the Army, Navy, Air Force, Marine Corps, Coast Guard of the U.S. or in an auxiliary service of those branches.

If employed, employee will be asked to provide documents to verify preference

DATE _____

NAME _____

Appendix H

Paul W. Shrodo, M.D.3 Stirrup Lane, Ransom Canyon, Texas 79366
(806) 748-6746 vls@shrodo@aol.com**Qualifications Profile***Licensed to practice medicine in Texas and Ohio and in good standing with Medical Exam Boards**Bi-lingual in English and Spanish**Passed Forensic Pathology Boards (2003)**Graduate Degree in Law (1979)***Professional Experience**Lubbock County Medical Examiner's Office, Lubbock, Texas
Deputy Medical Examiner

2004 - Present

Harris County Medical Examiner's Office, Houston, Texas

1997 - 2004

Assistant Medical Examiner

Performed 3000 + autopsies, testified in 100's of criminal cases, established Residency education program, and designed case review protocol for office.

Hamilton County Coroner's Office, Cincinnati, Ohio

1996-1997

Forensic Pathology Fellow

Studied Forensic Pathology under Dr. John Howard and Dr. Robert Pfalsgraf
During this fellowship program.Scott & White Hospital, Temple, Texas

1991-1997

Pathology Resident

Pathology resident in both Clinical and Anatomic Pathology. Did Forensic Rotations in Bexar Co., Tx. And Columbia, South Carolina.

Texas Tech University Health Science Center, Lubbock, Texas

1987-1991

Medical Student

Medical School: first two years in Lubbock, last two years in El Paso.

Scott & White Hospital, Temple, Texas

1984-1987

Sleep Disorders Technician

Conducted sleep studies on patients and issued reports on those studies.
Helped establish this lab and maintain the business aspects.Legal Aid Society of Central Texas, Bolton, Texas

1979-1983

Paralegal

Prepared legal court briefs, drafted wills, and represented clients
In employer-employees hearings, social security hearings, and small claims appearances.Educational Service Center Region XIII, Waco, Texas

1978-1983

Bi-lingual Consultant

Evaluated migrant children for education in program for English as a second language.

Columbus School, Medellin, Colombia, South America

1975-1978

Teacher

Taught middle school grades. Subjects included Math, Science, and English.
This is a Bi-National School which was sponsored by Colombia and America.

Educational Background

Forensic Path Fellowship (1997)
Cincinnati, Ohio

Pathology Residency (1996)
Temple, Texas

Medical School (1991)
Lubbock, Texas

Pre-Med Requirements, Baylor U. (1984)
Waco, Texas

Graduate Law Degree, Southwest Texas Stat U. (1979)
San Marcos, Texas

BA Degree: Majora (English Lit/World History) Minor (Spanish Language)
Indiana Central University (1973)
Indianapolis, Indiana

Presentations, Papers and Articles:

"Suicide by BB Gun: A Case Report", American Academy of Forensic Sciences, New York City,
New York, February 1997.

"A New Look at the Death in Custody Autopsy", American Academy of Forensic Sciences, Colorado
Springs, Colorado, February 1999.

"Postmortem Distribution of the MK81 (Dizocilipine), A Legal Mimic of Phencyclidine". TIAFT
Scientific Program, Paris, France, August 2002.

Postmortem Distribution of the Novel Anti-Psychotic Drug Quetiapine", Journal of Analytical
Toxicology ISSN 0146-4760 Vol. 28 # 4, April 2004. Pp. 264-68.

"Dextromethorphan: Recreational Abuse of an Over-The-Counter Drug: 13 cases at Houston County
Medical Examiner". Southwestern Association of Toxicologists, Fall 2002 Meeting, Galveston, Texas.

"Diltiazem: Effects and Toxicity in a Geriatric Patient", Southwestern Association of Toxicologist,
Spring 2003, Albuquerque, New Mexico.

"Increasing Popularity of Heroin and Carisoprodol in Abuse", Southwestern Association of
Toxicologists, Spring 2003, Albuquerque, New Mexico.

Appendix I

REPORTER'S RECORD
TRIAL COURT CAUSE NO. 2006CM4085
VOLUME 2 OF VOLUMES

IN THE INTEREST OF:

ANGEL RENAI DOMINGUEZ, AKA
ANGEL RENAI SILVA,
DAMIEN JOSEPH RAMOS,
ELLIE NICHOLE RAMOS and
ALICIA DANIELLE RAMOS,
Minor Children.

IN THE 65TH JUDICIAL

DISTRICT COURT OF

EL PASO COUNTY, TEXAS

JURY TRIAL

COPY

On the 13th day of August, 2007, the
following proceedings came on to be heard in the
above-entitled and numbered cause before the Honorable
ALFREDO CHAVEZ, Judge Presiding, held in El Paso, El Paso
County, Texas:

Proceedings reported by machine shorthand
utilizing computer-assisted realtime transcription.

2

1 APPEARANCES

2 For Child Protective Services:

3 BRUCE YETTER

SBOT # 22153500

4 RICHARD DECK

SBOT # 00785812

5 Assistant County Attorneys

500 San Antonio, 5th Floor

6 El Paso, Texas 79901

7
8 For Respondent Mother Alicia Silva:

9 THERESA CABALLERO

SBOT # 03569625

10 300 E. Main, Ste. 1136

El Paso, Texas 79901

11
12 For Respondent Father David Ramos:

13 CHRISTOPHER T. COX

SBOT # 00787296

6006 N. Mesa, Ste. 220

14 El Paso, Texas 79912

ROSENDO TORRES

SBOT # 20144550

1220 Montana, Ste. 201

15 El Paso, Texas 79902

16 For Angel Renai Dominguez:

17 BERNARDO GONZALEZ

SBOT # 081245100

7362 Remcon

18 El Paso, Texas 79912

19
20 For Ramos Children:

21 CELIA A. VILLASENOR

SBOT # 24043975

1112 Montana Avenue

22 El Paso, Texas 79902

23 DEBORAH BABERS

24 Court Appoint Special Advocate

25
DIANE J. MARQUEZ, OFFICIAL COURT REPORTER

68th District Court, 500 E. San Antonio, Rm. 1105

El Paso, Tx. 79901 (915) 546-2182

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WitnessDirect Cross Redir. Recro. VD Vol.

DAVID RAMOS

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PAUL W. SHRODE, M.D.

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CPS-5	Del Sol Medical Records	106	110	2
CPS-6	Sierra Medical Center Records	111	111	2
CPS-12	Autopsy Report		180	
CPS-12a	CV of Dr. Shrode	131	165	2

1 want to miss anything. If I assume this is a natural
2 death, then I'm not going to think about an accident
3 other a homicide or anything like that.

4 Q. Why do you assume anything?

07:32:44 5 A. Well, you know, the law assumes a person is
6 innocent until proven guilty. Why can't I assume some
7 things?

8 Q. Do you think there is a burden in medicine
9 because there are burdens in the law -- are you telling
07:33:00 10 the ladies and gentlemen of the jury that like the law,
11 that medicine has burdens? And if you are telling me
12 that medicine has burdens, then I'd like you to show me
13 what medical book outlines that.

14 A. No, I'm not going to tell you that.

07:33:10 15 Q. Let's talk about your CV, Doctor. You have down
16 on your resume your educational background. You have a
17 graduate law degree from school of political science
18 Southwest Texas University, San Marcos, Texas 1979. You
19 are saying you have a graduate law degree?

07:33:20 20 A. It's from the school of political science. It's
21 not from the school of law.

22 Q. Do you have a law degree, Doctor?

23 A. Not in the sense of a law degree from a school
24 of law, not like you.

07:33:30 25 Q. Not like me. Do you have a diploma, a

1 certificate, anything that hangs on your wall that you
2 can show the ladies and gentlemen of the jury that says I
3 Dr. Shrode have a law degree? Not just a law degree, a
4 graduate law degree?

5 A. No, I do not have that.

6 Q. And so in fact you don't have a law degree,
7 graduate or otherwise?

8 A. Well, I have a degree in law from the graduate
9 school of political science. As I mentioned, it was the
10 first year of law school in this school that did not get
11 eventually accredited.

12 Q. First year of law school. How many years did
13 you attend?

14 A. One.

15 Q. Do you know how long law school is?

16 A. Three.

17 Q. Three. So you got a law degree in one year from
18 the school that is not an accredited law school?

19 A. Well, the school of law was not accredited.

20 Everything was done under the -- it wound up being under
21 the school of political science.

22 Q. Are you -- I want to understand what you're
23 telling me. Are you saying that you have a law degree?

24 A. I do not have a law degree.

25 Q. So your CV is misleading. Graduate law degree,

1 am I reading that incorrectly?

2 A. No, that's what it says.

3 Q. So that's not what you have though, is it?

4 A. Well --

5 Q. That's a "yes" or a "no".

6 A. I have a law degree from the graduate school of
7 political science.

8 Q. Is that different from you have a graduate law
9 degree?

10 A. In terms of having a law degree from a school of
11 law, I do not have that. And if you want me to say I
12 don't have a law degree, I do not have a law degree.

13 Q. I want you to just tell me what you have,
14 Doctor. It's not I want you to say this or I want you to
15 say that. I see you have said in plain English graduate
16 law degree from school of political science.

17 A. Okay. I have a degree from the graduate school
18 of political science.

19 Q. And what does that degree entail?

20 A. It's law. We studied a year of law. We studied
21 contracts and all the things that you do in first year
22 law.

23 Q. Are you aware there is a criminal justice
24 program at UTEP and students can go take contracts and
25 torts and civil procedure and criminal procedure at that

1 criminal justice program, but they don't call them a law
2 degree?

3 A. No, I am not aware of that.

4 Q. Do you think that that is perhaps misleading?

5 A. Well, if it is misleading it can be looked at.

6 Q. Looked at or changed, rectified, corrected?

7 A. Corrected, whatever.

8 Q. In fact, didn't you say earlier it was a
9 paralegal degree?

10 A. I worked as a paralegal.

11 Q. I didn't ask you that. Didn't you say earlier
12 it was really a paralegal degree?

13 A. It was paralegal studies.

14 Q. And the paralegal in the legal profession would
15 be what a medical assistant is in the medical profession?

16 A. I can't make that correlation. I don't know.

17 Q. Is a medical assistant the same as a doctor?

18 A. No.

19 Q. Could a medical assistant who studied medicine
20 for one year say that she has a graduate medical degree?

21 MR. GONZALEZ: Judge, I'm sorry. It's time
22 to object. This is argumentative and totally irrelevant.
23 That's not why we're here today.

24 THE COURT: Sustained.

25 Q. (BY MS. CABALLERO) And in fact, you have under

1 your qualifications profile that you were a member of the
2 State Bar of Texas from 1979 to 1983, correct?

3 MR. GONZALEZ: Same objection.

4 THE COURT: Sustained. Move on.

5 Q. (BY MS. CABALLERO) Is there anything else on
6 here, Doctor, that needs to be corrected? Anything else
7 under your qualifications?

8 A. You're saying I was not a member of the State
9 Bar?

10 Q. Sorry?

11 A. You're saying I was not a member of the State
12 Bar?

13 Q. I didn't say that. I asked you if you said
14 that?

15 A. I was a member of the State Bar of Texas.

16 Q. Is there anything else on your CV that you think
17 isn't entirely accurate or would be misleading to a jury
18 that takes this back to read it?

19 A. No, I don't believe so.

20 Q. And there was a supplemental report generated by
21 Rex K. Parsons investigator, correct?

22 A. Yes.

23 Q. And that supplemental report was generated
24 because in fact the case numbers were mixed up, correct?

25 A. Yes, the case numbers were incorrect.

1 Q. So they were using a camera and shots are taken
2 and they put case number 96-0219 on some information.
3 And as it turns out that should have been 06-0220,
4 correct?

5 A. Correct.

6 Q. Any other mistakes that we need to know about
7 here?

8 A. I am not aware of any.

9 MS. CABALLERO: I pass the witness.

10 THE COURT: Let's brake for the day. Ladies
11 and gentlemen of the jury, at this time we are going to
12 recess for the day. The instructions I've given you
13 previously continue. Do not discuss this case with
14 anyone. Anyone attempts to discuss the case with you,
15 inform us immediately.

16 I need you in the jury room at 8:30 tomorrow
17 morning so we can continue this case. Good night.

18 (Proceedings adjourned for the day.)
19
20
21
22
23
24
25

1 STATE OF TEXAS }

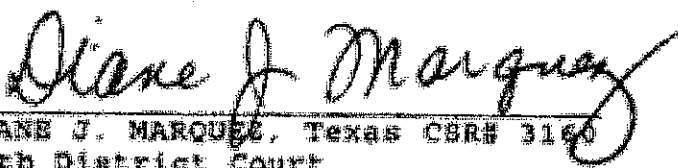
2 COUNTY OF EL PASO }

3
4 I, Diane J. Marquez, Court Reporter in and for the
5 65th Judicial District Court of El Paso County, State of
6 Texas, do hereby certify that the above and foregoing
7 contains a true and correct transcription of ~~all~~ ^{excepts} portions
8 of evidence and other proceedings requested in writing by
9 counsel for the parties to be included in this volume of
10 the Reporter's Record, in the above-styled and numbered
11 cause, all of which occurred in open court or in chambers
12 and were reported by me.

13 I further certify that this Reporter's Record of the
14 proceedings truly and correctly reflects the exhibits, if
15 any, offered by the respective parties.

16 I further certify that the total cost for the
17 preparation of this Reporter's Record is \$ _____ and was
18 paid/will be paid by _____.

19 WITNESS MY OFFICIAL HAND this the 31 day of
20 Sept., 2007.

21
22 
23 DIANE J. MARQUEZ, Texas CRR# 3160
24 65th District Court
25 El Paso, TX 79901 (915) 546-2102
Expires: December 31, 2008

DIANE J. MARQUEZ, OFFICIAL COURT REPORTER
65th District Court, 500 E. San Antonio, Rm. 1105
El Paso, Tx. 79901 (915) 546-2102

Appendix J

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NEWS

Weather:

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EL PASO, TX | Now: 62°F

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County confirms medical examiner Paul Shrode's résumé issues; no action to be taken

By Diana Washington Valdez / El Paso Times (<mailto:dvaldez@elpasotimes.com>)
 subject: El Paso Times
 POSTED: 02/23/2016 12:00:00 AM MST

EL PASO -- County Human Resources Director Betsy Keller said her staff found discrepancies in Chief Medical Examiner Paul Shrode's résumé.

She reported her department's findings at Monday's meeting of the County Commissioners Court.

The commissioners first discussed Shrode's résumé during a closed session. Then, once back in open session, they announced that no action would be taken at this time.

Shrode did not attend Monday's meeting and has not returned phone messages for comment.

Keller said Shrode does not have a graduate law degree from Southwest Texas State University, which he claimed he had on the résumé he submitted when he applied in El Paso.

"He took several graduate courses at Southwest Texas," Keller said.

He has a medical degree from Texas Tech University Health Sciences Center but no other graduate degree, the county confirmed.

In a previous job application -- for Harris County -- Shrode indicated he had a paralegal diploma or degree from Southwest Texas State University, now known as Texas State University. However, according to the registrar's office, he attended the school for only one semester in 1979 and was enrolled in political science courses.

Shrode also said on his résumé that he was a deputy medical examiner for the Lubbock County Medical Examiner's Office before coming to El Paso.

However, the Human Resources Department confirmed that he was actually an employee of Texas Tech in Lubbock, which had hired him as a professor of pathology.

At the time, Texas Tech was on contract with Lubbock County to perform medical examiner duties, and Shrode was one of the Texas Tech employees who did autopsies and was allowed to use the title of deputy medical examiner on the paperwork.

David Fisher, a government watchdog in Elgin, Texas, said Texas Tech was forced to dismantle its former medical examiner arrangement with Lubbock County because it was allegedly illegal.

"Shrode's previous supervisors at Texas Tech in Lubbock did not have the authority to confer the title of deputy medical examiner on anyone," Fisher said.

Fisher has a complaint against Shrode pending before the Texas Medical Board.

Keller said Shrode received his undergraduate degree from Indiana Central University in world history and Spanish in 1972, and not in 1973, as his résumé indicated.

Keller also confirmed that Shrode passed only one of the two required exams to become board certified. "He is no longer eligible to sit for those boards (exams)," she said.

Elizabeth Gard, who also filed a complaint with the Texas Medical Board against Shrode, complained to commissioners about the way Shrode's office delayed releasing her late husband's autopsy report and death certificate, and about alleged errors in the documents.

County Assistant Attorney Holly Lytle defended how the county handled the release of the autopsy

VIDEO NEWS FEED



28m

Bannon Review

In case you missed it, here's a preview of the GRAMMY Salute to the #Beats, airing again tonight (Feb. 12) on CBS.

This comment is BLOCKED from showing in the widget.

This comment is APPROVED from showing in the widget.

Happening Around El Paso

News

EL PASO TIMES ONLINE

Later, Gard said, "What Lytle presented was inaccurate because she did not have the complete information from my husband's medical records."

After the meeting, County Judge Anthony Cobos said, "I've lost confidence in Dr. Shrode. As time goes on, I believe a lot more is going to come to light regarding him."

County Commissioner Veronica Escobar said the district attorney and county attorney consider Shrode qualified to be the medical examiner. Under Texas law, the only requirement for a medical examiner is that he or she be a licensed medical doctor.

Escobar said Shrode did embellish his résumé, but commissioners already admonished him a couple of years ago.

"It would be irresponsible for the county to fire someone simply to do the politically expedient thing," said Escobar, referring to other politicians who've said the county should fire Shrode.

Lawyer Theresa Caballero, who is running for county attorney in the Democratic Party primary election, said she would have advised the commissioners to fire Shrode.

"I told the commissioners (Monday) I wanted this to go to a vote, and for everyone to be able to see how they voted," Caballero said. "Shrode is dishonest. I would like for him to be fired. Lives are at stake."

Lawyer Sergio Coronado, a county judge candidate and Canutillo ISD board member, also has called for Shrode's ouster.

County Attorney Jo Anne Bernal, who faces a challenge by Caballero for the county attorney's post, said Shrode is qualified to stay on as El Paso's chief medical examiner.

Diana Washington Valdez may be reached at dvaldez@elpasotimes.com; 546-6140.

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8 used-to-be homeless stars



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Crowdfunder

Three-story Shreve Hall building
Canutillo...



Appendix K

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

COUNSELING WORKSHEET

Dr. Paul W. Shade
NAME

10-5-01
DATE

- | | |
|--|--|
| 1. <input type="checkbox"/> Unreported Absence | 9. <input type="checkbox"/> Improper conduct |
| 2. <input type="checkbox"/> Tardiness | 10. <input type="checkbox"/> Reporting under the influences of alcohol |
| 3. <input type="checkbox"/> Drinking on duty | 11. <input type="checkbox"/> Violation of rules |
| 4. <input type="checkbox"/> Insubordination | 12. <input checked="" type="checkbox"/> Defective and improper work |
| 5. <input type="checkbox"/> Dishonesty | 13. <input type="checkbox"/> Carelessness |
| 6. <input type="checkbox"/> Failure to obey orders | 14. <input type="checkbox"/> Destruction of property |
| 7. <input type="checkbox"/> Fighting on premises | 15. <input checked="" type="checkbox"/> Other: <u>Wrong determination of cause of death.</u> |
| 8. <input type="checkbox"/> Leave without permission | <u>Case - MLOJ. 2587</u> |

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

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

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

Correct ruling:

COD: Acute Toxic effects of cocaine and heroin

MOD: Accident

How injury occurred: Consumed drug mixture of cocaine and heroin

RECEIVED
Kathy Ramsey

OCT 08 2001

MEDICAL EXAMINER'S OFFICE

[Signature]
Signature of Supervisor

10/08/01
Date

[Signature]
Signature of Employee

10-08-01
Date

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

Appendix L

Luis A. Sanchez, M.D.
Chief Medical Examiner



(713) 796-9292
FAX: (713) 796-6844

JOSEPH A. JACHIMCZYK FORENSIC CENTER

file

MEMORANDUM

TO: Paul Shrode, M.D.
Assistant Medical Examiner

FROM: Dwayne Wolf, M.D., Ph.D.
Deputy Chief Medical Examiner

RE: Case Log

DATE: December 15, 2003

A review of your cases from 2003 reveals a large number of remaining pending cases (103 cases), uncompleted (classified and pending) autopsy reports (178 cases currently in the medical records area). In order to allow you time to diminish these backlogs you will be relieved of any responsibility from performing autopsies on Wednesday, December 17, Thursday, December 18, and Friday, December 19.

During this period of time, you will need to maintain a log of cases completed (number unpended, and number of autopsies released for final form). These numbers should be forwarded to me at the conclusion of each day.

Cc: Luis A. Sanchez, M.D.

DAW/bg

Appendix M



Times.com (<http://www.elpasotimes.com>)

NEWS

Weather:

(<http://www.elpasotimes.com/weather>)

EL PASO, TX | Now: 58°F

(<http://www.elpasotimes.com/weather>) | High: 67°F

(<http://www.elpasotimes.com/weather>) | Low: 38°F

(<http://www.elpasotimes.com/weather>) | 5-Day Forecast

HOT TOPICS: [Bridge delay](http://www.elpasotimes.com/news/24895008) (<http://www.elpasotimes.com/news/24895008>) | [ICE informant arrested](http://www.elpasotimes.com/news/24895008) (<http://www.elpasotimes.com/news/24895008>)

Print Email

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

By Marty Schladen \ EL PASO TIMES (<mailto:mrschladen@elpasotimes.com?subject=El>)

EL PASO TIMES
POSTED: 02/12/2014 12:00:00 AM MST

[Shrode resume](#)

(http://extra.mnginteractive.com/files/media/6525/20100110/20100110_053446_Shroderesume.pdf)

[Transcript: Cross examination of Shrode](#)

(http://extra.mnginteractive.com/files/media/6525/20100110/20100110_053411_Shroderesume.pdf)

[Richard Nields clemency report](#)

(http://extra.mnginteractive.com/files/media/6525/20100622/20100522_124002_Richard_Nields_case.pdf)

EL PASO -- A majority of the County Commissioners Court stuck by Chief Medical Examiner Paul Shrode through three conflicting résumés and more than two years of questions about his credibility. All that changed Monday when court members fired Shrode on a 3-2 vote.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Medical examiners frequently testify in felony trials.

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

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

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

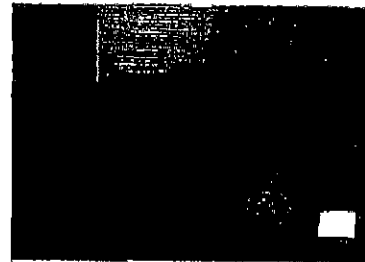
Shrode testified that he knew from his autopsy that Nields beat Patricia Newsome in Cincinnati in 1997, left for 15 minutes to six hours, then came back and strangled Newsome. Shrode's supervisor later told the parole board that Shrode had no scientific basis for the claim, which helped establish to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

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

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



Cash camera video of a police chase in Douglas...



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

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

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

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

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

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