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STATE OF MARYLAND	*	IN THE
v.	*	CIRCUIT COURT
KEITH DAVIS, JR.	*	FOR
CASE NOS: 116090001	*	BALTIMORE CITY

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MOTION FOR NEW TRIAL

TO THE HONORABLE SYLVESTER B. COX, JUDGE OF SAID COURT

Defendant, KEITH DAVIS, JR., by his attorneys, Deborah Katz Levi, Andrew Northrup, and Brandon T. Taylor, hereby moves this Honorable Court, pursuant to Maryland Rule 4-331, to Grant this Motion for New Trial for the reasons set forth in the Memorandum in Support of this Motion.

WHEREFORE, the Defendant prays that this Honorable Court:

A. Grant this motion for a new trial;

B. Set this motion in for a hearing; and

C. Grant such other and further relief as the interest of justice may dictate.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of August, 2019, a copy of the foregoing Motion for New Trial was hand delivered to Assistant State's Attorney Patrick Seidel, at the Baltimore City State's Attorney's Office, 120 E. Baltimore Street, Baltimore, MD 21202.

Deborah Katz Levi
Assistant Public Defender

STATE OF MARYLAND	*	IN THE
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* * * * * * * * * * * * *

MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR NEW TRIAL

Defendant, Keith Davis, Jr., by and through his attorneys, Deborah Katz Levi, Andrew Northrup, and Brandon T. Taylor, hereby moves this Honorable Court, pursuant to Maryland Rule 4-331, to grant this Motion for a New Trial because the prosecutor committed egregious error in closing arguments by: (1) misleading the jury regarding DNA evidence; (2) denigrating Mr. Davis; (3) arguing an unindicted crime for which there was no evidentiary support; (4) altering exhibits presented to the jury through Power Point; (5) incorrectly stating the presumption of innocence and shifting the burden of proof; and (6) admitting irrelevant and inflammatory evidence. In addition, this Honorable Court, having denied the defendant the right to a hearing on new evidence first raised during trial that may amount to a Brady violation, which is hereby supported by affidavit, entitles Mr. Davis to a new trial.

Each error in and of itself violates Mr. Davis's right to a fair trial, effective assistance of counsel, and his right to due process, ensured to Mr. Davis through the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Articles 21 and 24 of the Maryland Declaration of Rights. The violations substantially prejudiced Mr. Davis and interfered with his right to due process and effective assistance of counsel, thereby entitling him to a new and fair trial. Further, the cumulative nature of the errors, objected to and overruled, could not be cured by any one instruction.

I. THE PROSECUTION MISLEAD THE JURY REGARDING DNA AND FINGERPRINT EVIDENCE

As Chief Judge Barbera explained, "DNA is a powerful evidentiary tool and its importance in the courtroom cannot be overstated . . . . Not surprisingly, jurors place a great deal of trust in the accuracy and reliability of DNA evidence." Whack v. State, 433 Md. 728 (2013). Thus, when a prosecutor misleads the jury, particularly regarding DNA, reversal is required. See Whack, 433 Md. at 748; Beads v. State, 422 Md. 1 (2011). In this case, the prosecutor falsely stated "how are we gonna distinguish between his blood and the victim's blood? Which one of these spots do we say, oh this must be Kevin Jones's spot, that we can say is not his spot. That's the problem is that he was bleeding on his own stuff. That's why we can't do DNA." See Rebuttal Tr. Attached as Exhibit 1. As the attached affidavit from Karl Reich, Ph.D., illustrates, these assertion were false and misleading. Moreover they were based on facts not in evidence. As a result, a new trial is required.

In Whack, the Court of Appeals reversed the defendant's conviction for murder because the prosecutor mislead the jury during closing arguments regarding DNA. As Chief Judge Barbera explained, "counsel have a responsibility to take extra care in describing DNA evidence." Id. at 748. Further, it is "highly improper" to misrepresent DNA evidence to a jury. "Given the immense weight jurors are apt to accord DNA evidence," when prosecutors make factually incorrect and misleading statements during closing arguments, as was the case here, the trial is manifestly unfair. Id. at 750. As was the case in Whack, in the instant matter, the prosecutor's statements misled the jury to the prejudice of the defendant, and thus a new trial is required.

More specifically, the prosecutor in the instant matter stated "[Mr. Davis] was bleeding on his own stuff." There were simply no facts in evidence to support this contention. There was testimony that Mr. Davis was bleeding, but no testimony that the blood on Mr. Davis's clothes came from Mr. Davis and not from Mr. Jones. See DNA Affidavit.

Next, the prosecutor asserted that the reason there's no DNA is because the State could not distinguish between Mr. Davis's blood and Mr. Jones's blood. That is patently false and misleading to the jury. It is common knowledge in the field of DNA that scientists can determine mixture DNA, or DNA from more than one person, even in a small spot of blood. See Whack at 743-44; and Reich Affidavit. This statement to the jury, which was presented during rebuttal close as a justification for why the State did not present the results of the DNA evidence is patently false, misleading, and deprived Mr. Davis of the right to a fair trial, as he had no ability to defend against the false assertion.

"Closing arguments serve an important purpose at trial. . . . [a]ccordingly, [courts] grant attorneys, including prosecutors, a great deal of leeway in making closing arguments. . . . [But t]his 'liberal freedom' has limits." Whack 433 Md. at 742. Prosecutors may not mislead juries, and when they do, particularly in regards to DNA evidence, reversal is required. See id. As courts have explained, errors committed at closing must be considered within the larger context within which DNA evidence is treated and perceived by jurors." Id. at 747. When the prosecutor, such as here, falsely claims the State did not present DNA evidence because it could not discriminate between two contributors, that claim should be closely scrutinized, particularly in a case such as this one with a close range firing and blood on the crime scene. By making the false claim about DNA and misrepresenting to the jury, the prosecutor recklessly or intentionally misled the jury when Mr. Davis had absolutely no chance to respond to the false claim regarding

mixture DNA or that Mr. Davis bled all over his clothes. This misleading statement, launched for the first time during rebuttal close substantially prejudiced Mr. Davis and interfered with his right to a fair trial, to Due Process, and to effective assistance of counsel, thus requiring a new and fair trial.

II. THE PROSECUTOR IMPROPERLY DENIGRATED THE DEFENDANT BASED ON FACTS NOT IN EVIDENCE

The prosecutor repeatedly referred to Mr. Davis as "Mr. Howard County." He also repeatedly claimed that the defendant was not from Baltimore, and only came to the city to commit a murder. These statements inappropriately denigrated the defendant, were not based on facts in evidence, and inflamed the passions of the jury to "protect their community." As a result, Mr. Davis was deprived of the right to a fair trial and a new trial is warranted.

There was simply no evidence indicating where Mr. Davis was from. There was merely a 2013 expired identification card, issued two years before the murder. There was no testimony as to where Mr. Davis was born what his ties to Howard County were. Denigrating the defendant with an nickname, no less one that is unsubstantiated, is inappropriate and inflames the passion of the jury. Moreover, doing so with the suggestion that the jury needs to protect its community is inappropriate and violates the defendant's right to a fair trial. See Beads v. State, 422 Md. 1 (2011).

III. THE PROSECUTION IMPROPERLY REFERRED TO UNINDICTED CRIMES TO DEPRIVE MR. DAVIS OF THE RIGHT TO A FAIR TRIAL

In U.S. v. Wilson, 135 F.3d 291 (1998), the Fourth Circuit reversed the defendant's murder conviction for improper comments in closing that deprived the defendant of his right to a fair trial. In particular, the prosecutor in Wilson waited until closing argument to argue that the facts in evidence supported an unindicted crime. The Court found that this misled the jury and

prejudiced the defendant. More specifically, the prosecutor in that case waited until closing argument to assert that the defendant had murdered someone. While there was evidentiary support to argue that the defendant had fired a weapon at somebody, there was no support for the argument that he had killed anyone. Notwithstanding the lack of evidence, the prosecutor waited until closing argument to assert that there was in fact a murder and that the defendant committed it. The Fourth Circuit found this to be "prosecutorial misconduct that deprived [the defendant] of a fair trial." Id. at 296.

The same thing happened here. The prosecutor waited until closing argument to suggest that Mr. Davis robbed the deceased because no wallet was found on Mr. Jones. The prosecutor based this argument on facts not at all in evidence, then asserted his own ill-advised statement that he "sure hoped" that the seven dollars found in Mr. Davis's pocket were not what this murder was all about. As was the case in Wilson, this unsupported and inflammatory argument prejudiced Mr. Davis because he was entirely unable to develop a defense to this unindicted crime, which the prosecutor argued for the first time in closing argument.

As the court concluded in Wilson, this "was not based on record evidence or any reasonable inference," the argument "came as a last-minute surprise [because the defendant] was not charged with murder in the indictment," and the defense could not present a defense to that claim in any way." Id. at 299-300. The argument simply "came too late" for Mr. Davis's lawyers to develop a factual defense. Id. This is particularly harmful given the fact that Mr. Davis had a defense witness in a holding cell at the time who would have testified that he had lent Mr. Davis cash the night before the killing.

In Wilson, the Fourth Circuit held that the prosecutor's arguments based on an unindicted crime were "highly improper because it was not supported by the evidence and it was sprung at

the last minute, when Talley and his lawyer had no chance to investigate the charge or to offer any evidence in defense." Id. at 299. The same is true here. The prosecutor asserted that Mr. Davis committed a robbery, an unindicted charge, for which there was no evidentiary support, and he did so at the last minute, in closing argument, in a circumstantial evidence case, when the defendant had no opportunity to defend against the charge. Mr. Davis was certainly prejudiced by the remarks. As the Fourth Circuit stated, "it is hard to fathom anything more prejudicial than the unproved assertion that the accused is also guilty of [an uncharged crime] when he is on trial for another offense." Id. at 299. As was the case in Wilson, the State overreached when it argued an unindicted crime during closing argument for which there was no support, and in doing so, prevented Mr. Davis from responding and defending himself. As a result, the State rendered this trial manifestly unfair, and a new trial is required.

IV. THE PROSECUTION EDITED PHOTOGRAPHS IN EVIDENCE, DENYING THE DEFENDANT THE RIGHT TO A FAIR TRIAL

In State v. Walker, 182 Wash.2d 463 (2015), the Supreme Court of Washington reversed a defendant's conviction where the prosecution edited photographs that had been admitted as evidence, then presented those photographs to the jury for the first time in a Power Point presentation during closing arguments. In this case, the same is true. The prosecutor edited several photographs and at least one video during its closing argument and presented those edited photographs to the jury through a Power Point. The State did not show the photographs to anyone in advance, and to this day, has refused to admit the Power Point into the record for

appellate review, stating rather absurdly, that the Power Point presented to the jury was work product.[1]

The photos in the State's Power Point were highly edited. Some photos appear with graphics, some have circles, highlights and portions taken out and superimposed on other photos, some have green and red graphics placed on top of them, some are cut out from one picture and super-imposed on others. The argument that the photos were already in evidence, which this Court accepted, has been flatly rejected in other jurisdictions. In Walker, the State argued that the edited photos were already in evidence. The court said that the "**the problem is that the state altered the photo.**" 182 Wash.2d at 488. The underlying photo may have been in evidence, but the fact that the prosecutor altered the photo to emphasize the prosecutor's opinion was improper. **"To be sure, altering evidence on Power Point slides constitutes misconduct."** Walker, 182 Wash.2d 463, 489 (2015).

And further, in State v. Walter, 479 S.W.3d 118 (2016) the Court explained, just as defense counsel argued in this case: "[T]he use of the altered photograph was the equivalent of introducing unadmitted evidence." Id. at 125. Here, the prosecutor altered numerous photos,

[1] In State v. Walker, 182 Wash.2d 463 (2016), the Court explained that, "given the serious need to curb abuses of such visual presentations, we encourage trail court judges to intervene and to preview such slides before they are show to a jury." Id. at 480. This is "not burdensome and could curtail the necessity of a retrial due to misconduct." Id. In this case, not only was that not done, but the State refused to place a copy into the record, and the Court, to this day has not even ordered it. The photos and the video admitted through Power Point were manipulated and altered, and constituted unadmitted evidence.

and then, in an act to shield appellate review, refused to enter those photos into evidence. This conduct is egregious, in and of itself, and violates Mr. Davis's right to a fair trial and to effective assistance of counsel. It further interferes with the special duties of prosecutors under rule 3.8 and the duty of candor.

The use of visual aids should be closely monitored because the human mind is particularly persuaded by rapid visual images. In this case, the altered photographs, maps and videos, presented to the jury through Power Point, particularly during closing arguments "manipulate[d] the audience[] by harnessing rapid unconscious or emotional reasoning processes and by exploiting the fact that we do not generally question the rapid conclusions we reach based on visually presented information." State v. Salas, 1 Wash. App. 2d 931 (2018) (finding prosecutorial misconduct for submitted edited photographs to the jury during closing arguments through Power Point). This is particularly problematic during closing argument when "the risk of swaying a jury through the use of prejudicial imagery is perhaps highest during closing argument, when jurors may be particularly aware of, and susceptible to, the arguments presented." Salas, 1 Wash. App. at 947.

Here, the State used closing argument to present multiple edited exhibits and photographs, changing how they looked, superimposing them on top of each other, adding graphics, and highlighting portions with multi-colored circles, and edits. The State also played edited recordings alongside edited photographs, and superimposed portions of edited photos over others, while juxtaposing edited photographs against each other inappropriately.

"Closing arguments provides an opportunity to draw the jury's attention to the evidence presented, but is does not give a prosecutor the right to present altered versions of admitted evidence to support the State's theory of the case, [and] to present derogatory depictions of the

defendant, or to express personal opinions of the defendant's guilt." Walker, 182 Wash.2d at 478. In this case, the State admitted a number of edited exhibits to the jury, which had not been admitted during trial. The errors were egregious, inflammatory, and numerous, and they highly prejudiced the defendant and entitle him to a new trial.

V. THE PROSECUTION IMPROPERLY CHARACTERIZED THE PRESUMPTION OF INNOCENCE AND SHIFTED THE BURDEN OF PROOF

Over objection, the State instructed the jury that the presumption of innocence did not mean that the defendant was innocent, but merely that he was not guilty. This is incorrect, and manifestly interferes with the defendant's right to a fair trial. Moreover, the State repeatedly referred to witnesses the defendant could have brought, particularly with regard to DNA. The defendant objected and the Court overruled the objections. Burden shifting during closing argument is inappropriate and prohibited. See Lawson v. State, 389 Md. 570, (2005) (reversing conviction based on cumulative error at closing). While the Court did ultimately re-read the reasonable doubt instruction, this failed to provide a cure, given the cumulative nature of the errors and the prejudice to the defendant at trial. See id. Supplemental argument on this issue of constitutional importance is forthcoming.

VI. THIS HONORABLE COURT'S FAILURE TO SUSTAIN OBJECTION TO INFLAMMATORY AND IRRELEVANT EVIDENCE, INTRODUCED DURING CLOSING, WARRANTS A NEW TRIAL

During closing, and over objection, the State argued that the defendant "beat a hack," and was cheating on his girlfriend. Mr. Davis repeatedly objected to the introduction of this evidence, and those objections were all overruled. Allowing the State to rely on irrelevant and highly prejudicial evidence during closing violated Mr. Davis's right to a fair trial. It served the equivalent of admitting 404(b) evidence into trial without the proper analysis. This highly

inflammatory and irrelevant information severely prejudiced Mr. Davis in a case that was entirely circumstantial. Thereby violating Mr. Davis's right to a fair trial and unfairly influencing the verdict. As a result a new trial is required. See Lawson v. State, 389 Md. 570, 598 (2005).

VII. NEW EVIDENCE ADDUCED DURING TRIAL, BUT NOT PREVIOUSLY PROVIDED TO DEFENSE, AMOUNTS TO A POTENTIAL BRADY VIOLATION THAT THIS COURT DECLINED TO EXPLORE

During trial, Major Singletary testified that he was informed of Kevin Jones's murder from a man named Donald Long, who was the first to report it. Defense Counsel's investigator found and interviewed Mr. Long, during trial, who indicated that he thought Mr. Jones was murdered because he had witnessed his cousin being murdered a few weeks prior to June 7, 2015. Mr. Long also stated that he believed Mr. Jones dabbled in drug dealing and he had previously been shot. See Long Affidavit, Attached as Exhibit 3. Mr. Long further recollected that he may have told this information to the Baltimore Police Department the day of the murder. In the affidavit, attached as Exhibit 3, Mr. Long now states he is not sure if he told this information to police, but originally reported to our investigator that he did so on the day of the murder. Mr. Long also stated that he and his supervisor completed reports. Prior to trial, defense counsel never received this information.

Defense counsel asked for a hearing and asked that both Detective Curtis McMillion and Mark Veney be present so we could discern whether they knew of Mr. Long and the information he had, and failed to provide this information to the defense, as both detectives were at the scene of the murder on June 7, 2015. The Court granted the request for the hearing, but failed to follow through, despite repeated requests from the defense. This information, discovered during trial amounts to new evidence for which a new trial is warranted and for which Mr. Davis was, at

minimum, entitled to the hearing that the Court had granted. As a result, Mr. Davis is entitled to a new trial.

CONCLUSION

This Court ought to grant Mr. Davis's Motion for a New Trial because the prosecutor committed egregious error and misconduct in closing arguments by: (1) misleading the jury regarding DNA evidence; (2) denigrating Mr. Davis; (3) arguing an unindicted crime for which there was no evidentiary support; (4) altering exhibits presented to the jury through Power Point; (5) incorrectly stating the presumption of innocence and shifting the burden of proof; and (6) referencing irrelevant and inflammatory evidence. Moreover, new evidence exists that indicates exculpatory information may have been given to the police and never provided to defense. A request for a hearing on this matter was granted, but never followed through with. Thus, Mr. Davis was unable to complete the record on a Brady violation, which he contends may have occurred. As a result of all the above-mentioned errors and misconduct, this Court ought to grant Mr. Davis's Motion for New Trial.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of August, 2019, a copy of the foregoing Motion for New Trial was hand delivered to Assistant State's Attorney Patrick Seidel, at the Baltimore City State's Attorney's Office, 120 E. Baltimore Street, Baltimore, MD 21202.

Deborah Katz Levi
Assistant Public Defender

EXHIBIT 1

PROSECUTION CLOSING

Seidel: Before I being my argument, I wanna start with kind of a brief summary. A brief introduction to the argument. What I wanna do is show you where we're gonna start, and where we're gonna go, okay? I'm gonna take two slides to do that. I wanna start first with this slide. Cuz where the state starts, where my argument starts and where you start is with something called the presumption of innocence. Now when we began this case, when I did my opening statement I told you I don't wanna just talk to you, okay, I actually wanna show you. So as I'm talking, I'm also gonna show you on the monitor exactly what I'm talking about so you can understand it, so you can hear it for yourself, so you can see it for yourself. The presumption of innocence does not mean that he's innocent. It means that you're gonna assume he's not guilty, okay?

Levi: Objection

Hon. Judge Sylvester B. Cox: Objection is noted, overruled.

Seidel: And the best way to understand this concept is to look at a slide like this. Last week, when you were first sworn in, when you first sat in this jury box, if in my opening statements I said thank you very much, the state rests, and the judge said what's your verdict? This is all you have. You have the name of the case and the case number. You didn't have any witnesses, you didn't have any pictures, you didn't have any video. You had nothing to base your verdict on. So a week ago, if you were asked what your decision was, it had to be not guilty cuz you had nothing to find him guilty. But over the course of a week, we have gone from the presumption of innocence to where the endpoint is. Which is right here, reasonable doubt. This is where we have to go, this is the – this mountain that we have to overcome. It's the highest burden that you could possibly imagine. And this is a concept that even confuses lawyers: what is reasonable doubt? Well you just heard the definition: reasonable doubt is doubt founded upon reason. You're using the same words to describe what the concept is. So I wanted to try and show you

that you actually already understand that concept because you do it every day in your life. Reasonable doubt is proof that convinces you of the truth so that you're willing to act on it without reservation, okay? You're gonna make a decision based on whatever it is that you're learning. And number two, it's gotta be something important to you. You do this every single day. If I go down to Raven's stadium and I want to buy a ticket, I can go to the box office where I have absolutely no reason to doubt that that's a legitimate ticket. Or I can go buy it from a scalper, where I might want a little bit more information before I turn over my money. If I buy a car, buy it from a dealership, do I have a reason to doubt I'm actually gonna get that car? What if I go on Craigslist? Am I buying it now? You guys do this every single day in a whole bunch of transactions in your life you just don't realize that all it is is getting beyond reasonable doubt. It's being able to make that decision and act upon it. So this is now my argument. I told you at the beginning I want you to leave here convinced of what happened and who did it. And I think that over the course of the last six to seven business days, we have shown you what happened and we have shown you who did it. Now I wanna go through and I wanna summarize and I wanna start with what happened. This is what happened. Okay? So what we did is we gave you surveillance video, right? I told you he's walking to work. Kevin Jones is walking to work. And you can see for yourself that Kevin Jones was walking to work. You can see he's got the sweatshirt on. You can almost read Preakness along the side of his sweatshirt here. You can see he's got his bag, his work pants, his boots, you can see his short braids coming out. I told you he was walking to work, now you can see it for yourself. And we heard from Detective Pittmann that this time stamp is about three minutes off, so it's not 4:48, it's 4:45 in the morning. You can what Park Heights looks like at 4:45 in the morning. And I know that Mr. Taylor wanted to point out it was bright broad daylight, sunshine. You've seen the video yourself there at 4:45 in the morning, it's still dark, the sun hasn't come out yet. So there we go. This is something that we have proven. He's walking down that street at 4:45 in the morning. Then this happens. Okay. This is about 45 seconds later. Again, quiet street, 4:45 in the morning –

Levi: Objection, your honor.

Hon. Judge Sylvester B. Cox: Objection is noted, it's overruled.

Levi: May we approach? Need to make record?

Hon. Judge Sylvester B. Cox: No, nope, no

Seidel: And what we have is a person walking down the street with a mask over his face. And he's forty-five seconds behind Kevin Jones. And what you just saw right there, is that that person right at the end of the clip is starting to cross that street. And that's why I drew the arrow the way that I drew it. Is because they're crossing the street, which way are you going if you're crossing the street? You're going towards that parking lot. Watch right here. 4:49 and fifteen seconds, the dog reacted first. And of course it's the dog that gets left on the street all by itself while everyone's inside. That right there is the indication that there's something going on. The fact that this guy is just standing outside smoking his cigarette and all of the sudden gets up and looks this way. And he's looking towards where the parking lot would be. And the dog that's just lying out there on the street all the way on the ground all of a sudden perks up and jumps up and starts staring at the same direction. That's when the shots are getting fired. And we know that because the 911 call is at 4:50.

Plays 911 call(10:15:49)

Seidel: Somebody just got shot on Belvedere and Park Heights. So what we've established is he's walking to work, he's being followed by a masked man and in less than four minutes, there is a shooting in the direction right where all this was taking place. You've seen this image before, this is the parking lot. And I'm not putting this up here so you can see Kevin lying on the ground, I don't know why this was such a focus in this case. The purpose of this picture is so that you can see the characteristics of where the crime took place. This is an isolated area. Empty parking lot. And you can imagine at 4:45 in the morning this is pitch black. Because the lighting – there's no lighting anywhere along here. You've got

some basic street lights right here but that's not going in the parking lot and you've got a fenced in area and you've got trees and you've got businesses that are all closed down here. This one appears to be abandoned right here. This is an isolated area. This is a place where you are by yourself for a limited amount of time. I wanna show you something that's important about that autopsy. I told you that Kevin can't come into this courtroom and he can't testify. But that doesn't mean his body can't tell us a story.

Levi: Objection your honor, facts not in evidence.

Hon. Judge Sylvester B. Cox: Objection is noted, it's overruled.

Seidel: His body tells us a story. Better than any witness. He had abrasions on his left hand and only his left hand. Dr. Allen told you that she can tell the difference between healing abrasions like old scrapes and old cuts and something that's fresh. And she said that these abrasions are the same time as the gunshot wounds. Why on his left hand? Which hand is he using to hold his bag as he's walking down the street? As that bag is strapped over the shoulder, he's holding it back with his left hand. And yet, when we find the body the bag is separated from him. And it's not just lying next to him, it's out front of him, pretty good distance. And you can see the personal effects are also scattered. We'll look at these in a little bit more detail but he's got a box right here, he's got his grill, his gold fronts right here, a couple of cell phones, some listechs and the bag, all separated and scattered around his body. But what we also know is probably the first gunshot that he suffered is the one to his face. Cuz this is the one he had to still be alive because he swallowed the bullet. And this is the only gunshot wound that he suffered from the front to the back and straight in front to back, right to his face. But we also know that there's no evidence on this particular injury of close range fire which means there has to be distance. So whoever is attacking him is in front of him at least as far away, about as far away as the bag is. Shooting him right in the face. Face to face confrontation. Something else. One of the things that – where's that uh. You guys haven't seen this yet I think it's on my computer. This is gonna be state's eighty five. You guys heard the

judge say it was admitted into evidence. All the printed photos that we have for you, you're gonna get on a disc so you can actually look at it, zoom in on it. The reason why that's important is when you look at these photos you can zoom in to stuff like –

Levi: Your honor, objection that's not in evidence. May I please make a record?

Hon. Judge Sylvester B. Cox: Your objection is noted, it's overruled.

Seidel: You can zoom into stuff like his pocket. And what do you see? The pocket for some reason has been unbuttoned. You look at his rear pocket. Zoom in on it. His rear pocket has been unbuttoned. But then when you look at the bag, the bag is still latched shut. So I want you to ask yourself, if the bag is latched shut, but his pockets are all unbuttoned and opened, how does that happen? Cuz we have video of him walking down the street and you can see he has nothing in his hands. There's his hands right there, there's nothing in his hands. There's no cellphones in his hands, there's blistechs? There's no grill, there's no box. It's just him and the bag. So where did these come from? We know the grill wasn't in his mouth, cuz it blew his two front teeth out. There's no damage to the grill. So if they're not in the bag, and they're not in his hands, where are they? They're in his pockets. We've got a masked man following somebody to an isolated area. Where he makes physical contact. Has a face to face confrontation. His belongings are scattered across that parking lot. Pockets been emptied. And what's the one thing that's missing from this crime scene? No wallet, no cash, no credit cards. Kevin Jones is gonna go an entire shift, five to one without eating lunch apparently this day? Every single one of you have just connected the dots about what this is. About what this case is really about. About what this defendant was doing in this parking lot that morning. So we've shown you what happened. I wanna show you who did it. And I told you at the beginning of this case this would be a whole different trial, this would be a lot easier if we could just have Kevin come on in here and say what happened. We wouldn't have these days of testimony and hours of cross examination wouldn't exist. What happened?

Who did it? We'd be done in a day. But we can't do that. That's kind of the part of this case where our hands are tied behind our back. We have to use circumstantial evidence. The judge just told you there's no difference. If Kevin had come in here and said it for himself, that would be direct evidence. If we prove it with circumstantial evidence, it's just the same. There's no difference between the proof on either. They don't have to give you more circumstantial than direct. Treat it just the same. So the circumstantial case starts at the crime scene, with the only thing that the killer left behind, and that's the casings. The little pieces of brass. And I've told you they were about the size of the eraser on your pencils. I wasn't kidding, I mean these are tiny. These are tiny, a couple millimeters, a couple centimeters is what we're talking about. And the projectile itself, when you look at it in the photo on his back, it looks huge, you can see. This is just a little tiny nothing. It's amazing that this small little piece of lead can end a person's life. Kevin had to suffer eleven gunshot wounds. So that's where we start with our circumstantial case, is those casings. I told you we were gonna do some science in this case and we did. We had the firearms unit look at those casings and as of June eleven, we figured out that all of those casings were fired from the same gun. Fired from the same gun that's what Ms. Bohlen said. And the, the fragments that were pulled out of Kevin's body they're badly mutilated, they're not good enough for a comparison to the gun, not good enough for comparison to those casings, but we can tell the caliber, and they're all twenty-two caliber. So I don't wanna hear about any nonsense about, oh we don't know if all the stuff pulled out of Kevin is the same as at the scene. It was all twenty two caliber, okay? Circumstantial case. Take those casings, the logical point is to go find the gun. And this is one of those rare cases where we actually have the murder weapon. We were able to bring that to court. And the circumstances of how we found this gun I think are important.

Plays jail call (10:25:17)

Levi: Objection

Hon. Judge Sylvester B. Cox: Objection is overruled.

Levi: Your honor that's not in evidence

Hon. Judge Sylvester B. Cox: It's in evidence.

Seidel: It is. That's Mr. Davis. I seen the accident, Police were right there. And Officer Eskins, Sergeant Eskins was documenting the accident. That's how this all started. I told you it was an random series of events, it was chance. And one of the things I've been thinking about since Officer Heffernen got called back in here for a second time: remember what he said at the very beginning of this case? Is that once he started the tow process, and the tow paperwork, he was stuck there even when the 911 call came in for the shooting, when the murder happened. And yet we have Officer Eskins dealing with this accident scene. Can you think of any other reason why he would leave? We know the protocol is to stay. He's not leaving that scene unless a crime is happening literally right in front of him.

Plays dispatch (10:26:30)

Seidel: That entire chase that you have recorded, and you can hear it again if you want, you can hear it a thousand –

Levi: Your honor objection to the map not in evidence

Hon. Judge Sylvester B. Cox: come forward. It's in evidence, I thought

Levi: No it's not.

Hon. Judge Sylvester B. Cox: It would be nice if you referenced what exhibit it was but come forward please

Sidebar:

Levi: There is no detailed, there is no detailed, edited map. First of all there is a recent court of appeals opinion when you are cutting and splicing digital evidence, which they did with the surveillance footage. They cut it and then they spliced it and they put that forty second delay out, that is, in my opinion, reversible error to allow the state to manipulate the digital evidence like that. They are supposed to play it in its entirety for the jury to consider. That is not what the state did, first with the surveillance. But number two, that map is not in evidence with any of those time stamps on them and any of those red marks. And you cannot get up there and create new evidence in closing argument it is not – there's no rule for that. You cannot create new evidence.

Hon. Judge Sylvester B. Cox: The map's in evidence, for one.

Seuidel: The timestamps came off of the KGA recordings this is all as the evidence appears.

Levi: It is – But it is edit – it's not even this version.

Hon. Judge Sylvester B. Cox: It's all in evidence. It's all in. Your objection is noted.

Levi: let me make the record that a map that is in evidence does not have red lines appearing. There is no map in evidence saying 9:59 9:50 9:52. There is no map in evidence. No number.

Hon. Judge Sylvester B. Cox: But it's corresponding with whatever Eskins was –

Levi: It doesn't matter if it's corresponding, then do it in the case in chief

Hon. Judge Sylvester B. Cox: The objection is noted, it's overruled.

Levi: We just get to make it up?

Hon. Judge Sylvester B. Cox: In fact, none of this, what you all are doing is evidence, the evidence has already been had. The objection is noted, it's overruled.

Seidel: This is argument

Levi: Listen, may I make another – because here is the thing, if the state's gonna play like this, it is not gonna go into the jury room.

Hon. Judge Sylvester B. Cox: The objection is noted, it's overruled.

Levi: Last time we did this they edited the digital evidence and then they asked to put it back in the jury room and I am objecting

Seidel: I have never asked in my closing –

Levi: Powerpoint last trial

Hon. Judge Sylvester B. Cox: The objection is noted, same as overruled.

Seidel: Come on Ms. Levi

Hon. Judge Sylvester B. Cox: The objection is noted, it's overruled

Levi: You – may we approach

Hon. Judge Sylvester B. Cox: No. Everyone go back to your positions. Thank you. You may continue, yes sir, I'm sorry.

Close Continues:

Seidel: Ms. Rogers gave us these photos so that you could see the chase yourself. One of the things I told you in the opening, and we have delivered on that promise. Running down St. Charles, remember what Officer Eskins said? As I'm chasing him, I'm not pulling my gun out, I'm not shooting him as he's running away because often times I'm waiting for the gun to get thrown. I mean think about it, if you're running through this neighborhood, the guy throws the gun, do you keep chasing him or do you secure the gun? You really want that gun just lying around the street while you run through some alleys after some guy you might not even catch? So the real focus at this stage of the chase is where's the gun

gonna go? And there's so many places this gun could go. Throw it through the fence, you've given yourself at least 30 seconds to get away. Running down the alley behind Belvedere, throw it over that fence, throw it into this yard, throw it up on that roof. Throw it into that yard, you've got an abandoned building to the left of here. Further down, now you've got barbed wire fence. How long would it take for police to get into barbed wire fence? There's so many options to get rid of that gun. And yet the defendant just won't give it up for some reason. He's now crossed Linden Heights, now crossed Reisterstown Road, going through another set of alleys.

Plays jail call (10:31:12)

Seidel: Once he got into this garage, there's nothing else for him to do but surrender. Because he got trapped. But he's still got the gun. And before anybody else comes, we didn't know it until June eleventh. Officer Eskins, who you heard was on a completely different shift, didn't even know about the murders from the previous shift. They don't know that that gun is actually a murder weapon. The only person in this situation that that particular gun is not just a gun, it's the gun, is the defendant. That's why he can't give it up. This is not about the chase, this is not about that gun, it's about the fact that the defendant knows in this very moment, as he is trapped in this garage, that he's got a murder weapon in his hand. That's the problem. And that's why there is a shooting. Cuz the choice is give up, and give them a murder weapon, or go down fighting. Go down fighting. And he made the choice. And so you see this refrigerator, they didn't even know this was a refrigerator at the time, but you can see where there's blood on that refrigerator. That's the point of surrender. And you look right on top of that, and that is where the gun was first relinquished by the defendant. It's not down here, by the headphones and the keys and the money. That's where he is taken into custody. It's not over here, by the cellphone, that's kicked from his hand. That is exactly where Officer Eskins said it was. And you heard that recording. The very first thing he says at the beginning of that recording is the guy's got a gun, and it's in his right hand. He doesn't have time to start making stuff up like that. You're saying that because you're

seeing it. Now this is what's interesting: is the detail of the map. The gun's on the refrigerator, right? But it's also in the right position. Officer Eskins is left-handed. Sergeant Santiago is left-handed. If they pick this up with their left hand, put it on top of the refrigerator with their left hand, the gun's gonna be like this. That gun is on top of the refrigerator like how a right-handed person would put it on top of a refrigerator. That gun is in the right position for a right-handed person to be putting it on top of a refrigerator. And it's right next to the wall. And you can see before they ever even take it out of that garage, one of the earliest photographs, you can see the ridge detail. You can see the ridge detail. And you can see what appears to be some suspected blood, some faint outlines of blood. And you know what's missing on that gun? Is dirt and grease. Dirt and grease. Cuz we know that once the gun is put on top of the refrigerator, and the defendant gets on the ground, we saw his right hand. We saw a picture from the hospital of his right hand covered in grease. Covered in dirt. But at the time this photo was taken there was none there. Which means that that gun had to be given up by that defendant before he got on the ground and got his hand all dirty. That's why it looks exactly the way that it does.

Plays jail call (10:35:23)

Seidel: I can't give you any better logic than that. If your fingerprints are on the gun you're gonna have to eat that. This is on June ninth. This is before the police department knows that that's the murder weapon. The firearms examination doesn't make a conclusion until June eleventh. So two days before we even know that that's the murder weapon, we've got fingerprints on the gun. And the fingerprints are the correct fingerprints because again, as you saw in court, Mr. Davis writing with his right hand, he's right-handed. The right palm is on the outside of the gun right where his right palm would be. And the middle finger, the right middle finger is on the inside of the gun right where it should be as if someone were holding the gun. So it's not just that his fingerprints are on the gun, they're on the gun in the right position. If they're on there, you're gonna have to eat that. And two days later, that's when we learned that that's the gun that is the murder weapon. So we've got about five hours of

time in between the casings and the gun. And we've got about point 7 miles. Less than a mile. Just a couple of blocks from Park Heights to Reisterstown Road. That this defendant has the murder weapon. Close in time, close in space. I didn't tell you all the other stuff we were gonna show you in my opening, I wanted to save that for this point. Once he got caught with the gun, everything else is verification. Everything else is just confirmation of that first fact. Having the gun is just absolutely devastating. But we didn't stop there. We went back and continued to do more analysis. More investigation. That's what Detective Veney was focused on. He didn't stop on June seventh and say he's got the gun I'm done. He went and he looked at other stuff. One of the things that he looked at was the cell towers. Detective Veney didn't personally do that, he called on the guys who do it professionally. He called on the FBI. He said get the phone records, look into this guy, let's make sure. So let's take a look at the cell towers. Some of you were curious, why were we talking about Columbia, MD? Why were talking about Columbia, MD? Well what we know is pretty much most of that day, one o'clock until almost eight o'clock, the defendant's phone was hitting off this 11737 Stonegate Lane address in Columbia, MD. It wasn't until the very last exhibit in this case that you all learned oh by the way he's not from Baltimore. He's not from Baltimore. And I know at the very end of this case Ms. Levi was standing up here talking about 2013 2013, She's right, that's when it's issued and that's when it expired. That's not when we got the record. We actually got this record on June 24, 2019, about a month before this trial started, just to make sure it was accurate. And it is accurate. It's no different than if you have been living in the same place for a number of years, right? We checked this as of a month ago. So our friend from Howard County is in Howard County until it gets dark. And from 7:52 to 9:41 all of a sudden, as it starts getting dark and the sun goes down, Mr. Howard County decides to come visit us in the city. 9:41 he's in the city now. And I can't tell you where he was all night. I don't know what he was doing. What I do know is that wherever he was, it was causing multiple towers to bounce off that phone. Wherever he was, from 9:41 to about 3:34 in the morning, he was pinging off multiple towers. And you heard agent Fennern explain

that. That can happen when a phone might be in close proximity to those multiple towers, where they can bounce them back and forth, maybe there's a little bit of movement in between those towers. Sometimes it gets a little but closer to one verses the other. That might explain that. But the point of the cell towers was after 3:00, we'll say about after 3:30, including at the time of the murder, he's just hitting off the tower closest to the racetrack. He's just hitting off the tower closest to the racetrack. So the person from Howard County, shouldn't even be in this city at any other time that day

Levi: Objection

Hon. Judge Sylvester B. Cox: Objection is noted, it's overruled. It's argument, not evidence.

Seidel: Within ten minutes of the murder, he's hitting off the tower closest to the murder. Now I want you to take that knowledge, and combine it with what we did with the cell phone. Cuz we got the defendant's cell phone. Not just the records but the phone itself.

Plays phone call (10:42:18)

Seidel: We have the phone. And we were able to go in the phone. Samsung, this white Samsung phone. So we don't just see the records of the calls, we can actually get content. We can get the communications and specifically we can get the text messages. That's what's so important. And you have in evidence the timeline of everything that was going on in this phone. This is state's 73A. It's not been published. We didn't go through all of these pieces of paper. But in here is everything that happened on that cell phone between 6/6 and 6/7. Text messages, the calls, emails, notifications, instant messages, everything is in here. You can see through the timeline exactly what was going on with the defendant and his phone on this night of the murder. And there's a couple things I wanna highlight for you. This is corresponding to the time of the police-involved. And I get that there's a lot of numbers up here and it's a spreadsheet and this can be a little confusing so I'm gonna focus your attention. I was on the phone with Kelly at the time of the shooting, okay? And you look, and this is in UTC. Remember

Agent Fennern said with UTC you gotta subtract four hours. So this is not 1:57 PM, you convert it to Eastern Standard this is actually 9:57 AM. 9:57, this is the time of the police shooting. There is a call to smiley, that number that ends in 2617. Smiley. You also heard Officer Eskins say when he kicked your phone away, it said something like Auntie. And we, we get the actual phone, and you can see this is 10:02 10:03, this is right at the time of the police-involved shooting. He's getting calls from Aunt ?. Just like Officer Eskins said. But I wanna look before the police involved shooting. I wanna go back in time with these records. And this is what we saw. In addition to Smiley, you're gonna see this in here, from 6/6 to 6/7, Mr. Davis wasn't just having conversations with Smiley, who I will submit to you is a female. You're gonna figure that out based on the conversations. Smiley is a female who I would argue is in love with Mr. Davis. You're gonna see expressions of love and how I just wanna be with you and I'm ready to make that commitment. That's coming from smiley. What you're also gonna see is a completely separate conversation going on with one-hundred. This person right here.

Levi: Objection, your honor

Hon. Judge Sylvester B. Cox: Objection is noted, it's overruled.

Seidel: 2305 is one-hundred. We'll call her one-hundred for everybody's comfort, okay? There was a completely separate conversation going on with one-hundred. Not about love, but about sex. I gotta get to you so I can have sex. So we've got this competing game going on with these two women. And at about 9:15 in the morning, take 4 hours off this it's 9:15, Mr. Davis is telling one-hundred, despite all of the love that's coming from Smiley, Imma walk up there I'm on my way. And one-hundred says no that's too far. I'll just see you later, honey, I really don't feel like coming down. And he says, so what, I'm only out in PH, which I think everybody in this room can conclude is Park Heights, it ain't that far. And again, at 9:20 in the morning, up the Heights, Park Heights, I'm on my way there. And again one-

hundred says that's too far to walk. 9:30 in the morning, now i'm down to right here. I'm on my way, I'm just beat a hack. Now beat a hack.

Levi: Objection

Hon. Judge Sylvester B. Cox: Objection is noted, it's overruled.

Seidel: That term, hack. We hear Mr. Davis talk about that term hack on that telephone call from July fourth.

Plays call (10:47:31)

Seidel: Who is he? He's the hack. So I guess my question to you is: at 9:30 in the morning, talking about this hack, whatever that may mean, Imma just beat a hack. Why is the response, that's dangerous, Keith, no. I want you to ask yourselves, why would that be dangerous? And the answer is pretty simple. Because beat the hack means ride for free. That's what's going on at 9:30 in the morning. That's how we beat the hack. I don't even wanna stop at that morning. I wanna go back earlier. If he's gonna give us such incriminating comments at the time of the police-involved, what does he have to say at around the time of the homicide? And what's curious is there's very little activity around the time of the homicide. You can look in here. There is communications and text messages and phone calls all night long. But right around the time of the homicide, the phone starts to slow down. The communications, and text messages, and phone calls, and emails, they start to slow down. This one is at 4:02 AM. This is about forty, forty-seven minutes before the murder. Just take four hours off this time. This again is from Smiley, our female in love. And what does she say? Babe, I wish you'd find a way inside or in the house, it's dangerous out. Here I know how you roll but I'm still nervous as all hell. That's what you get from the female that's off in love. I'm nervous as all hell. Now this text message tells us two things. Number one, he's not with that woman. He cannot be with her or she wouldn't be sending that text message. And number two, he's outside. I wish you would come inside, or in the house. So at four o'clock in the

morning, Mr. Davis is not with his significant other, and he is not inside. He is outside. So now it's not just that his cell phone is hitting off the tower closest to the murder, he's outside. And is there a response to this text message? Is there any type of communication? A phone call? It's okay, I'm alright, don't worry? Nothing. No response. He gets an email at 4:08 from this CM security and then the next activity is not until that phone call at 4:57 that's putting him right at the place of the murder. And who does it come from? My love, smiley. And you've gotta thank smiley in this case, ladies and gentlemen. Because we wouldn't be able to put him at the scene of the crime without her discomfort, without her concern, without her worry. Because right at that moment, she decided to call him and that's what generated the cell tower hit. Remember Agent Fennern said we're not gonna get a cell tower hit from a text. You need a phone call. And over the course of about fifty minutes, Smiley got too uncomfortable and just had to make that call. And she just happened to do it within ten minutes of the murder. She's the one who puts him at the scene of the crime. So the last thing I wanna talk to you about is the video. This is another circumstance. Because I think that we can all agree that this is the person that killed Kevin Jones. Okay? Our masked man. But again, we didn't just take the video and say okay we got the video, we're good to go. We sent it off for analysis. We sent it to the FBI. What can you do with this? And this video is gonna give us two components to the circumstantial case. It's gonna give us a physical description, both of the person himself, like the skin completion for example, and it's also gonna give you a clothing description. And we're fortunate enough in this case to have the defendant's clothing. I mean if you think about it, without the police-involved shooting, we don't get his clothing. It's almost like this had to happen. So, we've got his jeans, they're right here. I introduced a picture so that you guys don't have to go back in the jury room and play with those all day. But you got a picture of them and what's important about these is that they're designer jeans. If these are just regular jeans, I'm not sure they would have any significance. Everybody has jeans, right? But these are designer jeans and they have some intentional damage to them, they have some intentional damage, like right about here, here,

here, probably here, maybe even this one. But they have some unintentional damage, too. Like this right here. This probably isn't intentional. The combination of intentional damage and unintentional damage on these. And there's nothing wrong with the backside. That's important, as we're gonna see in the video in a minute. And we also have the shoes. And the shoes are different. I'm not gonna say that they're unique, alright. You can buy shoes from the shoe store. But I mean, just think about Baltimore for a second. If these are a pair of gray New Balance, okay, that doesn't mean anything. These are unique, in the sense that that black and white, and that ridge right there. It gives us something to compare. Enough to compare at least to say that yeah those are similar or they're not. And so I'm focused on the damage to the jeans and the markings on the shoes where it differs between black and white. You can use those to say, are these or are these not the clothes? So you take the FBI enhanced, slow motion video that zooms in, And I want you to look at the jeans. And you can see every one of the red marks that I've just highlighted on those jeans can be accounted for with the enhanced video. You can see on his left leg, his right upper pocket right here, the big square and the two little dots. Right there. You can seem them for yourself. So we can account for these right here. And we're looking for a big rip in the knee. And you can see it dragging on his left knee. Every time the knee comes up you see the hole. So we can account for all of the holes on the left leg. Do the same analysis with the right part of the pants. Zoom in. Can you account for those three spots? You can see it, when his leg comes up there's a white hole. You can watch this, take this back into the jury room, you can watch it for an hour if you want. The point is that every one of the pieces of damage on the jeans is accounted for in that video. The defendant is wearing the same jeans as the killer. Now do the analysis for the shoes. And this is the beauty of Mr. Howard County, cuz he's not from the city, he's stuck wearing the same shoes and pants all day. Can he change his shirt? Yeah. Can he get rid of a mask? Yeah. But you can't get rid of your pants. You can't get rid of your shoes. Cuz you're not from here. The shoes – the angle is important. If I do this to you, these shoes look black. If I show them to you at eye level, these shoes look black. Same

thing on the inside, eye level they're black. But that's not the angle of this camera. This camera is almost ten feet in the air. So when you're looking at the shoes, you're actually looking down at them. You're looking down where you mostly see white and just a little bit black. And that's exactly what we see in the video. And you can also see that he's got tags on the back. Go through, you're gonna see the tags on the back of the shoes. And you're gonna see the waves, the waves on the white portion. You can actually see them in the video when you zoom in. Right here. You can see the wave between the white and the black of the shoes. Not at eye level, ten feet up. Mr. Davis is also wearing the same shoes as the killer. And what are the odds of all that? We went a step further. I had the FBI say, tell me how tall that guy is. Please tell me he's like six-five and we can be done. Five-five and we can be done. Went out to the scene, the cameras in the same spot, same angle, same system, and he's telling us it's five-nine. Now you heard counsel talk about oh well there's this three inch error rate. Well it could be five-seven and a half. It can be five-ten and a half. But that's not quite accurate, is it? It was a bell curve. The most likely is five-nine. You start to deviate and the likelihood goes down. That's the point. Five-nine. That's the target. If he wants to say he's five-seven he would have said five-seven. If he wanted to say he was five-ten, plus or minus and inch and a half, he would say five-ten. But he didn't, he said five-nine. And what is Mr. Davis' self-reported height? Five-nine. Five-nine. So I don't think that there should be any dispute among you about what happened. Pretty obvious what happened. Kevin Jones was murdered. Brutally. Viciously gunned down. Not once, not twice, three, four, five. I mean he's getting shot in the back while he's on the ground. That's just wrong. You all know what happened. And I promise you at the end of this case you are gonna be able to leave this courthouse comfortable about what happened. When you're done with this, and you go back home to your lives, I know the judge said you can't be talking about this case to anybody. But they're gonna ask you, what happened? There shouldn't be any reason for you to doubt that Kevin Jones was brutally murdered. Question two is who did it? Who did it? And the thing about a circumstantial case is that when you check these things, if any one of them is wrong, the entire

case fails. If any one of them is different, the entire case fails. But we do it to be sure. We didn't stop with the gun. We checked the cell towers. We checked the cell phones. We checked the text messages. We checked his clothing. We checked his height. We did everything we could do. In a situation where if any one of those is different, and some of them should be, he's not from Baltimore. That right there is just, that would easily eliminate him. And yet on this particular night, we put him there. And not just in Baltimore but at the scene of the crime. If any one of those is different, the whole case fails. But it didn't. So I'm asking you. You know who did it. This has never been about who did it, this is about responsibility. Mr. Davis committed this crime, and he deserves to be held responsible for the decision that he made. That's what we're asking you to do. I'll yield now, thank you.

PROSECUTION REBUTTAL CLOSE

Seidel: See what she did? See what she did when she put the gun up on top of the judge's bench? With her right hand. She couldn't help it. Because a right handed person puts the gun down like this. And that's the problem. Is that she's saying that the two left handed officers that shot him planted the gun the way a right handed would. It doesn't make any sense. Most of what we just heard doesn't make any sense. Most of what we heard during this trial, as we put people like Officer Custas, and Det. March, people whose only job was to tell us that they took a bag from one place to the other place – why do we need to cross-examine them for two hours, three hours, four hours – over and over and over again when they only point was they took item A and took it to place B, that's it. The answer is simple, ladies and gentlemen, this is something called manufactured drama. Manufactured drama. It's a legal trick. When the evidence hurts the case, you start to manufacture stuff that has nothing to do with the case because it distracts you. I'll give you an example of it. This was done to so many of the witnesses if you wanna talk about credibility. Officer Eskins was an officer at the time of the shooting, but at the time he testified he was a sergeant. So when we call him we call him sergeant but he was an officer back then. So what does the defense do? Oh, today you're saying you're a sergeant, but you said back then you were an officer, so which one is it? Were you lying then or are you lying now? It's a trick. It's a trick. It's designed to confuse you. Cuz they don't want you talking about the actual evidence in this case. Yeah, we can – where's the test fire envelope? Oh look, there's nothing in the test fire envelope, there's nothing in the test fire envelope. Ms. Bohlen said the test fires aren't even evidence, that they don't even keep them. That the current protocol is to destroy them. –

Levi: objection she did not say that

Hon. Judge Sylvester B. Cox: The jury is to make a determination as to what the witness indicated. The objection is noted, it's overruled.

Seidel: Oh. Oh. What about the date, what about the date? Remember, there are two different CC numbers. There's the one for the police-involved shooting and there's the one for the homicide. Mr. Lamont came in here talking about the one for the police-involved shooting. Ms. Bohlen was talking about the homicide. The gun was tested multiple times. So this date is not corresponding to what Ms. Bohlen did because she wasn't there when Lamont did it. This is talking about when Lamont did it on a different day. It's a trick. It's designed to confuse you. She knows exactly what she's doing, this is a seasoned defense attorney –

Levi: Objection you honor

Hon. Judge Sylvester B. Cox: Overruled

Seidel: Here's another example: This mysterious driver's license from 2015. If this was stamped in 2019 why is there no record of a 2015 license? You don't have it. It's not in evidence. Much like a lot of what Ms. Levi just said. Go through all those documents. You show me where it says the defendant is from Baltimore. The only one that has his address is Howard County. That's the only piece of evidence in this entire stack. She did that time and again, bringing up stuff that's not actually in here. So go back and look at it for yourself. That's why I said I want you to hear it but I actually want you to see it. See it for yourself. The DNA. There's no DNA reports in there. As you've seen in this case, the state can call witnesses; and we did. The defense –

Levi: Objection your honor, burden shifting

Seidel – can call witnesses. And they did.

Hon. Judge Sylvester B. Cox: And they did, well. Don't shift Mr. uh

Seidel: I understand, I'm very careful with my words, your honor.

Hon. Judge Sylvester B. Cox: You are, but don't shift

Seidel: DNA. Where's the DNA, where's the DNA? Where's the blood in this case? Where's the blood? You've got these in digital format – you can literally zoom in to A, B, C, D, E, and F. You can get down, you can zoom in 60 times on those photographs. Not one of those objects has any blood on it. They are within a couple feel of the body. The box doesn't have it, his grill doesn't have it, phones don't have it, the ballistics doesn't have it, the bag doesn't have any blood on it. So why would you think the shooter got blood on him? That makes zero sense. And what we learned is that the blood is literally contained to the body. He had over a liter of blood in his chest cavity. A liter of blood. It's all internal. It's all internal. There's not gonna be blood splattered everywhere, this isn't an episode of Dexter, okay, this is real life. There is no DNA test because there is no DNA spread out at the scene. And, the problem – you wanna go test his stuff, he bled all over his stuff.

Levi: Objection, your honor.

Hon. Judge Sylvester B. Cox: Overruled.

Seidel: He bled all over his stuff. So even if we try to go look at this, how are we gonna distinguish between his blood and the victim's blood? Which one of these spots do we say, oh this must be Kevin Jones' spot, that we can say is not his spot. That's the problem is that he was bleeding on his own stuff. That's why we can't do DNA. Same thing with the pants, they're covered – first of all they're covered in grease, since we looked at them. But they're covered in blood

Levi: Your honor ?(12:25:34) facts not in evidence, please objection

Seidel: It's been entered in evidence

Hon. Judge Sylvester B. Cox: You objection is noted, but overruled. Jury will make that determination

Seidel: Which one of the spots do we pick, when we know it's his blood from getting shot? That's why DNA doesn't effect this case. And do you remember what Ms. Stasik said when it comes to DNA? That a case like this, fingerprints are actually better than DNA. Fingerprints are the only piece of evidence that is 100% unique. Even in DNA, you can't distinguish between a twin, fingerprints can. So that's why Ms. Banks and I focused on fingerprints. We focused on the fingerprints because that was a more reliable piece of evidence. I guess we're going down this road. I guess we gotta talk about this now. The gun was planted. Now I've got some questions if the gun was planted. And the problem is with each and every single one of these questions, you can't answer them. You can't answer them. Start with step one. Why would the killer, why would the killer chase somebody down and start shooting them over and over and over again and then just leave the gun at the scene? Is this the dumbest criminal in the history of Baltimore? I mean even Mr. Davis doesn't get rid of the gun when he's being chased by police, and yet we're supposed to believe that the killer, in the isolated area in the dark parking lot decides, I'm gonna murder somebody and then just leave the gun there for the police to find, and keep for themselves so that they can go plant it at a shooting that hasn't happened yet, five hours later. And oh, by the way, didn't they point out that the police didn't respond for fourteen minutes? So the killer had fourteen minutes to get away and he decided I'm just gonna throw that gun for the police to find it at the scene of the crime. Why would he leave a gun at the scene? When did they get this gun? According to what you heard from Ms. Levi, I guess ten years ago is when they decided this was all gonna take place in 2015. Because their witness, the person that they called said, "I thought we sold it between 2002 and 2005." You want me to believe that ten years ago the police decided, I'm gonna take a gun, I'm gonna hold onto it for ten years till somebody gets murdered and then when they get murdered with the gun that, oh wait, I'm supposed to have but somehow they got it and then I'm gonna

take it from the scene of the crime even though I've had it for the last ten years, I'm gonna wait five hours for the police to go shoot somebody so that I can plant that gun. How silly does that sound? I mean that's just absurd. What a silly argument that is. How do you explain the different work shifts? The cops dealing with the murder are not the cops dealing with the police-involved – they're separate shifts. They don't even know what the others are doing. This all has to be coordinated across shifts in order for it to be planted. The officers from the murder have to take the gun from the scene of the crime and give it to the officers on the next shift to plant for the shooting that hasn't happened yet. What? Why'd they target him? Why'd they target him? You've seen the photos of how many people are out on the street. There's dozens of people on the street. They could decide because they're planting a gun on an innocent person, I'll just chase any of them. They just happen to chase the person who's not from Baltimore, who only came into the city that night, who's cellphone is hitting off the tower that's closest to the murder, who's wearing the murderer's clothes, they just happen to choose him out of all the people that were out there on St. Charles and Belvedere. Man they are lucky. They are really, really lucky. They had so many other options, if this is about planting the gun. The prisoner that Lane Eskins transported that morning, seven o'clock in the morning that got arrested, put it in the van, he had it, he's the murderer. Boom, done. The car accident guy, put it in his car, say he had it, arrest him. There's so many easier targets, but for some reason Mr. Howard County over here is just innocently around, they decided to target him. Why would he chase him from an accident scene if he wasn't doing anything? We already know he can't: protocol is stay with the accident and you've seen his paperwork, he's working on the accident for twenty minutes. Twenty minutes into working on an accident scene officer Eskins went crazy and decided I'm gonna pick a black man that's walking down belvedere and start chasing him and say he has a gun. That is so ridiculous. And, I'm gonna have the know withal that the minute I start chasing him I'm gonna say he has a gun. If he chased him, said I'm chasing the guy I'm chasing the guy and never mentioned anything about a gun, then maybe we would start to say well why did you start

chasing him in the first place? But the very first transmission is he's got a gun, that's why I'm chasing him, and it's in his right hand. He had already figured out the right hand during the chase. Since you're trying to plant the gun why don't you just shoot him in the back? Shoot him in the alley in the back and just plant the gun, explains it all, right? Shoot him in the back, he dies in the alley, plant the gun, boom. You got away with a shooting and we solved a murder. And Sergeant Eskins is now Major Eskins or something. I mean that's the easiest way to do it, right? But he didn't do that. He didn't even draw his weapon during the chase. Cuz again, he thought the gun was gonna get tossed during the chase. Why'd they use the bunker? I mean they're smart enough to remember, oh since we're saying he's got a gun we've gotta bring the bunker. It's in the photos, you can see it for yourself. They already has this all thought out? We've been over this time again, how'd they know he was right-handed? They don't even know who he is, right? They don't identify him until after he's apprehended. What do you do if they defendant is left-handed? We've got a big problem. And after they shot him and arrested him, put him in handcuffs, how would they know he's left-handed or right-handed especially cuz they're both left-handed. They're just really good at guessing, I guess. I said this one during my first close, wouldn't there be grease on the gun? If there's grease all over his hand, wouldn't there be grease on that gun? There's not. The last one I wanna show you: why are there drops of blood on the gun just like on his cell phone? Right here. We know he had that cell phone. He said he had that cell phone and that's all that ends up, after he's been shot in the face, this is all that ends up on the phone. It's the same on the gun. Why is that? This goes back to the manufactured drama. They blew his face off. No they didn't. They shot him in the face, he's bleeding, and he's producing drops of blood, just like on the cell phone just like on the gun. Here's the answer. Here's why you can't answer any of those questions that I just raised. When you get caught with the gun, everyone's a liar. Every single witness is a liar, the state's a bunch of liars, the detectives' a bunch of liars, everybody is lying. Everybody is corrupt. Everybody is dirty. That's the problem when you get caught with the gun. You can't just focus on one or two, everybody that's

involved has to be in on it. And that defies common sense, ladies and gentlemen. We don't abandon our common sense when we come into this courtroom. I'm gonna finish with this. The most important part of the case. I said it at the beginning, I maintain it at the end. He is the most important part of this case. This case is not about me, or Ms. Banks, or the defense attorneys, it's not even about the defendant. It's about Kevin. That's why we're here. It's about the man who has no more voice. A man you will never see again in your life. The man you will never hear from again in your life. That's why we're doing this. Because it is absolutely unacceptable that a twenty-two year old kid is growing up in a part of Baltimore that might not be the easiest to grow up in. He might have more challenges in his life that I might have in my life. More distraction, more excuses, more reasons to say why he couldn't do certain things in his life. And yet this young man, twenty-two years old is doing everything he can to go down the right path. He's working. He doesn't have the best job but that's okay he has a job, and he goes to it, and he's dedicated to it. He gets up earlier than most of us do. Day in and day out to do that job that some of us would snub our noses at. He does it cuz that's what he does. That's what's important to him. And it's the last thing he ever did on this earth. And that's not okay. The idea that this twenty-two year old man can get himself ready for work and walk to work and have to worry about being followed by some guy who's not even from this city, who just comes in at night. The idea that he's gonna follow him to an isolated area to run through his pockets. I sure hope, I sure hope that this case is not about the seven dollars that is crumpled up in his pockets. Even though he has a wallet with no cash in it. That's how much his life is worth? A crumpled up five dollar bill and two crumpled up one dollar bills. That's all it took, to end a twenty-two year old man's life? That's not okay. And I'm not asking you to fix it, because you can't. Fixing it would be bringing this young man back. And letting him continue his life and go to work and do what he does day in and day out and grow up and grow old. You can't fix it. None of us can. I'm asking you to hold the man who made the decision responsible. There's one man in this courtroom who made

a choice that only he could make. He took a life with that gun. And it's up to you to hold him responsible. That's what I'm asking you to do. Thank you.

EXHIBIT 2

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 116009001
	)	
KEITH DAVIS, JR.,	)	
	)	
Defendant	)	

AFFIDAVIT OF KARL REICH, Ph.D.,

I, Dr. Karl Reich, under oath and under the penalty of perjury, state that:

1. I am a DNA analyst and professional molecular biologist. I have a doctorate in Molecular Biology and am the Chief Scientific Officer of Independent Forensics of Illinois, 500 Waters Edge, Suite 210, Lombard, IL 60148. My *curriculum vitae* is appended and incorporated by reference (please see attachment #1).

2. Independent Forensics Laboratory adheres to the FBI's Quality Assurance Standards for molecular biology, human genetics and forensic DNA Testing Laboratories. Independent Forensics is accredited by ANSI-ASQ National Accreditation Board (ANAB, FQS-I, ISO/IEC 17025), the American Association of Blood Banks (AABB), and the New York State Department of Health (NY-DOH), for genetic identity and forensic DNA testing. Independent Forensics is the only such laboratory in Illinois.

3. I am very familiar with the scientific literature, research efforts and technologies used to test, screen, triage, analyze and interpret 'Biology', to process physical evidence with the aim of obtaining genetic identification data and in analyzing and interpreting this information into DNA profiles. This familiarity derives from (1) performing forensic DNA analysis on hundreds of samples, (2) supervising the forensic DNA analysis of many hundreds more submitted evidence samples, (3) supervising the development of new forensic methods and kits that improve the sensitivity and specificity of forensic DNA testing, (4) supervising the commercialization of these methods, tests and reagents (several hundred forensic DNA laboratories around the world use these tests every working day) and (5) from the professional review of hundreds of forensic DNA cases as an Expert Witness.

4. Have been asked by the defendant, through his attorney, to provide a critical review of the prosecution's closing argument as they relate to the processing, analysis and conclusions of forensic DNA.

5. There are three (3) topics, related to forensic DNA, mentioned by the prosecutor in his/her closing argument:

1) inferring the presence of DNA at a crime scene, specifically blood 'spatter' evidence
2) determining the identity / source of a blood stain or blood evidence, and
3) the claim that "fingerprints are the only piece of evidence that is 100% unique."

These will examined one by one.

6. The prosecutor listed a number of items of evidence purportedly near the decedent that apparently failed to have blood stains and then extrapolated to claim that there would be no reason to expect the 'shooter got blood on him?'

This claim is contradicted by the many cases where an assailant does indeed have blood stains originating from a victim who is shot. Blood is 'released' from a source when impacted by a high velocity object, *e.g.*, a projectile (bullet). There are different patterns that are made of the released blood and the direction of the released blood (*i.e.*, the spatter) can be in a non-obvious or unanticipated directions.

It is common to receive numerous items of evidence that fail to have blood and to yet find blood on the next tested item. Given the speed of a fired round, the known impact of a fired round on a body and the long history of finding the blood of victims on an assailant's shoes, clothing, accessories, etc., it is actually quite reasonable to expect to find blood evidence suitable for forensic DNA analysis on an assailant.

Our laboratory does not analyze the pattern of blood spatter and does not provide blood spatter analysis, however, our laboratory does receive shoes, clothing, cell phones, purses, wallets, etc., and of course swabs of walls and floors and these are tested for blood and DNA profiling.

Because there is no way to *a priori* to know which item or items might or might not have blood evidence, and there is an excellent chance that an assailant might have been 'marked' by blood spatter (either passive, transfer, or projected/impact), the screening of evidence and subsequent DNA testing is the only way to determine the question posed by the prosecutor. There is absolutely sense that the 'shooter' might have been stained with blood from the victim.

7. The prosecutor posed the question, "...how are we gonna distinguish between his blood and the victim's blood? Which one of these spots do we say, oh this must be Kevin Jones' spot, that we can say is not his spot. That's the problem is that he was bleeding on his own stuff. That's why we can't do DNA."

That statement is misleading. Forensic DNA provides a simple, accepted, and unambiguous way to distinguish between contributors to an item of evidence: obtain the DNA profile of the blood evidence and compare the generated profiles to the DNA profiles of the defendant and the victim. Technically the DNA profile of the references or standards (*i.e.*, the DNA profile of the known defendant and victim) are compared to the DNA profile (mixed or single source) derived from the questioned items. This type of analysis has probably been performed over twenty million times (20,000,000) with interpretable results.

The prosecutor defines a simple two-person mixture that could be precisely and accurately determined using forensic DNA procedures, methods and equipment that are in daily use in every forensic DNA laboratory in the U.S. (not to mention world-wide).

The DNA profile of the questioned evidence, here the blood evidence posited by the prosecutor, would be processed for DNA profiling and these results compared to the two (2) reference profiles.

It is true that mixture interpretation of DNA profiles is currently one of the most contentious subjects in the field, however, two person mixtures (the type described here) where both contributors are known, are the easiest and simplest to analyze. In fact forensic DNA laboratory produce, on purpose, two-person mixtures during their validation studies and are thus trained on exactly the type of sample mentioned. Thus, this type of sample described by the prosecutor presents no problem at all for deconvoluting the type of evidence he/she describes.

8. The prosecutor claimed that "fingerprints are the only piece of evidence that is 100% unique" and "Even in DNA, you can't distinguish between a twin, fingerprints can. We focused on the fingerprints because that was the more reliable piece of evidence".

Unfortunately for the prosecutor none of these statements are accurate. Or even close to accurate.

Currently there is no scientific foundation for any claims of uniqueness for latent ridge impressions , *i.e.*, fingerprints. Several forensic scientific commissions have repeatedly (a) pointedly referred to this fact and (b) noted the many known failures to try and demonstrate this dogma.

The only forensic analysis with any statistical foundation for uniqueness is forensic DNA analysis, the acknowledged gold standard of all forensic identification fields. The lack of foundation, precision, statistical power, and accuracy for all of the (so-called) pattern sciences (*i.e.*, latents (fingerprints), ballistics, tool-marks, blood spatter, bite marks, tire marks) is well recognized as are the many exonerations from cases where 'results' from these kinds of analyses were used at trial.

There are least two high profile complete mis-identifications by multiple latent examiners (Mayfield, Dandridge) which well illustrate the completely subjective nature of latent identification and the lack of scientific foundation for this type of analysis. In fact the failure in Mayfield was so egregious that the FBI was forced to completely

overhaul their latent examination section. A public (and embarrassing) demonstration of the failure of latent examination.

The claim that fingerprint analysis is more discriminating than DNA for identical twins has certainly never been directly tested, but even if this was correct (a moot issue as DNA sequencing and SNP analysis easily distinguishes twins, see below), it is clear that latent examiners are mostly unable to distinguish between the latents of close family members. This was glaringly illustrated in the (now) notorious 1995 latent external proficiency test that demonstrated that 34% of latent examiners made erroneous identifications. That year (and never repeated) the external proficiency samples were derived from close family members and so-called similars, *i.e.*, fingerprints that are initially identified by computer searching. This scandal has never been addressed by the latent examiner field.

The claim that twins cannot be distinguished by DNA analysis is patently and completely false. Distinguishing twins for medical research and diagnosis has been possible for well over a decade and several high profile sexual cases involving identical twins were in fact solved by DNA analysis. (MA, MI). It is true that short tandem repeat (STR) analysis cannot distinguish between identical twins, but both sequencing and single nucleotide polymorphism analysis can easily and reproducibly distinguish between identical twins thereby completely refuting the prosecutor's claim.

9. It is of course understood that both the defense and the prosecution will 'put their best foot forward' in their summary to the jury, but making factual misstatements, inventing procedural hurdles and ignorance of the current forensic science should not be permitted in the courtroom.

Further the affiant sayeth naught,

Karl A. Reich, Ph.D.

STATE OF ILLINOIS
COUNTY OF DUPAGE
Sworn to and subscribed before me on
the 5th day of August, 2019

Allan Suyosa Notary Public
My commission expires March 30, 2022

OFFICIAL SEAL
ALLAN SUYOSA
NOTARY PUBLIC, STATE OF ILLINOIS
My Commission Expires March 30, 2022

EXHIBIT 3

In the Circuit Court for Baltimore City, Maryland

STATE OF MARYLAND,	)	**Case No. 116009001**
	)	
Plaintiff,	)	
vs.	)	
KEITH DAVIS JR.,	)	
	)	
Defendant.	)	

AFFIDAVIT OF DONALD LONG

I, Donald Long, hereby being duly sworn, states as follows:

1. I am employed as a security guard by the Maryland Jockey Club at 5201 Park Heights Avenue, Baltimore, Maryland, 21215, and was so employed on the morning of June 7, 2015.
2. On June 7, 2015, "Fuzzy", a track worker also known as Vaughn Ringold, ran up to my post and told me that "somebody shot one of your guys." Fuzzy also told me that he and Kevin Jones were walking through the parking lot when a person approached Jones and shot him. Fuzzy told me that he was some distance away from Jones when the incident started.
3. Fuzzy told me that he tried to stop a security truck driven by Pimlico Security Lieutenant Damon Jenkins. Jenkins would not let Fuzzy into the truck and would not go help Jones. Instead, Jenkins drove away.
4. As part of my duties, I wrote a report about this incident, and I believe that Lt. Eric Battle, my supervisor, did the same.
5. I suspected that Kevin Jones was targeted because he had told me about witnessing his cousin's murder a couple of weeks before he was killed.
6. I knew that Kevin Jones dabbled in buying and selling drugs because he told me so.
7. Kevin Jones also told me that he had been shot in the leg and he showed me the healed wound. The wound appeared to be old to me. D.L

8. I do not recall whether I told this to the police or not.

I do solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing Affidavit are true to the best of my knowledge, information, and belief.

Further affiant sayeth naught.

Donald Long

Dated: August 2nd, 2019

MD DL L520 149 429 929

Sworn and subscribed to before me this 2nd day of August 2019.

THOMAS K. LANCASTER
NOTARY PUBLIC
MARYLAND
ANNE ARUNDEL COUNTY
MY COMMISSION EXPIRES 07/11/2023

Thomas K. Lancaster
Notary Public
My Commission expires: July 11, 2023