

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff,)
)
v.)
)
MARNI YANG,)
)
Defendant,)

No. 09 CF 926

FILED

NOV 30 2022

Eva Carolyne Weinstein
CIRCUIT CLERK

**MARNI YANG'S RESPONSE TO THE STATE'S MOTIONS TO DISMISS
HER POST-CONVICITON PETITION ALLEGING ACTUAL INNOCENCE**

NOW COMES the Defendant, MARNI YANG, by her attorney, Jed Stone, and responds to the state's motions to dismiss her post-conviction petition. In support thereof, MARNI YANG states as follows:

1. On October 1, 2019, Marni Yang filed her post-conviction petition advancing her claims of actual innocence. On December 15, 2021, she filed her first amended post-conviction petition persisting in her claims of actual innocence. On May 17, 2021, Ms. Yang filed an additional document, entitled, Compelling New Forensic Evidence Advances Marni Yang's Post-Conviction Petition for Actual Innocence. These three filings form the core of Ms. Yang's post-conviction pleadings.
2. The state filed its motion to dismiss Ms. Yang's post-conviction petition on February 26, 2020, and its supplemental motion to dismiss her amended post-conviction petition on May 31, 2022.
3. This response is offered to answer both of the state's motions to dismiss.
4. Over the passage of time between the initial filing of Ms. Yang's claims of actual innocence and today's filing, November 30, 2022, Ms. Yang's counsel and the state have engaged in complex and thoughtful discussions in an effort to advance some of Ms. Yang's claims of innocence.

5. On August 25, 2022, in a written correspondence to defense counsel, the state agreed to withdraw its arguments in their motion to dismiss with respect to the following claims, allowing them to proceed to a Stage 3 hearing:
 - a. The claims of innocence regarding DNA on the shell casings found at the crime scene;
 - b. The claims of innocence regarding DNA, or lack thereof, on the bracelet found on or about March 1, 2009, by police investigators;
 - c. The claims of Jessie Delgado, supported by a notarized and sworn affidavit; and
 - d. The claims of Steven Wade, supported by a notarized and sworn affidavit.

6. This response to the state's remaining issues in Ms. Yang's petitions shall focus on:
 - a. The claims of Emily Yang regarding the use of suborned perjury by the prosecution;
 - b. The claims of John Larsen, Arthur Borchers and Cyril Wecht, M.D. (contained in the May 17, 2021, pleadings and exhibits);
 - c. Advancing evidence of an alternate suspect of the killer of Rhoni Reuter;
 - d. The unreliability of the Yang/Paschen tape recordings;
 - e. The state's withholding from the jury additional evidence of the unreliability of the Yang/Paschen tape recordings;
 - f. Evidence that Assistant State's Attorney Patricia Fix concealed exculpatory evidence from the defense (paragraphs 133 to 135 of the October 1, 2019, post-conviction petition); and

- g. The use of false evidence to the grand jury by ASA Fix, which created a false alibi for Shaun Gayle. (Paragraphs 27 to 34 of the December 15, 2021, amended post-conviction petition).

THE GUIDING PRINCIPLES OF LAW FOR THIS CASE

7. Where Ms. Yang has made a substantial showing of innocence, this cause should be advanced to a Stage 3 evidentiary hearing.
8. At a Stage 2 proceeding, this court “is not to engage in fact-finding or credibility determinations. The [post-conviction] act contemplates that fact-finding and credibility questions are to be resolved at the evidentiary stage hearing.” *People v. Coleman*, 183 Ill.2d 366, 385 (Ill. 1998). “Unless the petitioner’s allegations are affirmatively refuted by the record, they are taken as true, and the question is whether those allegations establish or ‘show’ a constitutional violation.” *People v. Domagala*, 2013 IL 113688 at ¶ 35.
9. This court must view the Petitioner’s pleadings, together with the witnesses’ sworn affidavits, construing them in favor of the defendant. *People v. Sanders*, 2016 118123 at ¶ 31. The affidavits of Arthur Borchers, Dr. Cyril Wecht, Emily Yang, Jesse Delgado, Andrew Yang, and Steven Wade supporting the claims in Ms. Yang’s petition are sufficient to advance her claims to a Stage 3 hearing.

PROSECUTORIAL MISCONDUCT

10. The Supreme Court of the United States held that deliberate deception of a court and jury by presentation of known false evidence is “incompatible with ‘rudimentary demands of justice.’” *See Giglio v. United States*, 405 U.S. 150, 153 (1972).

11. Marni Yang has alleged sufficient evidence to show that Assistant State's Attorney Fix allowed false testimony before the grand jury. The false testimony misled the grand jury to provide Shaun Gayle with a false alibi.
12. Marni Yang has alleged sufficient evidence to show Assistant State's Attorney Fix suborned perjury when she compelled Emily Yang to provide false testimony at Marni Yang's trial.
13. As the Illinois Supreme Court stated in *Coleman*, credibility issues and fact-finding must be undertaken at a Stage 3 hearing. *See id.* at 385.
14. The alleged misconduct by Assistant State's Attorney Fix is sufficient to entitle Ms. Yang to an evidentiary hearing on those issues. *People v. Woods*, 2016 IL App (3rd) 140224-U. A copy of *Woods* is appended to this response as Exhibit 1.

THE POST-TRIAL DISCOVERY OF THE UNDEVELOPED 35MM FILM THAT CONTAINED CRIME SCENE EVIDENCE THAT, WHEN DEVELOPED AND ANALYZED BY POST-CONVICTION DEFENSE EXPERTS, IS NEWLY DISCOVERED, NON-CUMULATIVE EVIDENCE OF ACTUAL INNOCENCE.

15. The failure of the state to disclose evidence that may affect the jury's determination of guilt or innocence will render the fact-finding of the jury unreliable and require a new trial, irrespective of the good faith or bad faith of the prosecution. *See id.*
16. Even if the defense trial counsel did not request favorable evidence, the prosecution had an obligation to disclose such evidence to the defendant under the 5th and 14th Amendments of United States Constitution and the parallel provisions of the Illinois constitution. *See Brady v. Maryland*, 373 U.S. 83, 86-88 (1963).
17. In the prosecution of Marni Yang, the crime scene investigators took photographs of the scene with both digital cameras and 35mm film cameras, contemporaneous with the crime itself. The 35mm photos were not developed until years after the trial when post-

conviction expert Arthur Borchers found a mention of 35mm film in an obscure note on a page within thousands of pages of police reports. The development of the canisters of 35mm film uncovered theretofore unknown information about the location of bullet holes at the crime scene. See Borchers' affidavit, Appended to this response in Group Exhibit 3.

18. Burying a reference to canisters of undeveloped photographs of the scene is not the same disclosure of exculpatory evidence.
19. Due process requires the state to disclose to a defendant any material or information within its possession or control that tends to negate the guilt of the defendant. *See Brady*, 373 U.S. at 86-88. Here, the now developed 35mm photographs taken by police investigators allowed Art Borchers and John Larsen to track bullet trajectories with scientific accuracy. See Borchers' Affidavit, found in Group Exhibit 3. These film canisters were under the exclusive control of the state and in the actual possession of the Deerfield police. This film was not tendered to defense counsel before trial.
20. The developed photographs are material if they create a "probability that, had the evidence been disclosed [at trial], the result of the proceedings may have been different." *People v. Vasquez*, 313 Ill.App.3d 82, 98 (2nd Dist. 2000). In *Vasquez*, the court's concern was not whether the evidence would alter the verdict, but whether the defendant's trial was fair, and the verdict reliable, in the absence of material evidence. *See id.* By burying the existence of the 35mm film canisters, the reliability of the verdict is undermined, and the court's findings rendered unworthy of confidence. *See id.*
21. At Stage 2, the Borchers, Larsen, Wecht evidence need not convince this court their analysis of the evidence "exonerates" Ms. Yang. *See Robinson*, 2020 IL 123849 at ¶ 56.

The Illinois Supreme Court instructs that “new evidence supporting an actual innocence claim need not be entirely dispositive to be likely to alter the results on retrial.” *Id.*

22. Borchers, Larsen and Wecht, through their analysis, demonstrate to a reasonable degree of scientific certainty Ms. Yang could not have been the shooter. Their analysis was only possible by developing the theretofore undeveloped 35mm film.
23. This evidence must be advanced to a Stage 3 hearing.
24. Our Second District Appellate Court reminds us, “Discovery is not a game of hide-and-seek.” *People v. Garth Collins*, 333 Ill. App. 3d 20, 27 (2nd Dist. 2002). The People claim the Borchers, Larsen, Wecht evidence is not “newly discovered” because of an obscure reference in fifteen thousand pages of written discovery alerted the defense of its existence. This claim is trickery, not due process.
25. Ms. Yang is fortunate that investigators she engaged in her claims of innocence found references to undeveloped 35mm photographs. She is fortunate that these investigators not only found the film canisters but also developed and analyzed the photographs.

THE STATE’S RELIANCE ON THE SO-CALLED CONFESSION (THE PASCHEN TAPES) IS ILL-CONCEIVED. SHOULD THE PEOPLE RELY ON THIS TAPE RECORDED EVIDENCE, THE DEFENSE MUST BE PERMITTED TO INTRODUCE EVIDENCE OF ITS UNRELIABILITY. SEE REPORT OF DAVID THOMPSON, APPENDED TO THIS RESPONSE AS EXHIBIT TWO.

26. The Paschen tape is a classic false confession. See report of David Thompson attached as Exhibit 2.
27. Marni Yang knew that Christy Paschen was wearing a wire before she sat down with her at Denny’s restaurant. Paschen told her police handlers the wire had been discovered before the Yang/Paschen conversation took place.

28. In fact, days before the Yang/Paschen Denny's recorded statement, Ms. Yang had told both of her parents that she believed the police would secure a warrant to arrest her sixteen-year-old son, charging him with the Reuter murder. See affidavits of Larry Merar and Francine Merar at Exhibit 26 to her Post-Conviction petition of October 1, 2019.
29. Ms. Yang told her parents, she would "make shit up," falsely confessing to the murder. She falsely believed this would derail the arrest of her son; she would be arrested; her lawyers would "take care of it" in court.
30. To further assist the court in resolving the state's motion to dismiss and allowing this cause to proceed to a Stage 3 hearing, appended to this response are affidavits from Emily Yang, Arthur Borchers, Cyril Wecht, M.D., Jesse Delgado, Andrew Yang and Steven Wade as exhibits in support of her claims of actual innocence. See Group Exhibit 3.

WHEREFORE, MARNI YANG prays that this court deny the state's motion to dismiss and set this cause for a date certain for her Stage 3 hearing.

Respectfully submitted,

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NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2016 IL App (3d) 140224-U

Order filed June 14, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois.
Plaintiff-Appellee,)	
v.)	Appeal No. 3-14-0224
REGIS J. WOODS,)	Circuit No. 03-CF-1847
Defendant-Appellant.)	Honorable Robert P. Livas, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in dismissing defendant's postconviction petition without an evidentiary hearing. Defendant made a substantial showing of prosecutorial misconduct.

¶ 2 Defendant, Regis J. Woods, appeals the second-stage dismissal of his postconviction petition. On appeal, defendant argues he made a substantial showing: (1) of actual innocence; (2) that the State violated his right to due process when it induced and knowingly presented false



Moland's car. Howard turned and continued running, but he stumbled and fell. He rolled on the ground and came to rest in a position facing away from Moland's car.

¶ 7 One of the shooters ran up to him and fired his gun once. Howard felt gunpowder residue from the shot hit his face and head. He lay still, and then he heard three rapid gunshots and glass breaking. These sounds came from the direction of Moland's car. He stated that the shots fired at him sounded like a revolver, and the shots that broke the glass sounded as if they came from an automatic weapon. He also heard someone say "Fred, get that nigger, and get her, too." Howard continued to lie still until he heard the sound of cars driving away. He then got up and ran to the passenger door of Moland's car. After realizing that Moland had been shot, Howard dialed 911 at 3:35 a.m. Howard informed the dispatcher that Fred Woods had shot him and Moland. He was unable to identify the other shooter. Moland died of multiple gunshot wounds.

¶ 8 When police officers arrived at the scene, Howard told them that Fred Woods, who was wearing a black hoody and a black do-rag, had shot Moland. He described the second shooter as wearing "all black"—a black jacket with white stripes down the side and a black hat that covered his nose and forehead. Howard was taken to the hospital for treatment of his wound. There, the officers showed him a photographic array. Howard identified a picture of defendant as the man who shot Moland, but he stated that he was too tired to be sure. He later chose the same picture of defendant out of the same photographic array, and identified defendant as the shooter.

¶ 9 Steven Smith testified that, while he was conducting a narcotics transaction at 7 Miller Street at approximately 3:30 a.m., he observed defendant's cousin, David Woods, driving a burgundy car. The car parked across the street at 8 Miller Street. Smith then heard a gunshot, followed by at least two more shots, and he looked in the direction of the 500 block of Washington Street. Through the trees that partially blocked his view, he observed sparks. On

the walk back to his car after completing his transaction, Smith was surprised by the sudden appearance of defendant, who was brandishing a gun.

¶ 10 Smith first talked to the police about the homicide in November 2003, while he was incarcerated on three pending armed robbery charges. Smith denied that he had approached detectives about Moland's murder. He claimed that a detective brought up the subject of Moland's murder while talking to him about something else.

¶ 11 After Smith testified, defense counsel asked the trial judge to visit the scene—not in an attempt to recreate any of the events of the evening (which the judge had earlier declined to do), but just to view it. Doing so, counsel stated, was “absolutely crucial” to understanding Smith's testimony. It would also help the court determine the distances involved. The judge stated he would consider the request, but he would need time to think about it. He remarked that if he were to visit the scene, all parties would have to be present. The judge never visited the scene.

¶ 12 Cavelle Jackson, defendant's girlfriend, testified that defendant arrived at her house at approximately 2:30 a.m. on May 10. She awoke at 3 a.m. to feed her baby. She observed that defendant was asleep in bed. She stated that defendant's cellular phone rang several times. Defendant woke up once to answer his phone, and had a brief conversation before falling back asleep.

¶ 13 Cellular phone records, later introduced into evidence by stipulation of the parties, showed that defendant's cellular phone placed and received numerous calls between 1 and 4 a.m. on May 10. In particular, between the hours of 2:30 and 4 a.m., defendant's phone received 20 calls of one to two minutes duration, and placed 14 outgoing calls of a similar duration.

¶ 14 Following presentation of the evidence, the trial court found defendant guilty of all charges. The court sentenced defendant to 46 years' imprisonment for first degree murder, a

consecutive 9 years' imprisonment for attempt first degree murder, and a concurrent 9 years' imprisonment for aggravated discharge of a firearm. Following the denial of his posttrial motions, defendant appealed his sentence and conviction to this court. *People v. Woods*, No. 3-04-0851 (2006) (unpublished order under Supreme Court Rule 23). Defendant's only issue on direct appeal was that the trial court erred in allowing the State to impeach its own witness by the use of prior inconsistent statements. This court affirmed, finding that defendant had waived the issue and the evidence was not closely balanced. Defendant thereafter filed a *pro se* petition for postconviction relief, which the trial court summarily dismissed. This court affirmed. Defendant appealed, and the Illinois Supreme Court, in its supervisory authority, directed this court to vacate its judgment and reconsider in light of *People v. Hodges*, 234 Ill. 2d 1 (2009). This court reconsidered its previous decision, and remanded defendant's petition for second-stage postconviction proceedings.

¶ 15 In May 2013, defendant, through court-appointed counsel, filed an amended postconviction petition and included supporting affidavits. In the petition, defendant alleged, *inter alia*: (1) that Augusta Spearman, an inmate at Menard Correctional Center, had information showing that defendant did not commit the crime; (2) that Howard had been coerced by prosecutors to testify falsely against defendant; and (3) that trial counsel was ineffective for failing to obtain a ruling on the defense motion to have the trial judge visit the crime scene and for failing to conduct an appropriate investigation, *i.e.*, to discover information from Patricia Sharp, a resident of the area where the crime occurred.

¶ 16 Spearman submitted the following affidavit, which we recite verbatim:

“I Augusta Speorman [*sic*] Jr., being dulying [*sic*] sworn upon my oath depose and give the following statement on behalf of

Regis Woods. A guy I met here at the Menard Correctional Center who is from Joliet, IL. As I am too. As we started conversating [sic] about the neighborhood I learned of the offense that he was incarcerated for, and I became aware of that/the incident he was being imprisoned for I actually witnessed the shooting that took place.

When I related the story to Regis Wood that I had witnessed it, it was apparent that we were talking about the same incident.

I now give this sworn statement for the first time ever, that I witnessed the shooting that occurred back in May of 2003, in the area of Washington and Miller on the east-side of Joliet, IL.

I was going to buy some weed at 3:30, or 4:00 A.M. in the morning; and I saw clearly a man wearing a red jersey, dark pants, at lease [sic] 6'2" and around a 198 lbs, shooting at someone. I am also 100% sure from being face to face with Regis Woods that he was not the person in height nor size that I saw shooting in the general area of Washington and Miller street [sic] where I was heading to cop some weed in May 2003.

I August Speorman [sic] Jr. signs this affidavit of my own free will, and moral duty to testify to the truth I've witness with my own eye's [sic] May 2003, without any promise of personal gains

or threats to my health or well being. Anything further I sayeth not.”

¶ 17 Charles Howard, the State’s key witness, submitted an affidavit that read as follows:

“This affidavit is given by me, Charles T. Howard, in regards to the case of Regis Woods. On the night in question, I informed the detective that I could not be 100% sure of the identification of either shooter. I told them that earlier in the evening, Jemell Barefield had told me that he had a problem with Fred Woods—who was at the same club that we were at (Don’s). That was my reason for assuming that it might have been that Fred Woods (Regis Woods). Prior to then, I had only heard of ‘Fred’ Woods. I had told both the state attorney and the detectives that I did not want to testify and say that it was Regis Woods for sure, because I was not completely sure. I was told that my parole would be violated and I would be sent to jail for contempt and perjury. At first, I just did not show up for the court dates, but then I got arrested so I testified like they wanted me to. The statement above is given freely without any threat or promises by me.”

¶ 18 Patricia Sharp, a resident of the area, also submitted an affidavit after the Will County public defender’s office contacted her in 2013. In the affidavit, Sharp averred that she had lived at 8 Miller for approximately 33 years and was extremely familiar with the area where the shooting occurred. She stated that there had been no substantial changes in the landscape of the area, and “a cursory viewing of the aforementioned area would indicate that, regardless of the

conditions or any conceivable variations (such as time of day, time of year, etc.), it would have been impossible for anyone (regardless of the acuity of their senses) to have seen anything going on in front of 512 Washington while standing at or near 7 Miller.” Sharp also stated that she knew Moland and remembered the night she was murdered. On the night of the murder, Sharp was returning home from Harrah’s Casino. When Sharp pulled into her driveway, there was no one outside in the area of 7 Miller. Sharp immediately entered her house, and as soon as she did so, she heard gunshots coming from the area of 512 Washington. No one associated with the defense ever talked with her regarding the murder.

¶ 19 The State filed a motion to dismiss, which the trial court granted.

¶ 20 This appeal followed.

¶ 21 ANALYSIS

¶ 22 On appeal, defendant argues the trial court erred in dismissing his postconviction petition without conducting an evidentiary hearing. He specifically argues he made a substantial showing in his amended postconviction petition that: (1) he was actually innocent of the offenses for which he was convicted; (2) testimony of the State’s key witness who positively identified him at trial as one of the offenders was false and induced by police and prosecutorial misconduct; and (3) his trial attorneys were ineffective in failing to locate, present, or ask the trial court to consider evidence that could have affected the outcome of his case.

¶ 23 The Post-Conviction Hearing Act (Act) provides a three-stage review process for a criminal defendant to challenge the validity of his conviction based upon a constitutional violation. 725 ILCS 5/122-1 *et seq.* (West 2014). In the present case, the trial court dismissed defendant’s postconviction petition at the second stage of review. During the second stage, the defendant bears the burden of making a substantial showing of a constitutional violation. *People*

v. Pendleton, 223 Ill. 2d 458, 473 (2006). All well-pleaded facts that are not positively rebutted by the record are to be taken as true. *People v. Coleman*, 183 Ill. 2d 366, 385 (1998). Second-stage inquiry does not require the court to engage in any fact-finding or credibility determinations, as such determinations will be made at the evidentiary stage of the proceedings. *Id.* The sole issue for the court to determine at the second stage is whether the petition being attacked is proper as a matter of law. *Id.* “In other words, the ‘substantial showing’ of a constitutional violation that must be made at the second stage [citation] is a measure of the legal sufficiency of the petition’s well-pled allegations of a constitutional violation, *which if proven* at an evidentiary hearing, would entitle petitioner to relief.” (Emphasis in original.) *People v. Domagala*, 2013 IL 113688, ¶ 35. We review the second-stage dismissal of a postconviction petition *de novo*. *Coleman*, 183 Ill. 2d at 389.

¶ 24

A. Actual Innocence

¶ 25

Defendant first argues the trial court erred in dismissing his postconviction petition at the second stage because he made a substantial showing of actual innocence. A defendant makes a substantial showing of actual innocence sufficient to advance his cause to an evidentiary hearing when he presents evidence that: (1) is newly discovered; (2) could not have been discovered sooner through the exercise of due diligence; (3) is material and not cumulative; and (4) would probably change the result on retrial. *People v. Ortiz*, 235 Ill. 2d 319, 333 (2009); *People v. Molstad*, 101 Ill. 2d 128, 134-36 (1984).

¶ 26

In his affidavit, Spearman alleged that, after speaking with defendant, “it was apparent” that he had witnessed the shooting for which defendant was incarcerated. Spearman stated that, while purchasing drugs at 3:30 or 4 a.m., he clearly saw the shooter, who was wearing a red jersey and was at least 6’2” and weighed approximately 198 pounds. Spearman averred that he

was “100% sure” based on his familiarity with defendant’s face that defendant was not the person “in height nor size” that he witnessed commit the shooting in May of 2003 in the area of Washington and Miller in Joliet.

¶ 27 The State responds that Spearman’s allegations are insufficient to support a claim of actual innocence; Spearman’s affidavit does not identify whether the intended victim was male or female, whether the intended victim was on foot or in a car, or even whether anyone had actually been shot. Further, although there were two shooters involved in Moland’s murder, the State claims Spearman’s affidavit makes no mention of seeing a second shooter or even that he heard shots coming from two locations. Thus, according to the State, Spearman’s affidavit does not advance defendant’s claim of actual innocence, as it does not even show that Spearman witnessed the murder that formed the basis of defendant’s conviction.

¶ 28 In addition, the State argues, because Spearman did not assert that he would be willing to testify, his affidavit is facially insufficient, as it fails to identify the “availability of the alleged evidence.” See *People v. Jones*, 399 Ill. App. 3d 341, 366 (2010) (finding an affidavit flawed where it did not contain a statement that the individual would actually testify to the facts alleged in his affidavit).

¶ 29 Initially, we disagree that Spearman’s affidavit did not indicate his willingness to testify on defendant’s behalf. Spearman indicated he was signing the affidavit of his own free will and with a “moral duty to testify to the truth I’ve witnessed with my own eye[s] May 2003, without any promise of personal gains or threats to my health or well being.” Construed liberally, we find these words sufficient to show Spearman’s availability and willingness to testify on defendant’s behalf. See *People v. Smith*, 2015 IL App (1st) 140494, ¶ 24 (finding that a witness indicated his availability by stating in his affidavit that he wanted to help the defendant, taking

knowingly presented false testimony, a defendant presents a constitutional question within the purview of the Act. *People v. Clinton*, 2016 IL App (3d) 130737, ¶ 25; see also *People v. Brown*, 169 Ill. 2d 94, 103 (1995) (“[A] criminal conviction obtained through the knowing use of false testimony constitutes a violation of due process.”).

¶ 34 Here, the State attempts to recharacterize defendant’s due process claim as an actual innocence claim and asserts that Howard’s allegations could have been discovered earlier through the exercise of due diligence. However, it is clear, both from defendant’s amended postconviction petition and his brief on appeal, that defendant’s claim alleges a violation of his constitutional right to due process based on prosecutorial misconduct. As stated above, such a claim requires only a showing that the State knowingly presented false testimony. See *Brown*, 169 Ill. 2d at 106.

¶ 35 The State next argues the trial judge in this case was justified in dismissing this claim without an evidentiary hearing because he was the judge who presided over the original trial. See *People v. Hernandez*, 298 Ill. App. 3d 36, 40 (1980) (“When questions of perjury and the credibility of a witness’ posttrial recantation are raised, the trial court is justified in dismissing without an evidentiary hearing when he or she was the judge who presided over defendant’s trial.”). However, *Hernandez* was decided prior to the Illinois Supreme Court’s decision in *Coleman*, and wrongly applies an abuse of discretion standard in assessing whether a trial court may properly dismissed a petition without an evidentiary hearing. As the court made clear in *Coleman*, the appropriate standard of review upon second-stage dismissal is *de novo* and all credibility determinations are to be made at the evidentiary hearing stage of proceedings. *Coleman*, 183 Ill. 2d at 385, 389.

¶ 36 Taking Howard's current allegations as true, as we must at this stage, we believe defendant presented sufficient evidence to show that the State induced Howard to testify falsely, in violation of his right to due process. In his affidavit, Howard stated that he was not 100% sure defendant was the shooter; he had just assumed so because a friend had told him that he had a problem with defendant earlier that evening. When Howard told the State's Attorney and the detectives involved in the case that he did not want to testify against defendant because of his unsureness, he was told that his parole would be violated and he would be sent to jail for contempt or perjury. When Howard did not show up for court, the police arrested him. For these reasons, Howard decided to testify "like they wanted [him] to."

¶ 37 A review of the facts of *Coleman* supports our determination that the trial court erred in dismissing defendant's claim without conducting an evidentiary hearing. In *Coleman*, the defendant had been convicted of two murders that took place in a drug house. 183 Ill. 2d at 370. State witness Aldene Lockett testified at the defendant's trial that she viewed a physical lineup, which included the defendant, and that he fit the description of the man she saw leaving the house at the time of the murders. *Id.* at 371.

¶ 38 In a postconviction petition, defendant included an affidavit from Lockett, wherein she averred that she saw the gunman's face as he was leaving the drug house and remembered recognizing him as someone from the neighborhood. *Id.* at 377. She further stated that she had told the police during the lineup that the defendant was not dark enough to be the man who came out of the drug house. *Id.* She also told them she did not remember ever seeing him in the neighborhood. *Id.* Lockett claimed the prosecutor called her every few days to try to convince her that the defendant was the right person and to make sure her story did not change. *Id.*

¶ 39 The trial court denied the defendant’s petition without an evidentiary hearing. *Id.* at 378. In response to the defendant’s argument that he was entitled to an evidentiary hearing because Lockett’s affidavit showed that the State had knowingly presented false testimony and withheld exculpatory information, the State argued that the information contained in Lockett’s affidavit was nothing more than a witness recantation, which had historically been deemed unreliable. *Id.* at 390. For that reason, the State argued, no evidentiary hearing was necessary. *Id.*

¶ 40 In rejecting this argument, the Illinois Supreme Court noted that each of the cases the State relied upon for the proposition that recantations are unreliable involved situations where the trial court conducted a hearing at which it had assessed the credibility of the recanting witness’s new testimony. *Id.* By contrast, the court noted, because the defendant’s petition had been dismissed at the second stage, any determination of the credibility of the recanting witness’s new testimony was premature. *Id.* The court reasoned,

“By seeking to dismiss the post-conviction petition, the State assumed the truth of the factually supported allegations contained in that petition, at least for purposes of the motion. Therefore, the State, as the movant, has eliminated all factual issues from the inquiry. For this reason, the State cannot now on appeal seek affirmance of the dismissal order by arguing that Lockett’s recantation is incredible or untrustworthy. Had the State wished to test Lockett’s credibility, the State should have *answered* the petition, rather than seeking to dismiss it, for the latter action raises solely the question of the sufficiency of the pleadings, as a matter of law, and admits the pleadings solely for purposes of deciding

the legal question. As we have discussed earlier in this opinion, the Act contemplates that factual and credibility determinations will be made at the evidentiary stage of the post-conviction proceeding, and not at the dismissal stage.” (Emphasis in original.) *Id.* at 390-91.

¶ 41 Based on the foregoing, we conclude the trial court erred in dismissing this portion of defendant’s postconviction petition at the second stage. In so holding, we recognize that Howard’s trial testimony was corroborated by his 911 call, his identification of defendant to the police on scene, and the physical evidence. However, the issue is not whether defendant would have been convicted without Howard’s testimony but, rather, whether there was misconduct on the part of the State. Defendant is entitled to an evidentiary hearing.

¶ 42 C. Ineffective Assistance of Counsel

¶ 43 Finally, defendant argues his trial counsel provided ineffective assistance by failing to investigate and present evidence that could have affected the outcome of his case. Specifically, defendant argues counsel should have obtained a ruling on its earlier request for the trial judge to visit the scene, and should have located Patricia Sharp, a witness who lived in the area.

¶ 44 To be entitled to an evidentiary hearing on an allegation of ineffective assistance of counsel, a defendant must make a substantial showing that: (1) his counsel’s performance fell below an objective standard of reasonableness; and (2) there is a reasonable probability that, but for the deficient performance, the outcome of the trial would have been different. *Coleman*, 183 Ill. 2d at 397. In addition, if a claim can be disposed of for lack of sufficient prejudice, we need not consider the reasonableness of counsel’s performance. *Id.* at 397-98.

¶ 45 Here, both of defendant's arguments concerning counsel's alleged ineffective assistance would have served only to rebut the testimony of State witness Steven Smith. Smith testified that, while conducting a narcotics transaction in the area, he heard gunshots and saw sparks through the trees in the direction of Washington Street. Smith further testified he saw defendant immediately thereafter brandishing a gun. According to defendant, however, the visit to the scene would have shown the impossibility of Smith having seen the shooting from his location, and Sharp's testimony would have shown that no one was in the location Smith stated he was in at the time of the shooting. Nevertheless, even without Smith's testimony, which the trial court noted was inherently suspect, we find that the evidence presented was more than sufficient to support the court's finding of guilt.

¶ 46 As noted on direct appeal, the evidence in defendant's case was not closely balanced. Even setting Howard's trial testimony aside for moment (assuming it was coerced by the State), Howard identified defendant as the shooter in his 911 call, to the police upon their arrival on scene, and twice in a photo lineup. In addition, defendant's cellular phone records directly discredited his alibi—that he was asleep at his girlfriend's house at the time of the shooting. For these reasons, defendant cannot meet the prejudice prong of *Strickland*, and the trial court properly dismissed his ineffective assistance of counsel claim at the second stage of postconviction proceedings.

¶ 47 CONCLUSION

¶ 48 For the foregoing reasons, we reverse the judgment of the circuit court of Will County and remand for an evidentiary hearing on defendant's claim of prosecutorial misconduct. In doing so, we affirm the court's second-stage dismissal of defendant's actual innocence and ineffective assistance of counsel claims.

¶ 49

Affirmed in part and reversed in part. Remanded with directions.



WICKLANDER-ZULAWSKI

Learn How to Use the Truth to Your Advantage

People of the State of Illinois v Marni Yang No. 09 CF 926 Analysis of Confession Reliability

Date:
March 12, 2020

Report Prepared for:
Jed Stone
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Report Prepared by:
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Wicklender-Zulawski & Associates
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I, David Thompson, a Certified Forensic Interviewer (CFI) was contacted by the post-conviction team of Marni Yang with the request to offer an analysis in the case of People of the State of Illinois v Marni Yang. The scope of my analysis and consultation is to evaluate information obtained through an alleged confession of Marni Yang that was subsequently utilized in her conviction. This confession was not directly obtained by law enforcement, but rather through a recorded conversation that Ms. Yang had with her friend, Christi Paschen. It is the specific information obtained through this conversation that is the basis of this report; to analyze the reliability of this confession as it relates to known causes of false confessions.

Upon my engagement of this service, I was provided with evidentiary support that was included in the original case against Ms. Yang as well as expert opinions that have come forward after Ms. Yang's conviction. As part of the analysis, I reviewed these expert opinions, affidavits and recordings, both audio and video that were provided including:

- Two (2) Audio Files of Ms. Yang's recorded conversation with Ms. Paschen
 - Denny's 1 Tape (DS300014.wma)
 - Denny's 2 Tape (DS300018.wma)
- Three (3) Phone call recordings
 - Combined... 03.01.2009.wav
 - Combined... 03.02.2009.wav
 - MakingShitUp.wav



- Eighty (80) Videos of Marni Yang in Custody
 - InCustody1 – InCustody76
 - MarniAfterArrest1 – MarniAfterArrest3

As this report will detail, the context of the above recordings is essential in attempting to understand the entire perspective of each as well as their relative importance. The timeline of evidence obtained, interviews with witnesses and other subjects relative to Ms. Yang, and the ultimate result of a confession will be discussed in this report.

This report will be broken down into multiple parts for ease of reference and contextual understanding of the causes of false and involuntary confessions as they relate to Ms. Yang.

The outline of the report will be as follows:

Part 1: Summary of Findings

Part 2: David Thompson, CFI; Background and Qualifications

Part 3: False Confessions: Causes and Risks of Improper Techniques

Part 4: Analysis of Ms. Yang's Confession

PART 1: SUMMARY OF FINDINGS

- It is of high likelihood that the misclassification error, consisting of unreliable forensic analysis as well as confirmation bias led to Ms. Yang's identification as the primary suspect in this case. The dismissal of inconsistent and conflicting evidence combined with the avoidance of alternative theories demonstrate how misclassification contributed to Ms. Yang's role as the primary suspect.
- The lack of any parental or legal representation in the interviews of Emily and Andrew Yang, both juveniles at the time, allowed for potentially inappropriate tactics to be used in these interviews including the false evidence ploy, explicit threats and promises. It is of high probability that these tactics were used and are known to increase the likelihood of false confessions especially with vulnerable subjects. Although neither Emily, nor Andrew confessed to this crime, the context of their involvement and treatment by law enforcement has a direct correlation to Ms. Yang's recorded statements.
- While in police custody, Ms. Yang was interrogated using several of the tactics that have been proven to increase the likelihood of false confessions, specifically one of coerced compliance. Over a lengthy interrogation, lasting multiple days, Ms. Yang was subjected to explicit threats and promises, the false evidence ploy and confrontational tactics.
- In addition to the psychologically coercive tactics deployed on Ms. Yang, she was also impacted by these same strategies being utilized on her juvenile children and her friend, Christi Paschen. At the time of Ms. Yang's recorded confession, she is cognizant of the investigators ability to coerce her children and those around her to provide potentially false information. Investigators pulling Andrew Yang out of school, as well as including him in a photo lineup, demonstrated their intent on classifying him as a suspect.

- It is of high likelihood according to both Ms. Yang's statements as well as the audio recording of Christi Paschen that Ms. Yang was aware, she was being recorded while providing her statements. This knowledge of the recording device is important as it demonstrates Ms. Yang's intent, as she states, to "make shit up". Ms. Yang's confession was intended to appease investigators and protect her family. Ms. Yang knew that her conversation was being directly relayed to investigators.
- Ms. Yang's state of mind as she provided her confession was defined in the conversation she had with her parents and specific remarks she made to her father, Larry Merar. This recorded conversation was not provided to be able to be reviewed in its entirety. However, statements made by both Mr. Merar and Ms. Yang indicate that she discussed "making shit up" and "letting the lawyers figure it out" in order to appease the investigators and protect her family.
- Ms. Yang was knowledgeable of the crime scene and supporting details of the incident due to contamination in all three capacities: unintentional, intentional and through a third-party. Ms. Yang was provided specific details of the crime scene by investigators while in custody, as well as shown crime scene photos. Additionally, the murder of Rhoni Reuter was well publicized in the media and many details of the incident would have been common knowledge, especially at the time of Ms. Yang's confession, approximately 18 months after the homicide occurred.
- Ms. Yang's recorded confession contained details of the crime that were either provided to her while in custody or through other witnesses interviewed by the task force including Emily Yang, Andrew Yang, Brandon Yang, Sal Devera and Christi Paschen.
- Ms. Yang's recorded confession also contained details of the crime that were inconsistent and conflicting with the crime scene and other forensic evidence. These inconsistent details should have been considered when evaluating the reliability of the confession.
- It is of high probability that Ms. Yang provided a coerced-compliant confession, derivative of misclassification, incited through coercive techniques including threats and promises, lengthy interrogations and the pursuit by investigators using confrontational tactics on her family and friends. Ms. Yang then provided a contaminated, inaccurate and unreliable confession knowing she was being recorded and has otherwise maintained her innocence, consistent with a coerced-compliant confession.

PART 2: DAVID THOMPSON, CFI; BACKGROUND AND QUALIFICATIONS

I am the Vice President and a Partner of Wicklander-Zulawski & Associates (WZ), an international firm that trains investigators across the globe on methods of non-confrontational interview and interrogation techniques. As an instructor for WZ, I have developed curriculum and hosted training classes for investigators in the private and public sectors to include local, state and federal law enforcement agencies. I am also a Certified Forensic Interviewer (CFI), a designation that requires the passing of a standardized examination covering a series of topics regarding interview and interrogation. Maintenance of this designation demands continuing education credits and adherence to a code of ethics that represent the standard of interview and interrogation professionals.

While developing curriculum, I have collaborated with the academic community to understand the empirical research that either supports or challenges interrogation techniques and the risks of obtaining false confessions. In this arena, my opinion has been sought out and recognized in a variety of contexts including contribution to research studies, participant as *amici curiae* in multiple briefs and case consultation regarding the reliability of confessions. I have also contributed opinions in support of legislative change relative to the rules of evidence in an interrogation, and co-authored articles with the academic community to illustrate the same. My opinion has also been requested and delivered at presentations with members of advocacy groups including the Innocence Project, Center on Wrongful Conviction of Youth and the Center for Integrity in Forensic Sciences.

As a practitioner, I've conducted countless investigations, interviews and interrogations throughout my career. On behalf of WZ, I have also conducted investigations and consulted on cases ranging from theft and fraud to sexual harassment and homicide. Utilizing this experience, combined with the above collaboration with the academic community I have written curriculum that serves as the standard for many law enforcement agencies, loss prevention departments, human resource organizations and federal agencies. This curriculum ranges from interviewing and interrogation techniques, report writing, legal implications, investigative protocols and false confessions.

My unique combination of practical experience and academic collaboration has transpired into a knowledge base and expertise in identifying the truth with ethical, moral and empirically sound interview methods. Analyzing cases of wrongful convictions, especially those that have yielded false confessions, is a primary responsibility of mine.

A high-level overview of select publications, presentations and curriculum development is listed here in my curriculum vitae.



DAVID THOMPSON, CFI

CURRICULUM VITAE

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EDUCATION

2007 | B.A. | Canisius College
Psychology | Criminal Justice
Buffalo, New York

CERTIFICATIONS

Certified Forensic Interviewer (CFI)

ASSOCIATIONS

International Association of Interviewers
International Investigative Interviewing Research Group
ASIS International

PROFESSIONAL EXPERIENCE

2014-Present: Partner | Vice President of Operations
Wicklander-Zulawski & Associates, Inc. | Aurora, IL

2013-2014: Asset Protection District Manager
Rite Aid Corporation | Buffalo, NY

2013 – 2013: Recruit Trooper
New York State Police

2010-2012: Regional Loss Prevention Manager
Abercrombie & Fitch | Buffalo, NY

2006-2010: District Loss Prevention Manager
Kohl's Department Stores | Philadelphia, PA

2003-2006: E-4 SPC; Reserve Officer Training Corps
New York State Army National Guard | Buffalo, NY

PROFESSIONAL PROFILE

David Thompson, CFI, is responsible for the day-to-day operations of Wicklander-Zulawski & Associates, Inc. (WZ), as well as strategic planning in the evolution of interview and interrogation content. David has also served as the Director of Investigations for WZ providing him the opportunity to manage a variety of cases while conducting interviews and consulting on investigations ranging from theft and fraud to sexual harassment and homicide. As an instructor, David has created customized training programs, presented at seminars, hosted a variety of webinars as well as conducted live broadcasts of training. He is also an active member of the International Association of Interviewers (IAI) and has contributed blogs, video tips and published several articles to support the continuing education of its members.

David has also played an integral role in the ongoing evolution of content and innovative teaching methods. Developing training that is presented in a virtual broadcast venue, creating opportunities for distance learning and contributing to some of WZ's newest technology. He has also led the creation of numerous customized curriculums including a major program for the U.S. Citizenship and Immigration Services, serving as the Deputy Program Manager.

David is recognized as an expert in the interview and interrogation domain and has collaborated with members of the Innocence Project, Center on Wrongful Convictions of Youth and other academic partners to further the enhancement of interview protocols throughout the U.S. David has contributed opinions for a variety of cases, argued for legislative changes, contributed to amicus briefs and has been cited by the U.S. Federal Court of Appeals for his involvement on the topic of interview and interrogation.

SELECT PRESENTATIONS AND LECTURES

OCT 2019	Petition for Executive Clemency on Behalf of Brendan Dassey Contributing Speaker
JUN 2019	Intersection of Confession Evidence and Shaken Baby Syndrome Convictions Center for Integrity in Forensic Sciences Putting Science in Forensic Science
APR 2019	CFI's vs PhD's: Same Letters, Different Goals - An Analysis of the Interrogation International Association of Interviewers Elite Training Day
FEB 2019	Organized Crime Interviewing California Organized Retail Crime Coalition
OCT 2018	Isn't it Obvious? The Cognitive Interview Florida Retail Federation
OCT 2018	Organized Crime Interviewing California Organized Retail Crime Coalition
SEP 2018	Interview and Interrogation Techniques Cook County Organized Crime Conference
JUL 2018	Practical Perspectives to Identifying the Truth: Academic & Practitioner Partnership International Investigative Interviewing Research Group Symposium
APR 2018	The Cognitive Interview Metro Organized Crime Association New York City
NOV 2017	Solving Difficult Investigations – Selective Interview Techniques Association of Certified Fraud Examiners Mexico City
OCT 2017	Cautions of Confrontation U.S. Asia Law Institute New York University Wrongful Convictions Symposium
JUN 2017	An Interrogator's Perspective on Netflix's "Making a Murderer" National Retail Federation PROTECT
AUG 2016	Interviewing Techniques for Fraud U.S. Customs and Immigration Services
JAN 2016	Advanced Criminal Interviewing Techniques New York State Office of Attorney General
JUN 2015	Interviewing Techniques U.S. Equal Employment Opportunity Commission

continued

SELECT PUBLICATIONS AND CONTRIBUTIONS

Videotape all Police Interrogations: Justice Demands It

The New York Times | Saul Kassin, PhD; David Thompson, CFI | August 2019

What Is The 'Reid Technique,' And Was It Used In The Interrogation Of The Central Park 5?

Oxygen – Martini's and Murders | Gina Tron | Contributing Opinion | June 13, 2019

Seeking Clarity in the Era of False Confessions

Northwestern Journal of Criminal Law and Criminology | Contributing Speaker

Brief of Independent Law Enforcement Instructors as Amici Curiae

United States Supreme Court | Contributing Author | 2018

In the "Making a Murderer" Case the Supreme Court Could Help Address the Problem of False Confessions

The New Yorker | Douglas Starr | Contributing Opinion

Conducting Interviews: An Auditor's Guide to Getting to the Truth

Journal of Forensic & Investigative Accounting | Berecz, Metrejean, Thompson

Brief of Amici Curiae to the United States Court of Appeals for the Seventh Circuit

Juvenile Law Center | Wicklander-Zulawski & Associates | Professor Brandon Garrett

I Did It?! Why Innocent People Confess

Wicklander-Zulawski & Associates

Inside the Organized Retail Crime Interview

Loss Prevention Magazine

Multi-Disciplinary Video Blog Series

International Association of Interviewers | 2014 – Present | Contributing Author

Truth Be Told Bi-Weekly Column

Downing-Downing Daily Newsletter | 2019 - Present

The Confession Tapes | Gaslight | Season 2, Episode 1

Netflix | Contributing Opinion

TalkLP Podcast Co-Host

TalkLP | Amber Bradley & Dave Thompson, CFI | 2019 - Present

continued

SELECT CURRICULUM AUTHORSHIP

MAR 2020	<p>U.S. Law Enforcement Criminal Interviewing and Interrogation Seminar (In Press) A three-day course designed for the law enforcement professional ranging from local to federal agencies. This curriculum covers multiple non-confrontational interview techniques, legal framework and a comprehensive overview of false confessions.</p>
JAN 2020	<p>Wicklander-Zulawski Practical Aspects of Interview & Interrogation Techniques (In Press) Textbook Zulawski, Wicklander, Thompson, Hoover, Sturman</p>
JAN 2020	<p>Wicklander-Zulawski Workplace Investigative Interviewing Seminar Program developed for Human Resource, Employee Relations and Legal Counsel to conduct appropriate investigative interviews for workplace issues. Curriculum is built over a two-day course and previous versions have been presented to attendees across the globe.</p>
JUN 2019	<p>Office of Inspector General Cognitive Interviewing Techniques This course was designed to instruct the OIG investigators on the appropriate use of the cognitive interview when investigating allegations of fraud.</p>
MAR 2019	<p>Non-Confrontational Interview Techniques Maryland Commission of Civil Rights This two-day course included interview methodology that is tailored to investigations of discrimination, harassment and civil rights violations. The curriculum included multiple methods of non-confrontational interview methods.</p>
SEP 2018	<p>THE LINK Powered by WZ A Simulated Interview Training Program THE LINK technology, developed in partnership with Simmersion was designed to facilitate training for investigators after attending a seminar on interviewing techniques. The content written for this program included over 450 interviewer statements with correlating feedback and instructional notes that highlight the benefits of non-confrontational interviews.</p>
JUN 2018	<p>U.S. Citizenship & Immigration Services Non-Confrontational Interview Techniques A comprehensive two-day course designed for USCIS agents and officers investigating fraud in the naturalization and immigration process. The curriculum and course guidelines were reviewed and accepted by the USCIS training team, resulting in over 2,000 investigators being placed through the program in the first two years.</p>
SEP 2017	<p>U.S. Department of Housing and Urban Development Non-Confrontational Interview Techniques This course was developed for investigators from across the United States tasked with cases of fraud, discrimination and harassment. Multiple methods of non-confrontational techniques were covered and tailored to meet the needs of these specific case types.</p>
JAN 2017	<p>Chicago Police Department Detective Academy Criminal Interview & Interrogation Techniques This four-day program was built for Chicago Police to coincide with their desire to train all Detective's on non-confrontational interviewing techniques. The course focused on multiple methods of interviewing as well as a comprehensive overview on false confessions and the risks of improper techniques.</p>

PART 3: FALSE CONFESSIONS: CAUSES AND RISKS OF IMPROPER TECHNIQUES

HISTORICAL OVERVIEW

Confession evidence is often the heaviest weighted in determination of a subject's guilt by a judge or jury. This weight is not placed on the confession due to its scientific reliability, but rather the human element and bias in which most people cannot comprehend that an innocent person would falsely implicate themselves in a crime. Unfortunately, history has proven this phenomenon of false confessions to occur at a rate of frequency that should cause scrutiny over the reliability of any confession obtained, especially when investigations and interrogations are conducted improperly.

At the time of this report, the Innocence Project reports that 28% of wrongful convictions in which DNA evidence has provided exoneration contained a false confession from the subject.¹ This number is strictly based off of false confessions in which DNA evidence is able to exonerate the defendant, causing one to conclude there are additional cases of false confessions in which DNA evidence is unavailable to confirm. In effort to identify a potential false confession, experts will look for commonalities of risk indicators including coercive techniques, contamination and investigative failures. A combination of these indicators should create concern as to the reliability and voluntariness of a confession. Detailed below are the commonly accepted "types of false confessions" as well as the common indicators that are prevalent in known false confession cases.

TYPES OF FALSE CONFESSIONS

The psychology behind the incentive of a false confessor and the potential influence of the interrogator have been heavily researched and documented. False confessions have been most commonly categorized into three varying types of confessions; Voluntary, Coerced - Compliant and Coerced-Internalized.²

Voluntary False Confessions

The voluntary false confessor is known to have a motive outside of coercive interrogation techniques which incentivizes their admission. These confessions may even occur outside of police custody. Those that are most susceptible to voluntary false confessions could be managing within limitations due to a psychiatric disorder, a need for notoriety in a high-profile case, or the inability to distinguish between fantasy and reality.³

However, some false confessors may also be incentivized to provide admissions if they feel that their statements would cover up another crime or provide an alibi or protection for the actual guilty subject. The voluntary false confessor may have been impacted by coercive techniques used on another subject, incentivizing the confessor to provide information hoping to protect the other implicated person.

Coerced – Compliant Confessions

These admissions are generally a result of tactics used in the interrogation process or other investigative methods that applied pressures to the subject. In the "modern-era" of interrogations, investigators are no longer utilizing antiquated "third-degree" tactics to elicit confessions from their subject. However, the psychological pressures and influential strategies used to gain information may have comparable impacts on the subject. Typically, the coerced-compliant confessor has made a decision to provide false information in the hope of mitigating consequences that have been threatened by the investigator. Tactics such as providing threats or promises, excessive length of

time, confrontation and deception are highly prevalent in coerced-compliant confessions. Ultimately, the subject is aware of their innocence but is pressured into making the confession as all other options appear unfavorable, or unreachable.

Coerced – Internalized Confessions

An admission where the subject is now lead down a path where they doubt their innocence, distrust their memory and may agree with the investigator's statements of their involvement. These confessions are induced by the interrogator providing a false narrative for the subject, often with confrontational tactics, the false evidence ploy and a plausible explanation for the gap in the subject's memory.

The coerced-internalized, also known as a “persuaded” confession may contain detailed elements of the crime making the statements appear believable. This details however, are generally established through the investigators revealing of evidence, statements made by other witnesses as well as any potential media coverage.

CAUSES OF FALSE CONFESSIONS

False confessions, ranging from voluntary to coerced, have a multitude of potential causes that lead to their result. Although each false confession may be substantially different, research and historical review of these cases have proven several commonalities. The existence of any of the below factors are known to increase the risk of obtaining a false confession and should also be heavily weighted when evaluating the voluntariness and reliability of an any admission.

Misclassification

This error of misclassification is to first understand how an innocent person became the target of the interrogation in the first place. Once a primary suspect has been identified, the subsequent interrogations and investigation acquire an inherent bias of a presumption of guilt. In the analysis of a confession, it is imperative to review the course in which investigators arrived at this conclusion.

Many factors may contribute to the misclassification error including the interview process itself, especially when investigators rely on behavioral cues to identify innocence from guilt. As research has indicated, most people have approximately a 50% accuracy rating when trying to detect deception based off physical behavior.⁴ According to the Innocence Project, another factor common in misclassification include eyewitness misidentification, present in 69% of cases where the subject was later exonerated by DNA evidence.⁵ Unreliable forensic evidence is also often prevalent in false confession cases which further contaminate the perspective of the evaluator of truth.

Coercion

Coercion can take on many forms in an interrogation, or even be present throughout the entire investigative process. One of the most common elements of coercion is the presence of threats or promises made by the investigator, both explicit and implied. A combination of a threat of potential consequence, followed by a promise of mitigating those consequences create a risk-benefit analysis evaluation by the subject.

The coercive nature of an interrogation is also strengthened through additional tactics utilized by law enforcement. Lengthy interrogations are another commonality in coerced-compliant confessions, with most false confessions derivative of an interrogation that lasted more than 3 hours.⁶ Coercion may

also be amplified through the confrontational, intimidating and relentless nature of the investigator which may render the subject feeling helpless, regardless of their innocence.

Contamination

A false confession that does not contain detailed elements of the crime is generally vetted out through the investigation by law enforcement and the prosecuting agency. However, most false confessions that are utilized in a wrongful conviction contain these intimate facts and details relating to the crime. These confessions appear believable and true when heard at face value, but it is essential to review the timeline in which these facts became known to the subject. Detective (Ret.) James Trainum discusses the importance of Independent and Dependent Corroboration when determining the reliability of a confession. The two primary tasks here include a) has the subject provided any information that was previously known, and can it be substantiated and b) how did the subject come to know that information.⁷

The error of contamination can happen in a few ways; unintentionally by the investigator, intentionally, or by a third party. Unintentional contamination may occur by the investigator asking a leading question as well as leaking details of the crime through a theme or narrative they provide during the interrogation. Intentional contamination generally occurs by providing crime-scene photos during an interrogation, revealing specific details of evidence or the use of the false-evidence ploy. Lastly, contamination can occur through a third-party such as media coverage, eyewitnesses or other subject's that have been interviewed by the law enforcement agency.

Confirmation and Cognitive Biases

Many of the above errors may be committed by well-intended investigators who fall victim to confirmation bias. This bias, that creates a self-fulfilling narrative for the crime, often makes it difficult for investigators to independently evaluate a confession or other evidence that supports their theory of the crime. A study sponsored by the National Institute of Justice identified that 80% of wrongful conviction cases studied contained factors such as confirmation bias in the process.⁸ Once an investigator, eyewitness or other contributor to the investigation, has a theory or primary suspect identified, it mitigates their ability to review conflicting evidence. Instead, investigators will generally identify further explanations for these inconsistencies rather than explore them as an alternative theory. This perspective can be damaging when a case is presented to the prosecuting agency, a judge or jury, as it also prohibits their ability to evaluate a case fully.

Vulnerable Subjects

A historical review of false confessions demonstrates that any individual, given the appropriate circumstances, could be driven to provide a false confession. However, it is also known that there is a higher risk of obtaining false information when the target is a vulnerable subject. A subject may be considered vulnerable due to age, intellectual disabilities, personality disorders, mental or physical exhaustion or any other context in which their susceptibility to the above coercive techniques may be amplified.⁹

PART 4: ANALYSIS OF MS. YANG'S CONFESSION

OVERVIEW

The summary of my findings are highlighted within **Part 1** of this report, as this section is intended to provide contextual information supporting those opinions. The analysis is based off the information provided me at the time of this report and I reserve the right to edit or change my opinion as additional evidence or information is obtained.

CONTEXTUAL OVERVIEW

Ms. Yang's confession is of unique circumstance, as she does not volunteer any admissions while in custody with law enforcement but rather discloses information in a public setting while being discreetly audio-recorded. To analyze this confession, the context of what led to this moment where the confession occurs is essential in measuring the reliability and voluntariness of Ms. Yang's statements.

This context serves as a guideline for the path of Ms. Yang's interaction with law enforcement which also includes the impact of these engagements with her children and friends. These instances of interviews, interrogations and contact by law enforcement all have potential to contribute to any coerciveness, contamination and the overall state of mind of Ms. Yang upon her decision to confess to this crime. In addition to contamination, the voluntariness of the confession must be measured against any promises or threats made throughout the investigation that may potentially incentivize a confession, regardless of its validity.

Andrew Yang (Son of Marni Yang – 16 years old at the time of questioning – January 2009)

Andrew Yang had multiple interactions with law enforcement regarding this case, one of which was during an execution of a search warrant of Ms. Yang's residence. During this interaction, A. Yang states that he was separated from his siblings and feared that he was being arrested, prompting him to ask for an attorney.

An additional interaction included an incident when A. Yang recalls that two law enforcement officers had been asking fellow students if they knew him, showing his picture. A. Yang states that he was then approached by these officers and taken for a ride in their vehicle to "clear up some questions". This investigative process would lead a reasonable person to assume that A. Yang was a person of interest in this crime.

Andrew Yang also described his interaction with George Filenko, stating that during the interrogations Filenko was "frustrated and yelled" telling Andrew that "one of you is going to prison for the rest of your life".

A. Yang was also placed into a photo lineup in late 2007 and shown to potential witnesses of this crime. In addition to this, friends of A. Yang including Jessie Delgado and Rodolfo Betancourt were also interviewed by law enforcement. These interactions would indicate that A. Yang was considered a suspect in this crime, which is an element to Marni Yang's state of mind when deciding to give a confession.

A. Yang states that he became suicidal and was treated in a mental health institution due to these experiences. He claims that he was "broken down mentally" and that law enforcement "got me believing my truth was a lie". A. Yang also stated that he "...just going to agree with their version of the truth... because I have no other option."

Emily Yang (Daughter of Marni Yang – 16 years old at the time of questioning – January 2009)

E. Yang's interaction with law enforcement initiated during an execution of a search warrant at Ms. Yang's residence. In her affidavit, E. Yang stated that she was placed into a patrol car and brought to the Round Lake Beach Police Department for approximately 12 hours. During this time, E. Yang claimed that she felt she was being pushed "psychologically and intimidated". E. Yang states that during this interrogation, her requests to call her mother were denied. She further explains that the officers "yelled at her and told her she was lying" and that "I was telling them the truth, but they refused to accept it".

E. Yang also stated that law enforcement promised her that they would get her in contact with her father that she hadn't seen in several years. According to E. Yang, in exchange for this contact she was to provide law enforcement a statement. She states that she had to rewrite the statement several times, detailing false information, under direction from the law enforcement officers. E. Yang stated that the law enforcement officers told her they had talked to her father and that he "missed" the family. According to E. Yang, when she was put in contact with her father, he was upset that she reached out to him, contradictory to the statements made by the law enforcement officers.

Brandon Yang (Son of Marni Yang)

Brandon, the eldest of Ms. Yang's children, was also present at the residence when law enforcement officers arrived to execute a search warrant. B. Yang stated that officers arrived, "got in his face" and then proceeded to question him and his siblings. B. Yang also claims that they were taken into custody and brought to the police station for further questioning. He states that they were in police custody for approximately 12 hours that day.

Impact of Ms. Yang's Family Interactions with Law Enforcement

There are two main concerns relative to the reliability and voluntariness of Ms. Yang's confession that are directly correlated to Andrew, Emily and Brandon Yang's interaction with law enforcement.

First, is the potential contamination of the confession. Throughout the interview process, law enforcement officers made several claims of evidence – some that existed and some that did not – towards Ms. Yang's children. For example, investigators placed a bucket of concrete mix on the table when interrogating Andrew Yang, claiming that the murder weapon was contained within the bucket. These multiple interactions with family members of Ms. Yang yielded details of the crime being unveiled, subsequently contaminating their own statements to law enforcement as well as Ms. Yang's. As stated above, Emily Yang provided her statement to the police, only for the story to be altered and modified multiple times. The altering of a subject's statement is commonly seen in contaminated confession cases.¹⁰

The second issue that arises from the interrogations of Ms. Yang's children is her fear that law enforcement will pursue one of her children, specifically Andrew, as the suspect of this crime. Based on the review of statements, police reports and affidavits detailing the above interactions; it is reasonable to believe that there was a viable fear on behalf of Ms. Yang that her children could be wrongfully implicated in this crime. This is also relevant, as Ms. Yang proclaimed this fear to her father, Mr. Merar. According to Mr. Merar's affidavit it is stated that Ms. Yang wanted to protect Andrew and decided to "make shit up" in a confession to achieve that goal.

Christi Paschen (Friend of Marni Yang)

Christi, an essential player in obtaining the confession of Ms. Yang, was a close friend of Ms. Yang and stated that she was aware of the relationship between Ms. Yang and Mr. Gayle as early as 2006. In February – March 2009, Christi provided multiple statements to law enforcement and agreed to wear a wire that subsequently recorded the confession provided by Ms. Yang.

According to multiple statements made by Ms. Paschen to the Lake County Major Crime Task Force, she was interviewed by investigators and then placed at a local motel for “convenience and well-being”. Throughout the course of Ms. Paschen’s statements ranging from February 27th – March 2nd, she claims to remember additional details and provide further information in each. Ms. Paschen claims, in her first statement on February 27th, 2009, that Ms. Yang confessed details of the crime to her including wearing a disguise and renting a vehicle. Ms. Paschen also claims that Ms. Yang stated that she fired the weapon at Ms. Reuter causing the victim to fall backwards to the ground.

The following day, February 28th, 2009, Ms. Paschen provides another statement to investigators claiming that she left out details in her original statement. Additional details in this statement included claims of Ms. Yang planning the crime as well as more specific information about Ms. Yang’s “disguise” she wore during the incident. Ms. Paschen reasserts the claim that Ms. Yang placed the gun in a bucket of concrete and then buried it in a forest preserve.

On March 2nd, 2009, Ms. Paschen writes another statement claiming she remembered more details about the incident and detailed them in her narrative. In this statement, Ms. Paschen states that Ms. Yang looked around Ms. Rueter’s apartment taking an ultrasound photograph, paperwork, a hospital band and a medical alert bracelet. Additionally, Ms. Paschen claims that she “forgot” she was the one who discarded license plates into a dumpster and then further detailed the location of where Ms. Yang stated to have buried clothes, the wig and gun grips.

Ms. Paschen then agreed to be wired with an audio recording device and arrange two meetings with Ms. Yang in effort to obtain a recorded statement detailing the above. It is on these recordings that Ms. Yang provides the confession utilized to aid in her conviction, and the substance of this report.

Impact of Ms. Paschen’s Family Interactions with Law Enforcement

As stated, the recording device worn by Ms. Paschen captured the confession given by Ms. Yang that is the scope of this report. There are two main issues that are derived from Ms. Paschen’s extensive interaction with law enforcement.

First, like Ms. Yang’s children, Ms. Paschen is subjected to multiple interviews as well as presented multiple pieces of evidence, some factual and some not. Ms. Paschen states that investigators told her they had evidence linking them to the crime scene and even produced some tangible evidence, such as the rental car receipt and phone records. Due to these multiple interrogations by law enforcement, Ms. Paschen was exposed to several details of the crime prior to her wearing the audio-recording device. Additionally, as Ms. Paschen’s statements continue to add more details, we see a similarity to the process of obtaining a statement from Emily Yang. Multiple, additional, specific details continue to be added to the statements with interactions from law enforcement occurring simultaneously.

Secondly, Ms. Paschen also presents the viable thought that the investigators will pursue criminal charges towards herself, one of Ms. Yang's children or Ms. Yang. According to Ms. Paschen, investigators make statements such as "this is your chance, take it or leave it" regarding her cooperation in the investigation. Ms. Paschen details these interactions to Ms. Yang on the audio-recording, furthering Ms. Yang's viable fear that the investigators will not stop pursuing her family or those associated with her.

It is also important to note that on the audio-recording which contains Ms. Yang's confession, Ms. Paschen provides multiple details of the crime in the form of suggestive statements and leading questions. Statements such as "We dumped the wig; we dumped the gun" and "that stuff back in the bushes. I don't know what you put back there... I have a memory you told me...you stood in the door...stuff on the counter...did you take anything?" It is unknown the source of these details, but there is potential contamination as this information was presented after Ms. Paschen was working with the task force for several days prior to the confession.

It should be noted that an interview with Ms. Paschen conducted by Perry Myers of the post-conviction team yielded further information regarding her state of mind. This interview, filed on November 14, 2019, details Ms. Paschen's claims that she had a fear of being charged with the murder, and did not believe Marni had anything to do with it.

CONFESSION RELIABILITY

In effort to analyze the reliability of Ms. Yang's confession I have taken her admissions and evaluated them against any potential corroborating evidence as well as noting any contamination of her confession. This method of evaluating the reliability of a confession is a standard for experts in this field and routinely performed by investigators in critiquing the validity of their confessions. "

The column designated as "detail" will refer to any admissions that Ms. Yang made during her recorded conversation with Christi Paschen. The details listed below are anything relative to the crime in which corroborating evidence would be able to either support or disprove her statements.

The column labeled as "corroboration" will list either a "IND" (independent), "DEP" (dependent) or "N/A" (non-applicable).

To qualify as "*independent corroboration*" would require that details provided by Ms. Yang in her confession were previously unknown by investigators. These details would then be able to be confirmed through investigative measures after the confession.

To qualify as "*dependent corroboration*" would require that details provided by Ms. Yang in her confession would be supported by evidence that may have already been known by investigators. Although this type of corroboration is common and important in investigations, it also contains a risk of contamination as investigators have the opportunity to provide these details to the suspect prior to their confession.

The column labeled "*evidence*" will explain the available evidence relative to the detail. This evidence may be a combination of what was presented at the original trial as well as the additional forensic expertise that has been submitted since then.

Lastly, the column labeled "*contamination*" will highlight if the detail provided by Ms. Yang would have been previously known to her through the interrogations by law enforcement, interactions with her friends and family, or common knowledge obtained through the media.

The goal of this analysis is to determine the amount of details provided by Ms. Yang that are independently corroborated by evidence without having been contaminated through the investigative process.

Marni Yang’s confession contained details related to the crime including the act itself, the disposal of materials affiliated with the alleged as well as explanations of other evidence that was mentioned by law enforcement. As stated earlier, it is common for false or involuntary confessions to contain this level of detail, especially in high-profile cases. This case, specifically, was covered heavily by the media due to the relationship of Ms. Reuter and Shaun Gayle. Many of the details, including Ms. Reuters pregnancy and Mr. Gayle’s multiple relationships became well known in the media.

However, a more impactful source of contamination regarding Ms. Yang’s confession comes from the law enforcement interviews and interrogations of both Ms. Yang and her friends and family. Ms. Yang was in custody of the Lake County Task Force for multiple days, provided photographs of the crime scene and other details during these conversations. Ms. Yang is also privy to details shared by law enforcement in her conversations with Christi Paschen, which is noted on the audio recording from March 2, 2009.

Issue	Disposal of Weapon
Detail Provided by Marni Yang	<p><i>"It's gone"</i></p> <p><i>"I put it into a bucket of cement"</i></p> <p><i>"I put it in a dumpster"</i></p>
Type of Corroboration	NA
Available Evidence	No weapon was recovered.
Potential Contamination	<p>Investigators discussed the weapon, specifically a 9mm with Ms. Yang while in custody prior to her confession.</p> <p>Investigators placed a bucket of cement in front of A. Yang during interrogations.</p>

Issue	Crime Scene (Medical bracelet)
Detail Provided by Marni Yang	<p><i>"I did not {take anything}, I barely walked into the place"</i></p> <p><i>"I saw nothing"</i></p> <p><i>"It was dark in the kitchen, and I didn't see hardly anything. I didn't touch anything. I didn't take anything"</i></p>
Type of Corroboration	NA - Contradictory evidence has been presented that suggests Ms. Reuter never possessed this item.
Available Evidence	<p>Medical bracelet recovered that is alleged to have been taken by Ms. Yang from Ms. Reuters residence.</p> <p>Report by Inv. Frost states that he interviewed (7) of Ms. Reuter’s friends, none of which could identify the bracelet.</p> <p>Other witnesses did claim to identify the bracelet as Ms. Reuters</p> <p>Genetic ID Forensic test results (Def. Exhibit 19) exclude Ms. Reuter as a contributor to the DNA profile on the bracelet.</p>

Potential Contamination	Ms. Paschen states in the audio-recording that investigators had information of Ms. Yang taking something / touching something from Ms. Reuter’s apartment.
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Issue	Crime Scene (Description of scene)
Detail Provided by Marni Yang	<i>“It was dark in the kitchen” “I never got far enough in there to see anything” “Her leg was sticking out in the hallway, I had to kick it inside”</i>
Type of Corroboration	DEP – Contradictory evidence is dictated in crime scene photos.
Available Evidence	Ms. Reuter’s leg was not positioned near the door as stated by Ms. Yang according to crime scene photos.
Potential Contamination	Crime scene photos were shown to Ms. Yang while in custody.

Issue	Crime Scene (Description of victim’s reaction)
Detail Provided by Marni Yang	<i>“She started screaming” “All she was doing was screaming”</i>
Type of Corroboration	DEP – Witness statement
Available Evidence	Neighbor states to have heard muffled shots; a short scream and a crash.
Potential Contamination	Investigators discussed the crime scene, including the victim’s response and motives with Ms. Yang while in custody prior to her confession. Media coverage also detailed the witness’s perspective initiating the 911 call.

Issue	Crime Scene (Firing of weapon)
Detail Provided by Marni Yang	<i>“I took the first shot because I heard screaming...” “I took maybe 1 or 2 steps into the kitchen” “I just started emptying the clip”</i>
Type of Corroboration	DEP – Crime scene photographs and trajectory evidence contradict positioning and height of shooter.
Available Evidence	(Def. Exhibit 44) Forensic analysis concludes that the shooter was 5’10 or taller; The shooter stepped into the kitchen threshold and fired the first shot as Reuter opened the door. This shot created a “near contact” wound. Reuter was “bladed to the left with her right shoulder extended towards the shooter”. The near contact shot, combined with Reuter’s retreating position resulted in her feet being positioned away from the door.
Potential Contamination	Crime scene information was discussed with Ms. Yang while in custody prior to her confession.

Issue	Crime Scene (Positioning of body)
Detail Provided by Marni Yang	<i>"She went backwards into the kitchen. Fell against the counter. Hit the floor. Was all in shadows"</i>
Type of Corroboration	DEP – Crime scene photographs contradict the positioning of the victim.
Available Evidence	Paramedics found Reuter lying face-down on the kitchen floor.
Potential Contamination	Investigators discussed the crime scene with Ms. Yang while in custody prior to confession.

Issue	Disposal of Items (Gun Clip)
Detail Provided by Marni Yang	<i>"It was an empty clip... I buried it"</i> <i>"Empty 9mm clip that I pushed it down in the dirt"</i>
Type of Corroboration	NA
Available Evidence	No clip was recovered at the location.
Potential Contamination	Investigators discussed murder weapon in multiple interviews including Ms. Yang's prior to confession.

Issue	Rental Car
Detail Provided by Marni Yang	<i>"I took it back – they gave me a black car"</i> <i>"I had taken the plates off another vehicle"</i>
Type of Corroboration	DEP – Rental car agreement
Available Evidence	Supplemental forensic video review (Defendants Exhibit 4) concludes that the 2008 VW Rabbit rented by Ms. Yang was not the vehicle noted on the Shell station video.
Potential Contamination	According to Ms. Paschen, the rental car agreement was shown to her during her interviews in addition to conversations with Ms. Yang prior to her confession.

Issue	Pre-Paid Cell Phone
Detail Provided by Marni Yang	<i>"I bought the pre-paid cell phone with cash"</i>
Type of Corroboration	DEP – Transactional Records
Available Evidence	Cell phone records obtained by investigators.
Potential Contamination	This information was discussed with Ms. Paschen as well as Ms. Yang by investigators prior to Ms. Yang's confession.

Issue	Appearance (Disguise)
Detail Provided by Marni Yang	<p>"I had a wig on – I had dark sunglasses this big covering my face"</p> <p>"I had a hoodie on...I had dark makeup on my face, and I had gloves on"</p> <p>"I was halfway to your house before I took the wig off – you couldn't see my face"</p>
Type of Corroboration	DEP – Witness statement provided.
Available Evidence	<p>Witness (Manda Cameron) states to have seen a male black subject; short curly wig; naturally dark skin.</p> <p>Witnesses (Cameron & Cowles) did not state they observed subject wearing sunglasses or gloves, contrary to Ms. Yang's statement.</p> <p>None of these items have been recovered or identified.</p>
Potential Contamination	Cameron did not suspect makeup was used or the subject was female on 10/29/07; In a follow-up interview on 1/1/08 she then states that the jaw line could have matched Ms. Yang and may have had makeup on. Contamination of this statement is unknown.

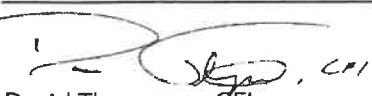
CONCLUSION OF ANALYSIS

The summary of findings is detailed in **Part 1** of this report as an overview of the opinion regarding the reliability and voluntariness of Ms. Yang's confession. The analysis in **Part 4** of this report is a comprehensive review serving as the basis for the summary.

After a thorough review of Ms. Yang's confession, it is clear her statements are contaminated through her prior in-custody interactions with law enforcement as well as the multiple interviews and interrogations that her family members and close personal friends were subjected to. Additionally, the media coverage of this case created more transparency to the available details – especially as Ms. Yang's confession came more than a year after the crime occurred. As detailed above, statements made by Ms. Yang were all previously known to her through one of these sources. Although this does not eliminate their potential for being accurate, it does yield doubt to the ability of independent corroboration of these details.

It is also of high probability that Ms. Yang's statements are consistent with those of a voluntary false confessor as well as a coerced-compliant confessor. The voluntariness of Ms. Yang's statements appears to be derived from her reasonable fear that her son would be wrongfully implicated in this crime if she did not confess. In reviewing the strategies used against Andrew Yang, Emily Yang and Christi Paschen by investigators; it is reasonable to believe that Ms. Yang had a legitimate concern for their wrongful classification as being involved in this crime. Consistent with a coerced-compliant confessor, it is of high likelihood that Ms. Yang decided to confess while still maintaining her innocence due to a risk-benefit analysis. As detailed above, a coerced-compliant confessor often is left with a decision to confess as no other options seem viable at the time due to the nature of the interrogation or simultaneous investigative measures.

The above opinions and analysis are based on the information provided to me at the time of this report. If additional details are uncovered or further information is disclosed, I reserve the right to review and update my opinion and analysis accordingly.



David Thompson, CFI
 Wicklander-Zulawski & Associates | Vice President | Partner
 Dated: March 12, 2020

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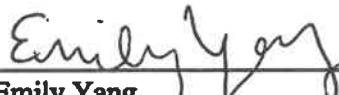
IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff,)
)
v.) No. 09 CF 926
)
MARNI YANG,)
)
Defendant,)

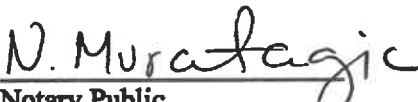
AFFIDAVIT OF EMILY YANG

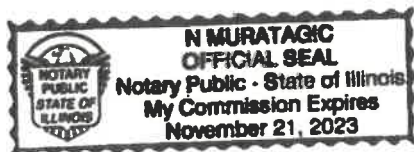
I, Emily Yang, being first duly sworn, state under oath and subject to the penalty of perjury as follows:

1. I am Emily Yang.
2. I have reviewed paragraphs 127 to 128 and Exhibit 46a of Marni Yang's Post-Conviction Petition of October 1, 2019.
3. I affirm, under oath and subject to the penalties of perjury, that what is contained therein is true and correct.


Emily Yang

Subscribed and sworn before me
this 29 day of November, 2022.


Notary Public



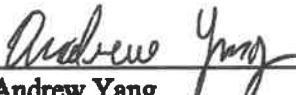
IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
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PEOPLE OF THE STATE OF ILLINOIS,)
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) MARNI YANG,)
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) Defendant,)

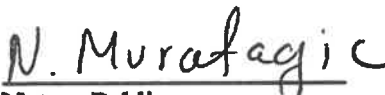
AFFIDAVIT OF ANDREW YANG

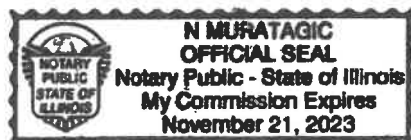
I, Andrew Yang, being first duly sworn, state under oath and subject to the penalty of perjury as follows:

1. I am Andrew Yang.
2. I have reviewed paragraphs 84 to 86 of Marni Yang's Post-Conviction Petition of October 1, 2019.
3. I affirm, under oath and subject to the penalties of perjury, that what is contained therein is true and correct.


Andrew Yang

Subscribed and sworn before me
this 29 day of November, 2022.


Notary Public



State of Illinois)
County of Cook)

Affidavit

I, Jesse Delgado, being first duly sworn on oath deposes and says I am 27 years of age with a birthday of October 7, 1989 and I reside at 4468 N Kasson St, Chicago, IL

That in 2007, I was a friend of Marni Yang's son Andrew Yang and spent a substantial amount of time in the Yang house while I was a teenager.

That Marni Yang opened her house to many of Andrew Yang's friends including me by offering us a safe place to hang out. She did this to keep us away from the gangs in the area.

That I knew Marni Yang owned a handgun as I had seen Marni cleaning the gun on at least one occasion while at the the Yang home.

That in May 2007, during the Memorial Day weekend, I was desperate for money and stole a Beretta 9mm handgun as well as a Sony Play Station and other items from the house of Marni Yang and I then sold the 9mm Beretta and items for \$800 cash in order to pay a debt.

That on a night in January 2008, I was awakened in my home by police detectives, who took me outside to their squad car in my sleep ware where I was questioned.

That during this questioning, I was asked if I knew if Marni Yang owned a handgun and I told them I did and that in fact, I stole it.

Jesse Delgado

That my reasoning for admitting that I stole the gun to the police was I thought that the police were questioning me concerning the theft and that they had somehow learned that I had stolen it.

That after I had told the police detectives this information, they seemed to want to change the subject of conversation and did not seem interested in this information and questioned me about Marni.

That upon reviewing the report of my interview by the police detectives, the report did not include a truthful statement concerning my knowledge of the gun, but they had totally omitted the fact that I had confessed to stealing the gun.

That everything in this statement is true and correct to the best of my knowledge.



(Signature)

Under penalties of perjury as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as such matters the undersigned certifies as aforesaid that he/she verily believes the same to be true.



(Signature)

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT

PEOPLE OF THE STATE OF ILLINOIS,)
PLAINTIFF)
)
v.) No. 09 CF 926
)
MARNI YANG,)
DEFENDANT)

AFFIDAVIT OF ARTHUR H. BORCHERS

Arthur H. Borchers, being first duly sworn, states under oath and subject to the penalty for perjury, as follows:

1. When Larsen Forensics & Associates (LFA) became involved the investigation and reconstruction of the Rhoni Reuter homicide we were required to take a comprehensive look at an event that took place in a matter of seconds but with consequences that are still playing out. In brief, at about 8:00 am on the morning of October 4, 2007, Rhoni Reuter was shot and killed in the kitchen of her residence at 441 Elm Street, Unit #3B, Deerfield, Illinois. The offender was not actually seen committing the crime.
2. A witness reported an unknown black male being seen leaving the area shortly afterwards. This person was described as a 13 to 14 years of age with curly hair running to a black mid-size sedan. The witness could not recall anything about his clothing or build. In a later interview this description became more expressive.
3. Deerfield Police officers responded to the scene based on a neighbor's 9-1-1 call. The officers clearly had no trouble accessing the Reuter residence and finding her body on the floor. The police reports fail to document if the kitchen door was found slightly ajar or wide open. In either case, Deerfield Fire Department personnel soon confirmed that Rhoni Reuter was deceased. The Lake County Major Crimes Task Force (LCMCTF) was mobilized to start an investigation.

4. In simple terms, the scene revealed that Reuter was carrying a large black tote bag over her right shoulder, her car keys were in her right hand and a plastic "Whole Foods" bag was found nearby.
5. Seven fired 9mm cartridge cases were scattered about the kitchen floor.
6. Five live 9mm jacketed hollow point cartridges were also found on the floor and under the tote bag. This indicates that the live cartridges were on the floor before Reuter fell.
7. Two fired bullets were found on the kitchen floor. One bullet was within the blood pool near Reuter's head in front of the refrigerator. The other bullet was found on a floor mat in front of the kitchen sink but behind the exit door. Another fired bullet was found inside the kitchen's black plastic garbage can. A fourth and final fired bullet was found on the dining room floor just outside the kitchen doorway.
8. Exhibit 1 is a scene diagram compiled by LFA from police reports and scene photographs. It is drawn to rough scale and represents the positions of items as best as can be determined. Exhibit 1 also records the positions of items and evidence not included in the police diagram.

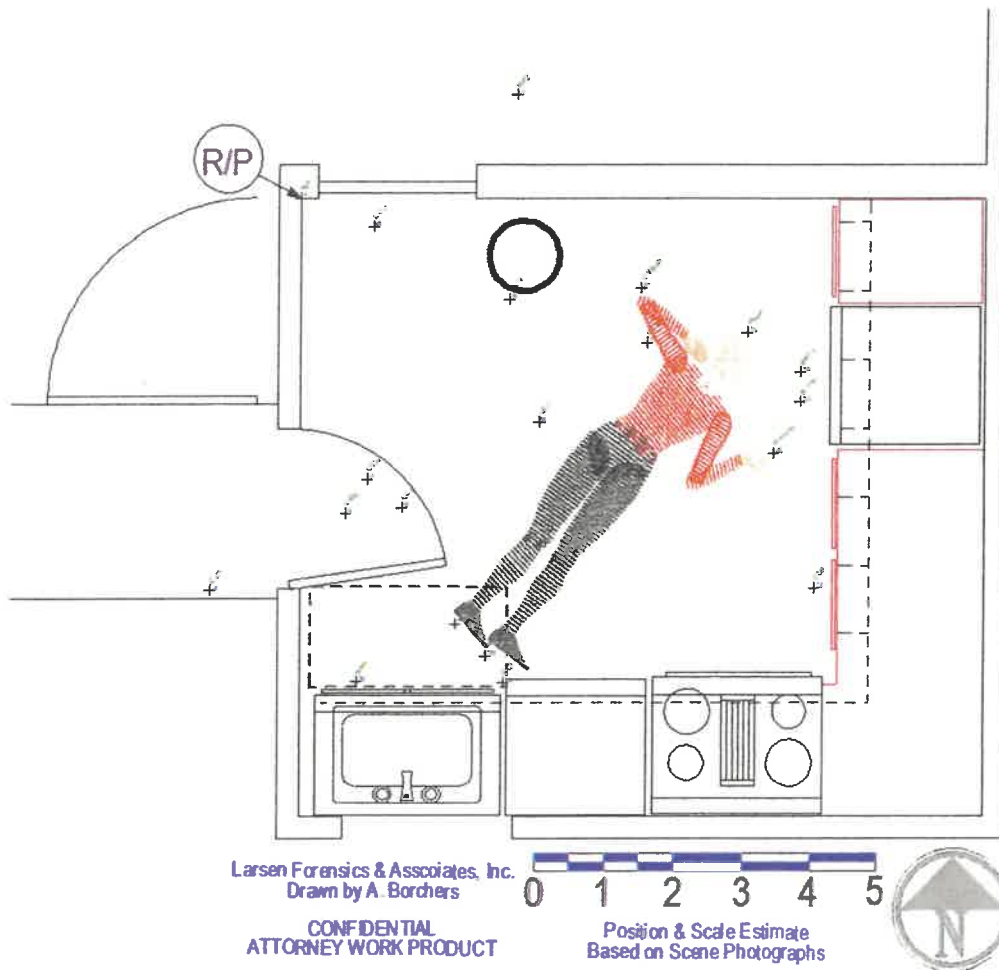


Exhibit 1 – LFA Scene Diagram

9. During the LFA scene analysis, anomalies were noted that were not explained in the police reports. These include particulate debris on the top of the stove and nearby counters in the southeast area of the kitchen. The locations of a bullet hole in the north kitchen wall with corresponding exit in the south dining room wall, an impact point on the dining room floor and an impact point on the east dining room wall were not measured and included in the police reports (See Exhibits 2, 3, and 4). These locations were determined through detailed photographic analysis as detailed herein.

Exhibit 2 – IMG_2243.jpg depicting the bullet hole in the north kitchen wall

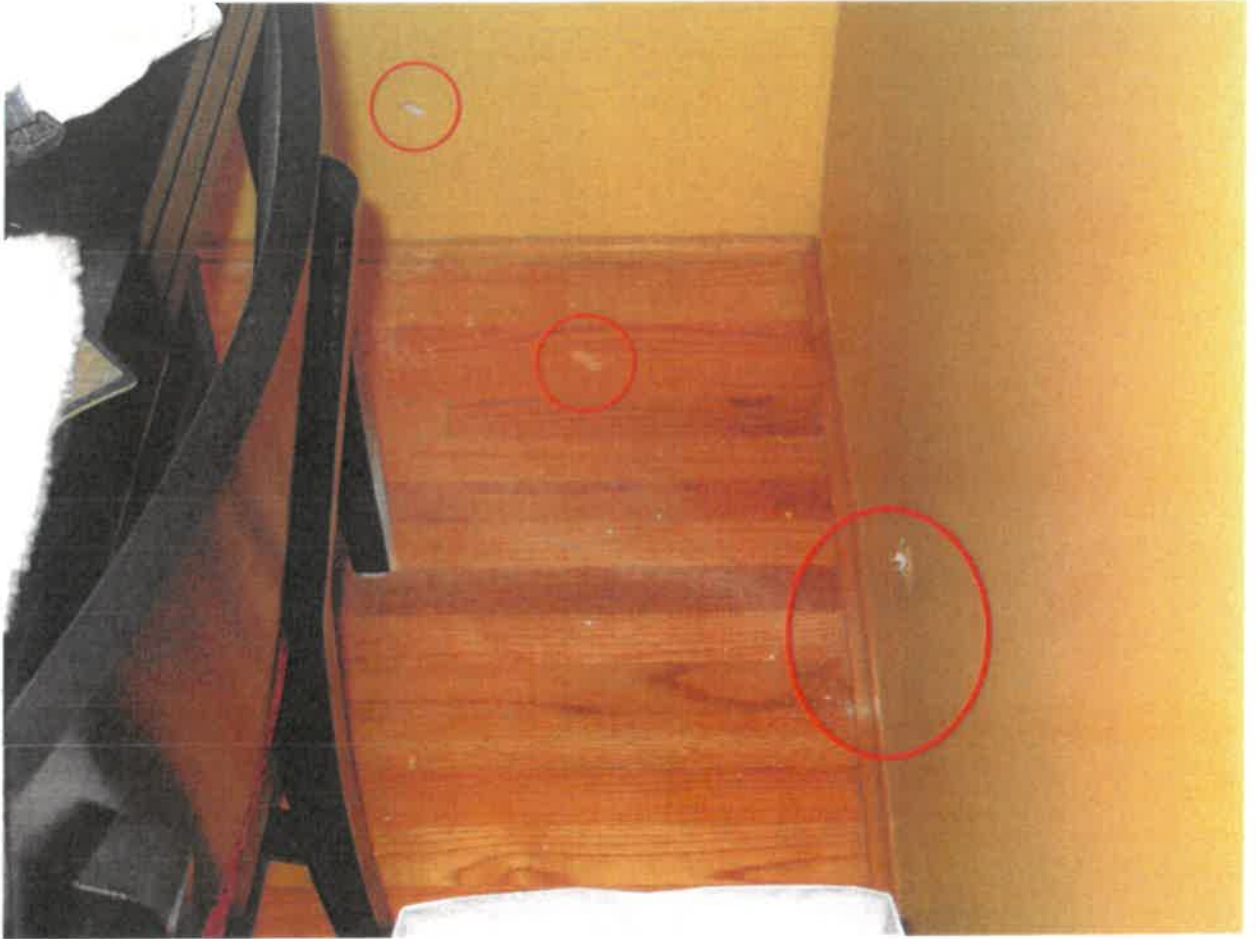


Exhibit 3 – IMG_2222.jpg: Dining room floor and walls



Exhibit 4 – IMG_2223.jpg: Dining room walls and floor

10. Another anomaly is the bullet impact and fired projectile recovery from the black plastic garbage can within the kitchen. Prior to this writing, no police image of the bullet hole in the can in its original location had been identified. However, a careful review of police images searching for this evidence located two images taken during the initial stages of their scene investigation (See Exhibits 5, and 6).

Exhibit 5 – IMG_2240.jpg with arrows highlighting both the hole and broken plastic debris.

////////

Exhibit 6 – IMG_2251.jpg with arrow highlighting the hole

- 11. The only specific evidence images taken by the police of this hole and the recovery of the fired bullet inside the can were taken after the can was moved from the kitchen into the dining room (See Exhibit 7). No explanation for this discovery / oversight was included in any police report.**



Exhibit 7 – IMG_2368.JPG: First specific police image of garbage can bullet hole

12. Review of LCMCTF evidence reports, NIRCL Lab Reports and Illinois State Police (ISP) Forensic Lab Reports all use different item numbers for the four scene bullets. The item numbers correspond as follows:

LCMCTF	NIRCL	ISP	Location
JY002	4	3	Dining Room Floor
JY009	11	7	Kitchen Floor Mat
JY012	14	12	Floor near refrigerator
JY023	18	13	Inside garbage can

13. Northern Illinois Regional Crime Lab (NIRCL) examination of this bullet, Item #18, revealed that the bullet was fired from the same pistol as other bullets.
14. The ISP analyzed Item #12 from the kitchen floor revealed biologic material.
15. The ISP analyzed Item #7 and found Caucasoid hair fragments stating some may be suitable for microscopic examination.

16. The ISP analyzed Item #3 and found paint and fibrous debris.
17. The ISP stated that Item #13, the bullet from the garbage can was retained by NIRCL and was not present in the original packaging.
18. Based on this, the garbage can bullet (Item #JY023, NIRCL #18 and ISP #13) was never examined for biological or other physical evidence.
19. The location of the garbage can was not measured or recorded in police reports or their diagram. The physical location of the bullet within the blood pool and the impact site to the floor in front of the refrigerator were also not recorded in police reports or their diagram. All these items are included in the LFA diagram.
20. Four fired bullets were recovered from Reuter's body during the autopsy. With the four fired bullets from the scene, we have a total of eight shots fired during this incident. A total of seven fired cartridges cases were recovered from the scene. No comment on the discrepancy is made in the police reports, nor was any effort documented to check the footwear of scene personnel, or was the scene itself reexamined, i.e., looking under the stove or dishwasher, in effort to find the missing cartridge case.
21. When LFA examined the court exhibits held by the Lake County Court Clerk's Office in March 2018, we found photographs documenting the use of lasers and rods to investigate the trajectory of the bullet perforating the north kitchen wall. There is no police report documenting who engaged in this effort, when it occurred, and what if any results were found. Digital images involved with this case had been turned over previously, but they did not include these images. Prints of some film based photographs were made available in October 2018. Police reports document additional film based photographs being taken but have yet to be turned over.
22. LFA continued to examine the scene photographs and made note of the plaster debris on the backsplash ledge of the east kitchen wall. Comparing IMG-2256.jpg, (See Exhibit 8), with Exhibits 2 and 3 above, similar debris piles can be seen under and near known bullet damaged areas. LFA then realized that there was a previously unidentified bullet impact site on the east kitchen wall that was hidden from view below the bottom of the upper cabinets.



Exhibit 8 – IMG_2256.jpg: Particulate debris on stovetop

23. Access to the former Reuter residence is currently unavailable, the actual height of these cabinets above the floor is unknown. However, accepted construction practice and building standards would predict the bottom edge of the upper cabinets would be 18 to 20 inches above the countertop and 54 to 56 inches above the floor. The construction standard height for lower countertop height is typically 36 inches.
24. LFA analysis of Reuter's wounds as documented in the Lake County Coroner's Office autopsy report discounted the trial testimony of Dr. Manuel Montez. Montez asserted that the first shot fired was wound "C" down into Reuter's abdomen. LFA's analysis showed that wound "B" to Reuter's upper left chest was in fact a contact wound. Wound "B" travelled right to left, front to back, and down before exiting Reuter's upper left arm.
25. Montez testified at trial that this wound was in fact going up because Reuter's left arm was raised above her head at the time she was shot. This is not physically possible as the bullet would have been required to change direction within Reuter's body. No effort was made to explain where the bullet from wound "B" went after exiting. Had the bullet in fact been going up, it would have impacted the upper cabinets themselves. A bullet

impact to the cabinets would have been in plain sight. No bullet impact above the height of the north wall hole has been previously identified.

26. Evidence bullet #9 from the floor mat in front of the sink tested positive for the presence of blood. While photographs of the bullet in situ do not clearly exhibit the presence of blood or plaster dust, the ISP finding of hair supports that this bullet corresponds to wound "B" and the east wall impact site after which the bullet rebounded to its recovered position on the floor (See Exhibit 9).

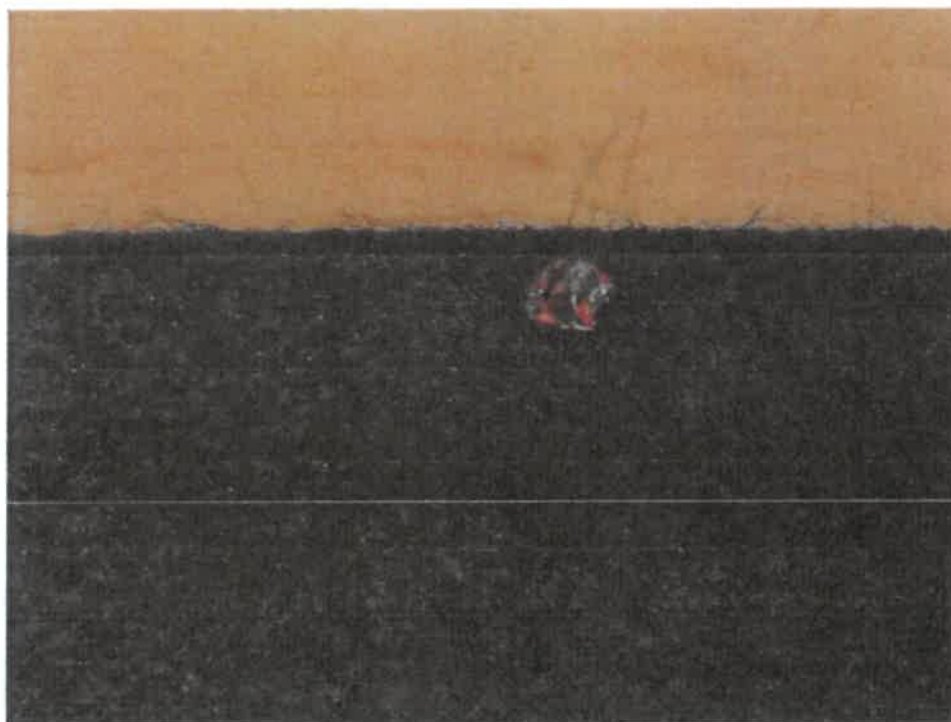


Exhibit 9 – IMG_2231.jpg: Photo of Bullet on mat

27. The LCMCTF eventually pursued Marni Yang and Andrew Yang as their primary suspects due to Marni's sexual relationship with Shaun Gayle, the reported father of Rhoni Reuter's unborn child. Marni Yang is a 4 foot, 11 inches to 5 foot tall woman. Based on the fired bullets and cartridge cases, NIRCL reported that firearms with matching known rifling characteristics included the Beretta 92, various Beretta clones including Taurus, plus the Intratec Tec-9 and SWD Mac-11 pistols.
28. Yang was known to own a Beretta 92FS pistol prior to this incident. Yang's Beretta could not be located after the incident. Affidavits are on record that LCMCTF officers were told that Yang's pistol had been stolen from her home prior to the murder and by whom. No record of these assertions is included in the police investigation reports.
29. During the investigation, books were found in Yang's home detailing how to make a handgun silencer. This became an issue at trial with the fact that the shots fired during the murder were not as loud as people expected.

30. LFA conducted live-fire testing with a suppressor equipped 9mm pistol and with the suppressor removed. Based on that testing and the readily apparent charring and tearing characteristics around wound "B," a suppressor was not used in this homicide.
31. The design of a standard Beretta 92F pistol will not allow the attachment of a suppressor without replacing the barrel. If one were attached by other means, i.e., hose clamp, the pistol would not function in a normal manner. An attempt to construct a suppressor using the same materials the LCMCTF identified, purchased at Home Depot, and proposed at trial could not be mounted on a standard Beretta 92F pistol (See Conidi report).
32. Had a silencer like the book design been used, trace amounts of steel wool would have been expelled by each shot fired. No trace of steel wool was found when LFA had the opportunity to examine Reuter's shirt.
33. Having worked in a police station where a shooting range is located on the same level as the rest of the facility, I can personally attest that a closed or partially closed door as well as distance and hallway corners have a significant effect on the sound of shots of all types being fired, e.g., handgun, rifle, and shotgun. I have also been present within 50 to 75 feet when two different negligent firearm discharge incidents occurred just outside of the range. While the sound was not as distinct as being within a short distance of actual shots being fired but were still obvious shots.
34. LFA has no evidence to explain the reason five live cartridges were found on Reuter's kitchen floor. NIRCL and Rosati confirmed that these rounds were cycled through the pistol used to fire all the other cartridges from this incident. To suggest any explanation here would be unsupportable speculation.
35. To reiterate, the wound "B" characteristics, the bullet travelled right to left, front to back, and slightly down. The entry was 13 ½ inches below Reuter's head. The exit was 15 inches below her head. Reuter was recorded as being 5 feet, 9 inches or 69 inches tall. At the time of the shooting, she was wearing ballet flat style shoes which would add no appreciable amount to her overall height. Therefore, using subtraction, the wound "B" entry wound was 55 ½ inches above the floor, and the wound "B" exit was 54 inches above the floor. Recall that the cabinets would be between 54 and 56 inches above the kitchen floor meaning that the bullet had unimpeded flight to the wall under the cabinets.
36. The approximate overall dimensions of the Reuter kitchen are 9 feet by 10 feet. The counters and stove would extend 24 inches out from the walls. Based on the visible floor tile pattern, the open kitchen floor space is approximately 7 feet by 8 feet. Using the 12 inch square floor tile pattern as a guide, the kitchen exit door is approximately thirty inches wide. There is about forty inches of wall space to the south of the doorway and about 40 inches of wall space to the north. It should be noted that this north section

of wall forms the foyer wall for the primary residence entry door which is immediately adjacent and perpendicular to the kitchen door (See Exhibit 1). Due to the proximity of the doors to one another, an assailant waiting in the hallway would be able to act whichever door Reuter exited.

37. The reconstruction process takes a complex event and breaks it down into smaller and smaller segments to allow examination of each portion. LFA's live fire testing of shooting seven live rounds and clearing five dummy cartridges established that this shooting could have occurred in as little as 13 to 15 seconds. The actual time would be dependent on the assailant's skill level with a firearm.
38. With the identification of the previously unknown bullet impact site on the east wall, the sequence of shots can now be discerned with higher confidence. Each shot can be logically tied into the scene and evidence:
39. **Shot 1:** When Reuter opens her kitchen door, the assailant raises a pistol and pushes it forward through the doorway opening into contact with Reuter's left upper chest and fires. The bullet travels through Reuter's chest and shoulder muscles exiting her upper left arm. The bullet travels across the kitchen and impacts the east wall under the cabinets. Since this wall is of solid firewall construction, the bullet does not penetrate but rebounds back coming to rest on the mat in front of the sink (See Exhibit 10).

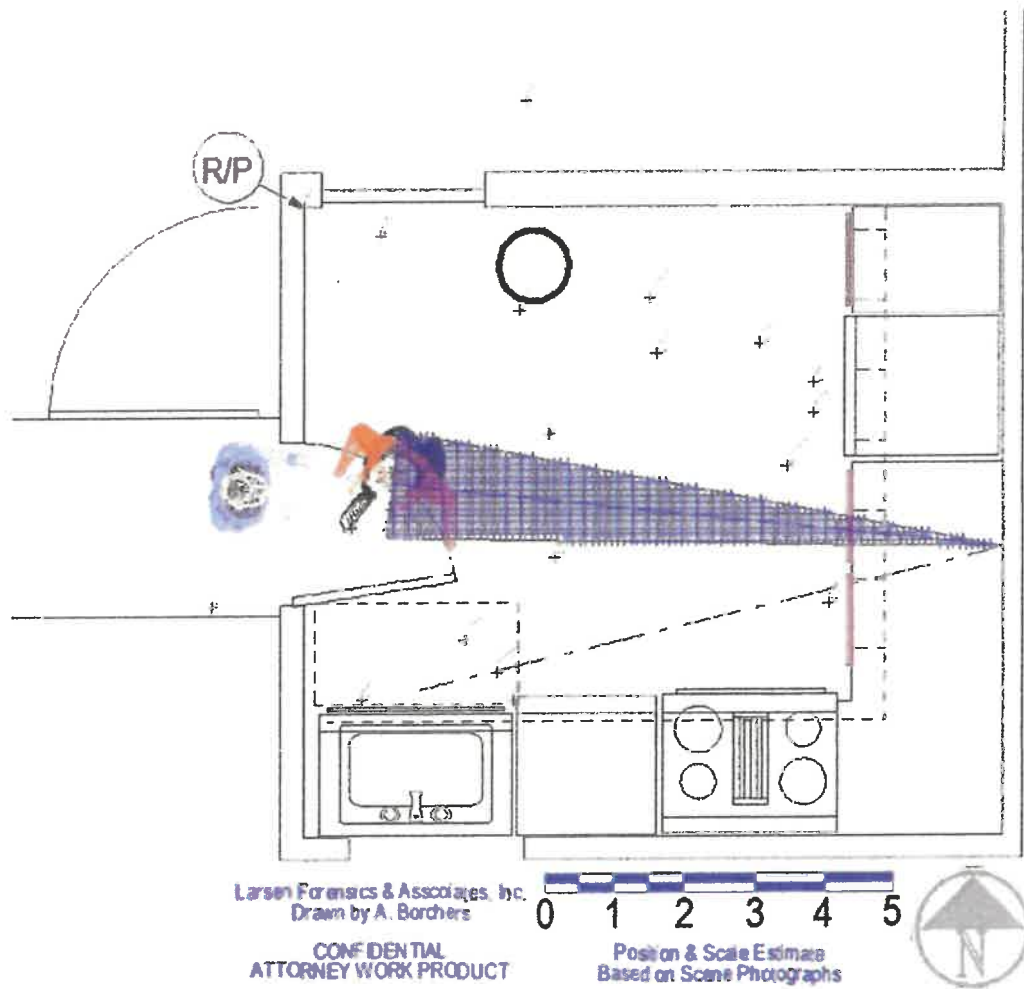


Exhibit 10 – Shot 1 / Wound “B” trajectory

40. Before continuing, issues regarding the assailant must be addressed. The police and prosecution contention at trial were that Marni Yang is the assailant and is responsible for the death of Rhoni Reuter. Recall that Yang is 4 feet, 11 inches or 59 inches tall and Reuter was ^{5'09} 4 feet, 9 inches or 69 inches tall. The “B” entry wound was about 55 ½ inches above the floor, the exit wound was 54 inches above the floor and the estimated bullet impact site is about 54 to 56 inches above the floor. This allows the bullet impact site to remain out of plain view for taller standing persons.
41. For Yang to fire this shot, her hand(s) holding the gun would be at a height of about 56 inches which is slightly above her eye height. This is not a standard firing position or one where a shooter can be sure that his/her shots are going to hit their intended target.
42. Given the intent involved, i.e., murder followed by fleeing the scene, and the limited time constraint, it is more reasonable to believe that a normal point-shoulder firing

position was used. LFA has previously declared our opinion that the shooter was 5 feet 10 inches or taller in height.

- 43. The firing position presumption is evident in Dr. Montez's trial testimony where he contended that Reuter's left arm was raised up in the air making the "B" wound an upward trajectory based on the height disparity of the two women.
- 44. The included body measurement charts generated by the PEDBIKE 2000 Plus software program reveals that Yang's shoulder height is about 48 inches. Reuter's shoulder height is about 56 inches. A 5 foot 10 inch assailant's shoulder height is about 57 inches. (See Exhibits 11, 12, and 13)

Body Segment Calculations:

This screen allows the user to enter a person's body height in - INCHES or CENTIMETERS- and the program will calculate several "approximate" body segment lengths. Calculations are based on references from R. Drillis and R. Contini - "Body Segment Parameters."

Q1: What is the subject's height (Inches or cm) =

59

Ground to Eye =	55.22 in	Length of Hand =	6.37 in
Ground to Chin =	51.33 in	Length of Forearm =	8.61 in
Ground to Shoulder =	48.26 in	Length of Upperarm =	10.97 in
Ground to Elbow =	37.17 in	Length of Head =	7.67 in
Ground to Hip =	31.27 in	Length of Foot =	8.97 in
Ground to Wrist =	28.62 in	Width of Foot =	3.25 in
Ground to Fingertip =	19.29 in	Width at Hips =	11.27 in
Ground to Knee =	16.82 in	Width at Shoulders =	15.28 in
Ground to Ankle =	2.30 in		

Exhibit 11 – Body Measurement chart for 59 inch person

Body Segment Calculations:

This screen allows the user to enter a person's body height in - INCHES or CENTIMETERS- and the program will calculate several "approximate" body segment lengths. Calculations are based on references from R. Drillis and R. Contini - "Body Segment Parameters."

Q1: What is the subject's height (inches or cm) =

69

Ground to Eye =	64.58 in	Length of Hand =	7.45 in
Ground to Chin =	60.03 in	Length of Forearm =	10.07 in
Ground to Shoulder =	56.44 in	Length of Upperarm =	12.83 in
Ground to Elbow =	43.47 in	Length of Head =	8.97 in
Ground to Hip =	36.57 in	Length of Foot =	10.49 in
Ground to Wrist =	33.47 in	Width of Foot =	3.80 in
Ground to Fingertip =	22.56 in	Width at Hips =	13.18 in
Ground to Knee =	19.67 in	Width at Shoulders =	17.87 in
Ground to Ankle =	2.69 in		

Exhibit 12 – Body Measurement chart for 69 inch person

Body Segment Calculations:

This screen allows the user to enter a person's body height in - INCHES or CENTIMETERS- and the program will calculate several "approximate" body segment lengths. Calculations are based on references from R. Drillis and R. Contini - "Body Segment Parameters."

Q1: What is the subject's height (inches or cm) =

70

Ground to Eye =	65.52 in	Length of Hand =	7.56 in
Ground to Chin =	60.90 in	Length of Forearm =	10.22 in
Ground to Shoulder =	57.26 in	Length of Upperarm =	13.02 in
Ground to Elbow =	44.10 in	Length of Head =	9.10 in
Ground to Hip =	37.10 in	Length of Foot =	10.64 in
Ground to Wrist =	33.95 in	Width of Foot =	3.85 in
Ground to Fingertip =	22.89 in	Width at Hips =	13.37 in
Ground to Knee =	19.95 in	Width at Shoulders =	18.13 in
Ground to Ankle =	2.73 in		

Exhibit 13 – Body Measurement chart for 70 inch person

45. Given that the physical evidence shows that the "B" wound was the first shot fired after Reuter opened her door to leave, and had car keys in her right hand, it is logical that Reuter opened the kitchen door with her left hand leaving that hand in proximity of the doorknob to pull the door closed behind her. Therefore, it is unreasonable to believe that immediately after opening the kitchen door, Reuter raised her left arm over her head.
46. **Shot 2:** After wound "B," Reuter backs away slightly from the threat and is slightly bent at the waist. She is then struck by shot "C" to the center of her abdomen. The bullet travels down through intestines, the edge of her uterus and embeds in her left pelvic bone. At trial, it was presented that shot "C" was the first shot fired with the intent of targeting Reuter's unborn child.
47. After receiving wounds "B" and "C," Reuter begins to turn to her left presenting the right side of her body to the shooter. Moving and turning an injury away from the injury cause is a natural human response.
48. **Shot 3:** Wound "D" is created when Reuter is shot in the right side of her pregnant abdomen. The bullet tracks through her intestines, fetus, and exits the left side of her abdomen to penetrate her extended left forearm creating wound "G." At autopsy wound "B" is described as traveling right to left and upward. Given the circumstances, it is reasonable that Reuter would be leaning to her left, with her arm extended to break a fall, which would account for the actual downward shot angle. The trial contention that Reuter's left arm was protectively over her abdomen was previously ruled out due to an impossible in-flight change of trajectory.
49. **Shot 4:** Reuter continued to turn to her left and receives wound "F" in the right buttock/hip/pelvis area with the bullet embedding in the right pelvic bone.
50. **Shot 5:** Reuter then receives wound "E" in her right back that perforates the right pelvic bone, her abdominal cavity, intestines, placenta, fetus, and the front of her uterus. The bullet lodges below the skin in the front left abdomen. The entry and rest positions are both 29 inches below the head (40 inches above the floor), so it is likely that Reuter was still in a bent position when struck.
51. **Shot 6:** The fatal shot was fired with Reuter on her knees or in a low crouch and her head turned to her left. I find it probable that Reuter would be glancing or looking to her left towards the assailant's threat as shot "A" was fired into the left back of her skull. Shot "A" travelled through the skull, the soft tissues of the neck, mouth, tongue, and floor of the mouth before exiting under the chin. The bullet then penetrated the side of the black plastic garbage can and remained inside.
52. Close examination of the autopsy photographs reveals gunshot residue in Reuter's hair around the wound "A" entry (See Exhibits 14 and 15). No mention of this is made in

either the autopsy protocol or the police reports. Examination photos of Wound "A" with the hair removed does not reveal any evidence of soot or charring on the skin. This indicates that the gun was fired within 1 to 3 feet of Reuter's head.



Exhibit 14 – 07-15327 (12).jpg: Gunshot residue in Reuter's Hair

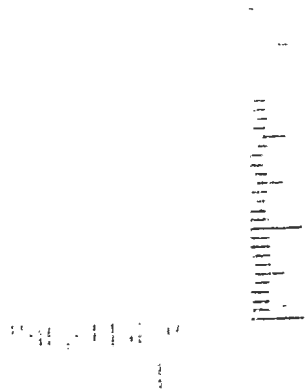


Exhibit 15 – 07-15327 (56).jpg: Gunshot residue (circled) on Reuter's head

53. Close review of the early crime scene photographs has identified two images of the can in place where the bullet hole can be seen as well as a fragment of black plastic on the floor.
54. The trajectory of this shot, based on the wound angle, probable head, body, and garbage can positions the trajectory to within ± 5 degrees of uncertainty. Exhibit 16 includes this estimated trajectory information.

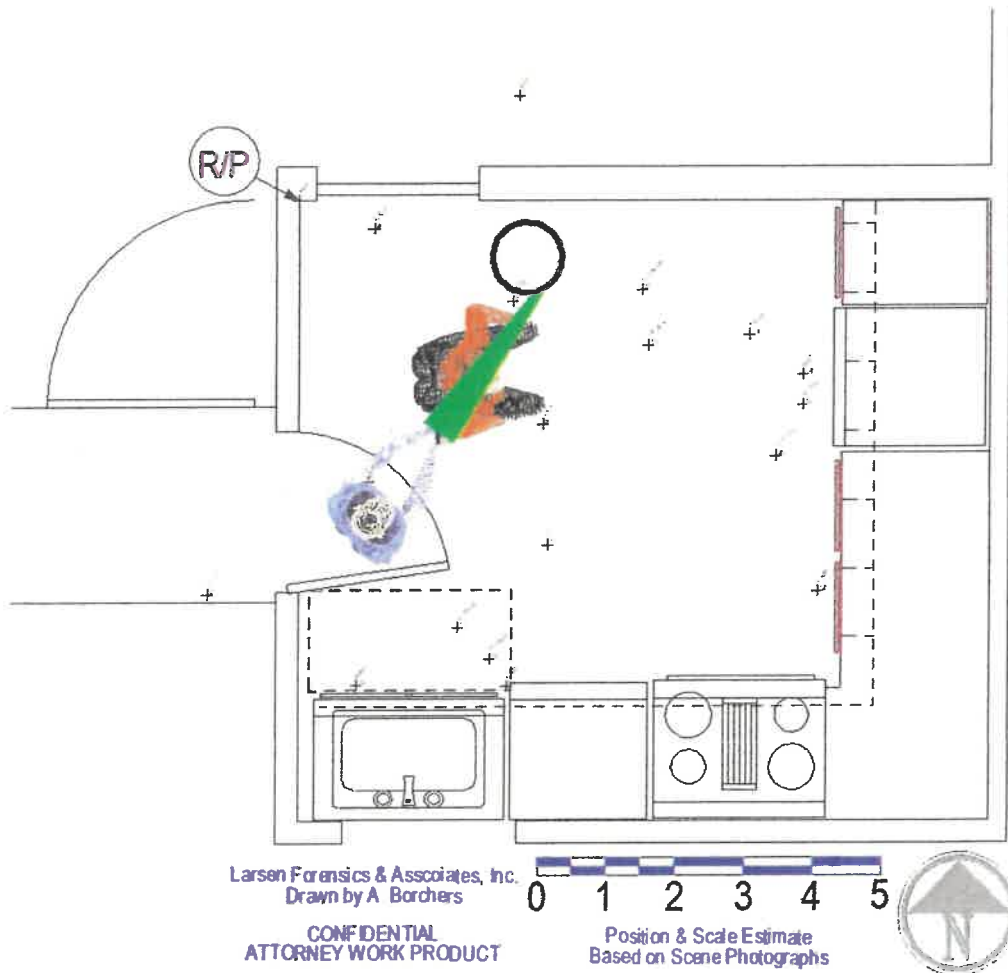


Exhibit 16 – LFA Diagram with Shot 6 / Wound “A” Trajectory

55. **Shot 7:** Reuter then began to fall right and forward to her ending position on the floor with her head turned to the right and her hands on either side of her head. It is apparent that as Reuter fell, the assailant continued to fire, and the next shot struck and perforated the north kitchen wall.
56. The trajectory of this shot can be mathematically determined based on extensive mathematical analysis of scene photographs within ± 5 degrees of uncertainty. The horizontal impact angle to the north wall is about 29 degrees away from the wall with a

downward trajectory angle of about 20 degrees (both ± 5 degrees). Exhibit 17 includes this bullet trajectory information.

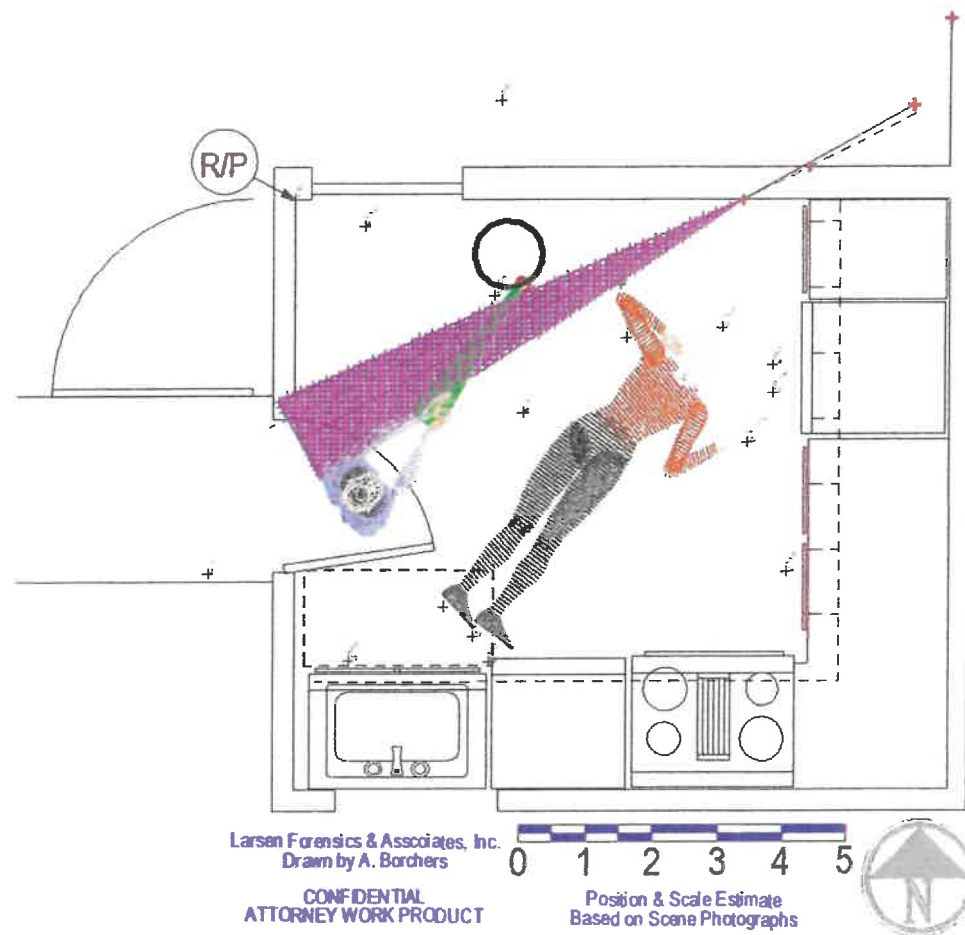


Exhibit 17 – LFA Diagram with Shot 7 trajectory

57. **Shot 8:** The final round fired occurred just as Reuter landed on the kitchen floor with the bullet striking the floor near her head and rebounding to a few inches away.
58. The police investigation became centered on Marni Yang and her son, Andrew, as the primary suspects. I will not detail the tactics and methods used by the LCMCTF as they are covered in the police reports and by others. Eventually the LCMCTF obtained a court order authorizing a consensual overhear (COH) with a covert recording device to be worn by Christie Paschen.
59. Two separate conversations were recorded on March 2, 2009, and March 3, 2009. At the start of the first conversation, Paschen stated to the recording device and to officers listening that she thought Yang had seen the recording device come out of her clothing.
60. Yang also had previously told her parents that she was going to “make shit up” and lie to the police to protect her son from charges by the LCMCTF. The telephone wiretap

recordings of Yang's statements are lost or no longer exist. During the Paschen recordings, Yang makes the following summary statements as to how her version of the shooting occurred:

- a. Yang stated she stood outside in the hallway outside the kitchen.
- b. Yang stated that she wore a hoodie, wig, dark makeup, gloves, and big sunglasses.
- c. When Reuter opened the door, Reuter started screaming and Yang "let her have it."
- d. Yang said that she did not touch anything or take anything.
- e. Yang stated that the gun was placed in a bucket of cement and thrown into a dumpster in Chicago.
- f. Yang stated that after being shot, Reuter went across the kitchen bumped into a counter.
- g. Yang stated the kitchen was dark and the floor was all in shadows.
- h. Yang stated she never went far enough inside to see how the kitchen was laid out.
- i. Yang said that when Reuter was down, she kicked at Yang's legs.
- j. Yang said that she took one or two steps in and fired one last shot into Reuter's head.
- k. Yang said that one of Reuter's legs was sticking out into the hall preventing her from closing the door, so she kicked it inside and slammed the door.

61. Reviewing these statements against the evidence of the scene and incident as known:

- a. it is unlikely that the initial witness statement describing a black male of undetermined height would miss the big sunglasses. The fact that this witness later revised his initial statement under subsequent police questioning is outside of the purposes of this report.
- b. Yang made no mention of the live rounds or any weapon malfunction. 'Letting her have it' implies speed and no firearm malfunctions.
- c. Yang stating the pistol was disposed of in a bucket of cement mirrors the LCMCTF presenting Andrew Yang with a bucket of cement during a prior interrogation where they stated they knew his mother had put the gun inside.

- d. Yang stated that Reuter bumped into a counter across the kitchen, but the most likely countertop had an undisturbed glass of liquid and other objects on it with no sign of blood or disturbance.
- e. Yang's statement that the kitchen was dark and the floor in shadows does not reflect the actual conditions at the time of the event.
 - i. On October 4, 2007, the sun rose at 6:52 a.m. as evidenced by the images from the Shell Gas Station video used at trial. Exhibits 18, 19, and 20 depict a Deerfield Police squad car, a Deerfield ambulance, and a Deerfield fire engine crossing the intersection of Waukegan Road and Osterman Avenue responding to this incident scene with the sun shining brightly. The time stamp of the Shell video has previously been shown to be incorrect by approximately 9 to 10 minutes. The police were called at approximately 8:00 a.m.



Exhibit 18 – Shell video frame #1



Exhibit 19 – Shell video frame #2



Exhibit 20 – Shell video frame #3

- ii. The building entry hallway and the Reuter kitchen window both had south facing glass. The lattice window covering in the kitchen may restrict some light but not enough to throw the room into darkness sufficient to restrict vision.
- iii. The sunglasses Yang purportedly wore may restrict light transmission, but the eyes also adapt to varying lighting conditions such that when entering a darker environment from outside, any difficulty in seeing only lasts seconds. There is no permanent vision restriction while wearing sunglasses.
- f. Yang states that she slammed the door when leaving but the initial responding police were easily able to access the Reuter condominium and find their victim. That would suggest that the door was ajar.
- g. Yang states that she fired one last shot into Reuter's head while she was on the floor, but Reuter's head wound was to the back of the left side of her head which was turned down to the floor and inaccessible.
 - i. The exit for wound "A" was through the chin which was adjacent to Reuter's right shoulder on the floor.
 - ii. The wound "A" bullet was inside the plastic garbage can in the opposite direction of the wound "A" trajectory.
 - iii. Wound "A" was instantly fatal so Reuter could not have moved on her own accord afterwards, i.e., turn her head away after the shot.
- h. None of the physical evidence supports Reuter being on the floor until after the infliction of the fatal shot "A" to Reuter's head.
- i. Yang's statement that Reuter's legs extended into the hall is not physically possible. If Reuter's legs were outside of the door, the remainder of her body

would have been substantively closer to the door and would have to be dragged into the position found. The earlier outline of the shooting reconstruction shows that neither Reuter nor the assailant made significant moves within the kitchen.

62. The fact that Yang said that she only took one or two steps inside, when taken in context of the entire statement, fails to prove any involvement in this incident. Every other of Yang's statements have been substantively rebutted based on the physical evidence from the scene.
63. The LCMCTF failed to make a comprehensive study of the scene evidence into account as a preventive measure for a false confession. Instead, the LCMCTF persisted in the belief that they would solve this through sheer investigative will. Their inane actions during various interviews and interrogations demonstrated a blind bias and predisposition in the guilt of their preferred suspect over an independent search for the truth.
64. LFA has been involved in this matter for over four years. During that time, we have worked on a dozen or more significant matters such that our investigation of this matter has not been worked on full-time.
65. In contrast, the LCMCTF personnel certainly began with significant staffing resources and individuals who were assigned to do nothing else but work this case.
66. LFA only gained access to some scene film photographs in October 2018. We only became aware of the evidence suggesting the bullet impact under the cabinets in early 2021. To date, LFA has never had access to the actual incident scene.
67. In contrast, the LCMCTF had access to the Reuter home for at least two days, conducted scene examinations, bullet trajectory analysis and still failed to detect the east wall bullet impact site. They failed to measure or document the kitchen / dining room walls, floor, and other evidence items. They appear to have failed to detect the bullet impact in the garbage can until after they moved it out of the kitchen.
68. LFA has created an actual-size kitchen floor mockup by use of a plastic tarp and painter's tape. The floor contains representations and locations of all the pictured evidence items, Reuter's approximated body position, and the kitchen door swing. Recently, we added an additional tarp to represent the hallway area outside the kitchen. This addition includes the solid wall on the south and the closed front door for Reuter's residence. This addition highlights the restricted movement within the space and has potentially highlighted a previously not considered factor.
69. To this time, the presumption has been that the assailant was right handed as is most of the general population. Testing of the various hypotheses and positions in developing this shooting sequence in this deadly assault appear to favor a left handed offender.

While we cannot state this as definitive fact, there is strong enough evidence that the possibility cannot be ruled out and must be presented as part of our findings.


- 70. Despite the fact Yang made overhear statements, she has steadfastly denied any involvement in this matter. The statements that she made about the crime do not match the facts or evidence.
- 71. The police and prosecution have failed to exercise any due diligence to evaluate the veracity of statements and stop the waste of government resources by a false confession. Their eagerness to clear a high profile case overcame commonly accepted procedures in their zeal for an arrest and conviction instead of a search for the truth.

Further Affiant sayeth not.

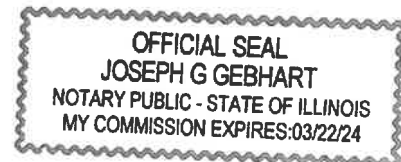


Arthur H. Borchers

Signed this 30TH day of NOVEMBER 2021 before me.



Notary Public




IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff,)
)
v.) No. 09 CF 926
)
MARNI YANG,)
)
Defendant,)

AFFIDAVIT OF DR. CYRIL WECHT, M.D.

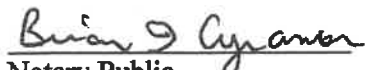
I, Dr. Cyril Wecht, M.D., being first duly sworn, state under oath and subject to the penalty of perjury as follows:

1. I am Dr. Cyril Wecht, M.D.
2. I have reviewed the documents I prepared for Mr. Stone in People v. Yang.
3. They consist of my curriculum vitae and a letter to Mr. Stone dated April 21, 2021.
4. Both are true and accurate.
5. Under oath and subject to the penalties for perjury, I affirm that my April 21, 2021 letter sets forth my opinion.
6. To a mater of medical certainty, it is my opinion that Marni Yang did not fire the fatal shots that killed Rhoni Reuter.

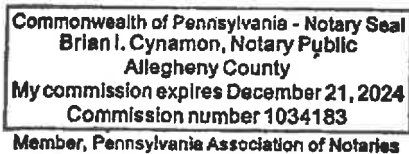


Dr. Cyril Wecht, M.D.

Subscribed and sworn before me
this 29th day of November, 2022, at
Pittsburgh, Pennsylvania.



Notary Public



IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT

PEOPLE OF THE STATE OF ILLINOIS,)
PLAINTIFF)
v.) No. 09 CF 926
MARNI YANG,)
DEFENDANT)

AFFIDAVIT OF STEVEN WADE

Steven Wade, being first duly sworn, states under oath and subject to the penalty for perjury, as follows:

1. I was at Leroy's Barber Shop 2401 Martin Luther King Drive, North Chicago Illinois 60064, on October 4, 2007.
2. I saw Shaun Gayle enter the barber shop at approximately 10:30 am. Gayle was noticeably upset and stated to Leroy I did it, she's gone. Both Gayle and Leroy went into the back room which was also Leroy's Office with a one-way mirror.
3. There was a loud discussion between Leroy and Gayle.
4. When Leroy and Gayle returned to the shop area Gayle's face was red, he appeared to be very stressed and worried and he didn't sit still in the chair he kept shifting his position in the chair. I remember this vividly because I was concerned Leroy would cut him while shaving his head since Gayle was moving so much.
5. When Gayle left the barber shop Leroy told me and several of the barbers to leave the shop and don't come back for the day that the police would be coming soon.
6. I was never questioned by the police.

7. Leroy never allowed us to speak about this in the Barber Shop. He told us what the celebrities say and do in the shop stays in the shop.

8. There was an unwritten shop policy to cater to the celebrities that came to the shop, or we would lose our barber station. I have never spoke about this to anyone.

9. Shaun Gayle had never come to the barber shop in the morning before, he always comes in the afternoon. Gayle is an afternoon client.

10. No one has given to me or offered to me anything of any value or any money in exchange for my statement. No one has threatened or coerced me into providing this statement.

In furtherance affiant sayeth not:

December 13, 2021

Date

December 13, 2021

Date

Steven Wade

Steven Wade

Jed Stone
Notary

