

Petition for Post-Conviction Relief

EXHIBIT A

**Report of the Minnesota Conviction Review Unit
Regarding the 2001 Conviction of
Brian K. Pippitt
Case no. 01-K4-99-000325**

May 28, 2024



**Minnesota Attorney General's Office
Conviction Review Unit**

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SUBJECT: CRU Report and Recommendation: State of Minnesota v. Brian Keith Pippitt

Brian Keith Pippitt is a 61-year-old man serving a life sentence for first-degree murder. He, along with three others, was convicted for the 1998 murder of Evelyn Malin in Aitkin County. He applied to the Minnesota Conviction Review Unit (CRU) on January 5, 2022, through his attorney, W. James Cousins of Centurion Ministries. Following an investigation, the CRU recommends that his sentence be vacated for several reasons. First, it was implausible for Pippitt to commit the crime in accordance with the prosecutor's theory of the case. Despite the implausibility, the prosecutor presented the jury with unreliable evidence which advanced its theory. This included presenting unreliable testimony from three witnesses, one of whom was a mentally ill, untrustworthy jailhouse informant. Second, Pippitt's defense counsel was unprepared, under-experienced, and overburdened, preventing him from competently representing Pippitt at trial. Finally, two credible suspects of Evelyn's murder were neither fully investigated, nor fully presented to the jury by Pippitt's attorney. As a result, there is little confidence in Pippitt's conviction. Therefore, he should be exonerated for the murder of Evelyn Malin

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I.

Executive Summary and Recommendation

Evelyn Malin, an 84-year-old convenience store owner, was found murdered the morning of February 25, 1998. Sheriff's deputies discovered her on the floor of her bedroom with her mattress turned over on top of her. Her face was beaten, with pinpoint petechiae marking her skin, suggesting strangulation. Feces appeared smeared around her body. Investigators found a broken basement window into her store, which also served as her residence. They concluded this was the entry point for the murderer. All other windows and doors were locked, including the front door, which had a deadbolt that could only be activated with a key—inside and out.

The murder shocked the tiny town of McGregor, Aitkin County, where Evelyn Malin owned her store. Investigator Bruce Beck of the Aitkin County Sheriff's Department teamed with Bureau of Criminal Apprehension (BCA) Special Agent David Bjerga to investigate the crime. They pursued over 100 leads and countless witnesses. As time dragged on, the case grew colder. The Malin family was outraged, and publicly criticized the Aitkin County Sheriff for failing to arrest anyone within a year of the murder.

Ultimately, investigators followed leads to the Misquadares and Martins, families that were related, but were often entangled in feuds. Members of each family implicated one another in the murder without corroborating evidence to support the accusations. In the end, Raymond Misquadace confessed to the crime, and implicated four others: Neil King, Keith Misquadace, Donald Hill, and Brian Pippitt. Each of these individuals were related by blood, sharing the same family lineage, but they did not get along well with each other. The day after Raymond confessed, Donald Hill gave a confession that was similar to Raymond's. A criminal complaint was filed immediately thereafter, charging all five with the murder of Evelyn Malin.

A grand jury indicted each of the defendants. Raymond entered a plea agreement whereby he pled guilty to manslaughter and received a less-than-five-year sentence. Hill received the same deal. Keith Misquadace entered an *Alford* plea to manslaughter. He tried to withdraw his plea before sentencing, but the Court refused. He received an upward departure 180-month prison sentence. Neil King was acquitted at trial. The trial judge, while expressing misgivings on the record, granted the defense's motion for a judgement of acquittal. In a separate trial, Pippitt was convicted of both premeditated murder and felony murder and sentenced to life in prison. He was unsuccessful on appeal, and years later, his postconviction petition was denied.

During its investigation of the case, the CRU reviewed transcripts of the grand jury proceeding; trial transcripts; plea and sentencing transcripts; the postconviction transcript; all pleadings, including available exhibits and affidavits; all court opinions pertaining to Pippitt; the entire prosecutor's file; the defense attorneys' file; various investigative reports, including forensic reports; expert reports; audio recordings of interviews and interrogations; a video walkthrough of the crime scene; photos of the crime scene; register of actions for cases pertaining to Pippitt as well as other individuals involved in the case; news articles pertaining to the murder, those who were accused, and others involved in the case; various scientific articles on interrogation methods; Minnesota court opinions, statutes, and rules relating to the issues in this case; and a memorandum from Pippitt's defense lawyer supplementing his CRU application.

Additionally, the CRU interviewed and consulted with over 24 people, including lawyers involved in the original case, experts, law enforcement officers, and witnesses from the time of the murder. The CRU also interviewed Brian Pippitt himself. After considering the totality of the evidence, the CRU concluded that Pippitt was wrongfully convicted of the murder of Evelyn Malin based on the following findings.

First, the CRU found that it was implausible for Pippitt and the others to commit the crime the way the prosecutor said they did: by breaking into the Dollar Lake Store through the south basement window, navigating their way to Evelyn Malin's bedroom, murdering her, stealing beer and cigarettes, and leaving through the front door. The evidence produced at trial contradicts the prosecutor's theory in several ways.

Two separate crime scene experts have produced reports, independently concluding that entry through the basement window was implausible. Nevertheless, the prosecutor's theory at trial was that the defendants were on an aimless quest for beer and cigarettes that suddenly turned murderous when confronted by a crippled, deaf, 84-year-old woman. The prosecutor also presented evidence to the jury that was incongruent with other evidence. For example, the prosecutor presented a theory that the front door was not deadbolted and that beer and cigarettes were stolen, both of which were contradicted by photographs from the scene investigation. The prosecutor also presented an unreliable confession from Raymond Misquadace corroborated that confession with the testimony of a jailhouse informant who had a history of dishonesty and had experienced psychosis near the time he gave his testimony.

Two other alternative suspects had motive, means, and opportunity to commit the crime, but were never charged. Terry Peet, a man who twice visited the Dollar Lake Store the day of Evelyn's murder, told a witness that he considered robbing Evelyn when she refused to sell him propane on credit. Evelyn also told multiple people that Peet was trouble, and insinuated that he had beaten and robbed her in the past. He also lived close to the Dollar Lake Store. In fact, a person matching his description was spotted walking two-tenths of a mile from the Dollar Lake Store the night of the murder. Finally, a search of his home revealed a screwdriver that had features consistent with the tool marks left on the window frame that was broken at the scene of the crime.

M■■■■■, 27-years-old at the time of his grandmother Evelyn's death, is another alternative suspect who was never investigated. M■■■■■ had a severe drug problem. Weeks before Evelyn's murder, Evelyn refused M■■■■■'s request for money. After her murder, he took eight days off from work. It is unclear whether M■■■■■ had an alibi for the night of Evelyn's murder. Since Evelyn's murder, M■■■■■ has had a history of mental health, chemical dependency, and legal issues.

In addition, Pippitt's attorney had neither the experience nor capacity to properly challenge the implausibility of the prosecutor's theory at trial. He was trying the first homicide case of his two-year career without co-counsel, and he failed to effectively impeach three key prosecution witnesses that were essential to the jury's verdict of guilt. He failed to use evidence he received in discovery to impeach the witnesses on crucial aspects of their testimony, which inevitably led to Pippitt's conviction.

Pippitt's attorney also failed to consult with experts. The crime scene analysis was an important component of the prosecutor's case. The prosecutor spent significant time eliciting testimony about the crime scene over the course of multiple witnesses' testimony at trial. Discovery contained forensic reports analyzing the crime scene and evidence from it. Trial defense counsel, however, failed to consult with a crime scene expert. Despite his suspicion that Raymond's confession was unreliable, the defense failed to consult with a false confession expert. He also failed to develop a cogent alternative suspect theory at trial.

The totality of the evidence suggests that Pippitt's conviction is no longer supported by proof beyond reasonable doubt. It suggests he is innocent. As a result, the CRU recommends that Pippitt's conviction be vacated.

II. **The CRU's Investigation**

In this case, the CRU reviewed the following:

- Grand jury transcripts
- Trial transcripts
- Guilty plea and sentencing transcripts
- Postconviction transcript
- All pleadings, including available exhibits and affidavits
- All Court opinions
- The entire prosecutor's file
- The public defender's file
- Various investigative reports, including forensic reports
- Expert reports
- Audio recordings of various interviews and interrogations
- A video walkthrough of the crime scene
- Photos of the crime scene
- Register of Actions for various people involved in this case
- News articles
- Various scientific articles on interrogation methods
- Minnesota court opinions, statutes, and rules relating to the issues in the case
- A memorandum from Pippitt's defense lawyer to supplement the CRU application

The CRU interviewed and/or consulted with the following people:

- Brian Pippitt, applicant
- Raymond Misquadace, convicted of manslaughter for the death of Evelyn Malin
- Donald Hill, convicted of manslaughter for the death of Evelyn Malin
- Keith Misquadace, convicted of manslaughter for the death of Evelyn Malin
- Bruce Beck, lead investigator from Aitkin County Sheriff's Department on the case
- Dave Bjerga, lead investigator from the BCA on the case
- Dan Ahlquist, BCA polygraph examiner

- Robert Berg, BCA polygraph examiner
- Thomas Murtha, Pippitt's trial defense attorney
- Edith See, Keith Misquadace's trial defense attorney
- Linda Netzel, consulting criminalist
- Stanley Paluski, licensed and certified forensic locksmith
- Brent Turvey, forensic scientist, crime scene analyst, crime reconstructionist
- Larry White, Professor Emeritus of Psychology, Beloit College
- Cathy Knutson, deputy superintendent of forensic science services at the BCA
- Gerald Horsman, the first lay witness to discover the crime scene
- Mari Blegen, former partner of Bryan Lee Misquadace
- Teresa Colton-Schalz, former partner of Keith Misquadace
- Ernest Steel, witness pertaining to Neil King's alibi
- Trudy King, witness pertaining to Neil King's alibi
- Gina Anderson, property manager at Mille Lacs Band of Ojibwe
- Carla Dunkley, project management compliance officer at Mille Lacs Band of Ojibwe
- Toby Egan, Mills Lacs building inspector
- Isaac Merrill, head of security at Grand Casino in Onamia
- Jim Cousins, Pippitt's current attorney
- Samuel Ranta, Pippitt's case manager at Minnesota Correctional Facility Faribault

The following people declined an interview with the CRU:

- Neil King, acquitted of the murder of Evelyn Malin
- Bradley Rhodes, prosecuting attorney
- Aaron Nelson, alternative suspect

The CRU was unable to locate the following people for an interview:

- Dawn Hill, sister of Donald Hill

The CRU was unable to interview the following people because they had passed away:

- Peter Arnoldi, witness against Pippitt at trial

- Bradley Misquadace, brother of Pippitt
- Wanda Misquadace, sister of Pippitt
- Bryan Lee Misquadace, brother of Pippitt
- Don Martin, father of Donald Hill
- Louis Quaderer, witness in case
- Howard “Chip” Martin, brother of Donald Martin
- Agnes Chief, mother of Pippitt
- Wesley Misquadace, nephew of Pippitt and witness in the case
- Brandon Misquadace, nephew of Pippitt and witness in the case
- Merle Malin, son of the victim and witness at trial



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III. The Facts Surrounding Evelyn Malin's Death

A. Finding Evelyn and the Aftermath

Norma Horner pulled her Ford Taurus station wagon into the gravel parking lot of the aging Dollar Lake Store at about 8:30 a.m. on a gray Wednesday morning, February 25, 1998, just as she had countless times before.¹ She and her friend, Gerald Horsman, checked on Evelyn Malin, Norma's mother, every morning and night.² At 84 years old, Evelyn was still working as the sole proprietor of the tiny convenience store located in Shamrock Township, about 130 miles north of the Twin Cities.³ Evelyn sold groceries, beer, cigarettes, and other items to locals and the vacationers taking advantage of lake recreation.⁴



Figure 1 – BCA crime scene photo of front of Dollar Lake Store

The Dollar Lake Store was also Evelyn's home.⁵ Opening the store in the 1950's, Evelyn and her late husband raised their two children, Norma and Merle, in the cramped living quarters separated from the store by a thin curtain.⁶ As Evelyn aged into her eighties, still working

¹ See Transcript of Trial at 29-30, 40, State v. Pippitt, K4-99-325 (2001) [hereinafter *Pippitt Trial*].

² *Id.* at 29-30.

³ See Richard Meryhew, *Lakeside community mourns loss of perennial storekeeper*, STAR TRIBUNE, Feb. 27, 1998, available at 1998 WLNR 6336751.

⁴ See *Pippitt Trial*, *supra* note 1, at 26.

⁵ *Pippitt Trial*, *supra* note 1, at 27.

⁶ *Id.* at 32, 201.

thirteen-and-a-half hour days, Norma took on greater responsibility in helping her mother.⁷ Having her own cabin only a mile away from the store, Norma would visit the Dollar Lake Store at least twice a day to haul water and stock shelves.⁸ The building had no indoor plumbing.⁹

As soon as Norma pulled up to the store, she knew something was wrong.¹⁰ Evelyn opened the store for business at 8:30 a.m. each day.¹¹ On that Wednesday morning, however, the lights were off inside the store.¹² The neon “OPEN” sign was dark and the fish cutout hanging in the front window was still turned to “CLOSED.”¹³ Newspapers still stacked on the cement stoop.¹⁴ Evelyn always brought in the papers each morning shortly after she woke.¹⁵ There was no movement within.¹⁶

Horsman started walking around to try the back door.¹⁷ On his way, he noticed one of the basement windows was broken out.¹⁸ Norma and Horsman hurried to the back door.¹⁹ Norma pulled the screen off the outer screen door so she could knock on the inner door.²⁰ The back door was locked.²¹ Evelyn routinely locked both the front and the back doors before retiring to bed each night.²² When Evelyn did not answer, Norma moved to Evelyn’s curtained bedroom window.²³ No answer.²⁴ Norma knew her mother’s health was failing.²⁵ Evelyn could only hear with the help of a hearing aid, and she walked with a cane.²⁶ Evelyn had been beaten and robbed

⁷ *Id.* at 25, 29.

⁸ Transcript of Grand Jury Proceedings at 24, State v. Pippitt, K4-99-325 (1999) [hereinafter *Grand Jury Proceedings*]; *Pippitt Trial*, *supra* note 1, at 29.

⁹ *Pippitt Trial*, *supra* note 1, at 57-59.

¹⁰ See Transcript of Interview by Scott Turner with Norma Horner, ICR # 98-467 (Feb. 25, 1998) at 2 [hereinafter *Horner Interview 2/25/98*].

¹¹ *Id.* at 5.

¹² See *id.* at 6.

¹³ See *Pippitt Trial*, *supra* note 1, at 41.

¹⁴ See *Horner Interview on 2/25/98*, *supra* note 10, at 8.

¹⁵ See *id.*

¹⁶ Transcript of Interview by John Drahota with Gerald Horsman, ICR # 98-476 (Feb. 25, 1998) at 7 [hereinafter *Horsman Interview on 2/25/98*].

¹⁷ See *id.*

¹⁸ See *id.* at 5.

¹⁹ *Id.* at 7.

²⁰ *Horner Interview 2/25/98*, *supra* note 10, at 2.

²¹ *Horsman Interview 2/25/98*, *supra* note 16, at 7.

²² *Pippitt Trial*, *supra* note 1, at 65.

²³ *Horsman Interview 2/25/98*, *supra* note 16, at 8.

²⁴ *Id.*

²⁵ *Pippitt Trial*, *supra* note 1, at 59, 62-63.

²⁶ *Id.*

several times before.²⁷ With no sign of life within, Norma instructed Horsman to go back to the cabin to call the police.²⁸

Norma remembered the last time she witnessed her mother alive.²⁹ It was approximately 8:00 p.m. the night before.³⁰ She called her mother to check on her around 9:00 p.m.³¹ Evelyn was unsettled about Terry Peet, a man who had just moved back to the area and down the street from the Dollar Lake Store.³² Evelyn told Norma she was worried about Peet, and called him “bad news.”³³ Norma saw Peet in the store earlier the day before—on February 24—and when he asked to purchase propane on credit, Evelyn refused.³⁴ Norma recalled that Peet smelled like alcohol.³⁵

Four officers from the Aitkin County Sheriff’s Office arrived at the store.³⁶ When efforts to get Evelyn to respond failed, one kicked in the back door.³⁷ The officer broke the door jamb and the force from the kick flung free a skeleton key that was inserted in the keyhole of the back door’s deadbolt.³⁸ The deputies entered the living quarter’s kitchen.³⁹ The building was dark, with thick curtains blocking much of the sun.⁴⁰ Each room in the living quarters was filled with furniture, stock, and other personal items stacked in piles.⁴¹

One deputy noticed a trap door in the kitchen floor that was propped open by a board wedged between the door and the first step leading down into the unfinished basement.⁴² A kitchen chair was on top of the door.⁴³ The deputy set the chair aside, and climbed down the

²⁷ Meryhew, *supra* note 3; *Pippitt Trial*, *supra* note 1, at 62, 204.

²⁸ *Horner Interview 2/25/98*, *supra* note 10, at 2.

²⁹ *Id.* at 20.

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 9; *Pippitt Trial*, *supra* note 1, at 70-71.

³³ *Horner Interview 2/25/98*, *supra* note 10, at 9-11.

³⁴ *Id.* at 9, 11.

³⁵ *Id.* at 10.

³⁶ Scott Turner, Aitkin County Sheriff Dept. Investigative Report, ICR # 98-476, Mar. 25, 1998, at 2 [hereinafter *Turner Report 3/25/98*]

³⁷ *Id.* at 3.

³⁸ See Gary Kaldun & Nathaniel Pearlson, BCA Forensic Science Lab Report on the Examination of Physical Evidence, ICR # 97-476, Mar. 13, 1998, at 8 [hereinafter *BCA Lab Report 3/13/98*]; *Turner Report 3/25/98*, *supra* note 36, at 3.

³⁹ *Turner Report 3/25/98*, *supra* note 36, at 3.

⁴⁰ See Death Investigation Video, Minnesota Bureau of Criminal Apprehension, Inv. # 98000062, Feb. 25, 1998, at 13:38-47:32 [hereinafter *BCA video*].

⁴¹ See *id.* at 19:12-28:07.

⁴² *Turner Report 3/25/98*, *supra* note 36, at 3.

⁴³ *Id.*

stairs into the basement.⁴⁴ Aside from the boxes of pop and beer that lined the basement walls, the deputy noticed footprints and shards of glass resting on the sandy ground below the broken basement window that Norma and Horsman had identified that morning.⁴⁵



Figure 2 – BCA crime scene photograph of stairs leading to basement in Dollar Lake Store



Figure 3 – BCA crime scene photograph of beer stacked along basement wall of Dollar Lake Store

Meanwhile, another deputy found Evelyn's body.⁴⁶ She was laying on the floor in her disarranged bedroom, next to her bed with her mattress turned on top of her.⁴⁷ Evelyn's face was bruised and battered.⁴⁸ Her neck and left eyelid were swollen.⁴⁹ The chamber pot that Evelyn used to relieve herself in lieu of a toilet was empty.⁵⁰ Piles of feces clumped to her sheets and the outside of her nightgown.⁵¹ More appeared smeared on her skin near her anus.⁵² Brown spots marked her face and chin.⁵³ Her body was cold and stiff.⁵⁴

⁴⁴ See *id*; *Pippitt Trial*, *supra* note 1, at 181.

⁴⁵ See *Turner Report 3/25/98*, *supra* note 36, at 3.

⁴⁶ *Id.*

⁴⁷ Dave Bjerga, BCA Report of Investigation, Inv. # 98000062, Feb. 25, 1998, at 2 [hereinafter *Bjerga Report 2/25/98*].

⁴⁸ See *BCA Lab Report 3/13/98*, *supra* note 38, at 8.

⁴⁹ *Id.*

⁵⁰ See *Pippitt Trial*, *supra* note 1, at 58; BCA photo of chamber pot 1, Feb. 25, 1998; BCA photo of chamber pot 2, Feb. 25, 1998.

⁵¹ BCA photo of feces 1, Feb. 25, 1998.

⁵² BCA photo of feces 2, Feb. 25, 1998.

⁵³ *BCA Lab Report 3/13/98*, *supra* note 38, at 8.

⁵⁴ *Id.*

B. Law Enforcement Investigation

Once the first responders realized they were in a homicide crime scene, they left the building through the same door they entered, and secured the premises.⁵⁵ Less than 30 minutes later, the Aitkin County Sheriff assigned Investigator Bruce Beck to lead the homicide investigation.⁵⁶ Beck had been a law enforcement officer for 16 years prior to his assignment to the Malin murder investigation.⁵⁷



Figure 4 – BCA crime scene photo of the south basement window of the Dollar Lake Store

The BCA detailed Special Agent Dave Bjerga to assist in the investigation.⁵⁸ At the time, Bjerga had been a licensed peace officer for Minnesota for 17 years.⁵⁹ A BCA Forensic Science Laboratory Crime Scene Team came to conduct a forensic examination.⁶⁰



Figure 5 - BCA crime scene photo of a blood spot stain on the inside of a south basement window well of the Dollar Lake Store

Outside, the Forensic Team found two wooden one-inch by three-inch boards, or laths, and two glass panes resting on the ground near the south basement window well.⁶¹ Glass and window dividers, or muntins, were missing from the basement window frame.⁶² Bright red blood spattered the concrete wall which lined the window well leading to the broken basement window.⁶³ Numerous hairs and fibers were stuck to the top of the basement window frame and tiny glass shards scattered

⁵⁵ *Turner Report 3/25/98, supra* note 36, at 3.

⁵⁶ *Id.*; Bruce Beck, Aitkin County Sheriff Dept. Investigative Report, ICR # 98-476, March 17, 1998, at 1 [hereinafter *Beck Report 3/17/98*].

⁵⁷ *Pippitt Trial, supra* note 1, at 274.

⁵⁸ *Bjerga Report 2/25/98, supra* note 47, at 2.

⁵⁹ *Pippitt Trial, supra* note 1, at 215. Bjerga was considered by some as one of the smartest law enforcement members to have worked in the area. See Denton Newman, *BCA investigator, former Crow Wing deputy retires*, BRAINERD DISPATCH, Nov. 5, 2012 (“He’s one of the smartest cops I’ve ever met in my life,” [Sheriff] Ball said.”). Before the CRU interview with Bjerga began on Nov. 21, 2023, a Crow Wing County Sheriff Deputy meeting Bjerga for the first time in the hallway told Bjerga that he was a “legend.”

⁶⁰ *BCA Lab Report 3/13/98, supra* note 38, at 7.

⁶¹ *Id.* at 3, 7 9.

⁶² *Id.* at 7.

⁶³ *Id.*

the bottom of the window well.⁶⁴ Inside the basement, several large pieces of broken window glass were identified on the floor in, as depicted in *Figure 6*.⁶⁵ One of those pieces had a single drop of blood on it.⁶⁶ The internal surface of the basement window frame from which the glass was broken had several tool marks from a flat blade tool, like a screwdriver.⁶⁷ Two laths found outside the building appeared to have come from the broken window.⁶⁸

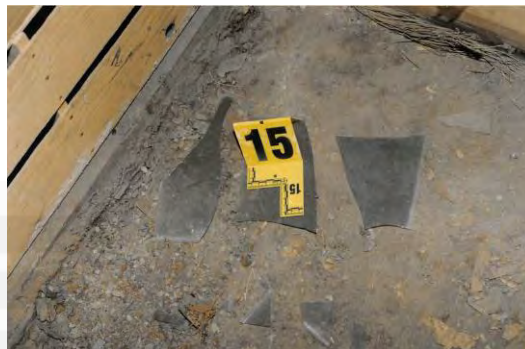


Figure 6 - BCA crime scene photo of broken glass found inside the Dollar Lake Store basement

Given that the front doors of the store, the attached garage, and all other windows were locked with no signs of forced entry—except the back door which an officer kicked in to get access into the building—the Crime Scene Coordinator determined that the point of entry for the intruder(s) was the south basement window.⁶⁹

The Forensic Team preserved the following evidence, among other items: five latent fingerprints; four footstep impressions from the sandy basement floor; two sets of fresh tire tracks in the Dollar Lake Store’s parking lot; Evelyn’s emptied wallet, which appeared to have been rifled through; Evelyn’s nightgown, black hair net, hair pins, and hair curlers; a cutting from her bedsheet, which had an unusual hole that may have been caused by a bullet; a single hair found resting on the right hip area of Evelyn’s body; and swabs of the blood spots.⁷⁰ They cleared the scene at 1:25 a.m. the following morning.⁷¹ The team of six spent a total of 11.5 hours investigating the crime scene.⁷²

⁶⁴ *Id.*

⁶⁵ *Id.* at 9.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *See id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at 2-6, 8. The forensic team, however, did not collect or fingerprint the board propping up the cellar trap door, nor the chair that was resting on top of the trap door. Linda Netzel, *Brian Keith Pippitt Crime Scene and Laboratory Analysis Review*, May 18, 2023, at 7. The crime scene team did not recover the panes of glass removed from the south basement window. *Id.* The glass from inside the basement was not collected. *Id.* at 11. The crime scene team did not provide sufficient documentation of the exterior window condition to determine how secure each pane of glass was and how sturdy the muntins were. *Id.* at 14. Crime scene personnel handled evidence without wearing gloves at the scene of the crime. *Id.* at 19; photograph 9-10. The crime scene team did not take sufficient photographs of the inside of the edges of the rails of the window, or closeup photographs of the muntins. *Id.* at 20.

⁷¹ *BCA Lab Report 3/13/98, supra* note 38, at 9.

⁷² *See id.* at 7-9; P. Johnson, Dollar Lake Store Forensic Drawing, BCA Lab case no. 978 4385, Feb. 25, 1998 [hereinafter *Store Diagram*].

Meanwhile, Beck, Bjerga, and their teams began canvassing the community.⁷³ Beck, alone, generated leads from over a dozen witnesses within the first 24 hours.⁷⁴ He spoke to customers of the Dollar Lake Store, local bartenders, community residents, family members, close friends, pedestrians who happened to be walking by the store, a liquor store clerk, and a newspaper delivery man who serviced the store.⁷⁵

Besides Norma, Horsman was one of the first people interviewed about the murder of Evelyn.⁷⁶ Horsman accompanied Norma every morning to help around the store.⁷⁷ He helped feed her animals and stocked goods for the store.⁷⁸ In fact, the last time he saw Evelyn was while he was re-stocking shelves in the store at 7:00 p.m., hours before she was murdered.⁷⁹ Three important pieces of information that Horsman gave investigators were: (1) that Evelyn always locked her front and rear doors at closing time;⁸⁰ (2) months before, someone tried to break in the same store window from which the storm window was removed, but could not successfully get in;⁸¹ and (3) none of the store stock, which included beer and cigarettes, appeared to be missing, upon review of the crime scene.⁸²

Peet, the individual who Evelyn expressed concern about to her daughter, became an early lead suspect.⁸³ Aaron Nelson, a man who was alleged to have beat and robbed Evelyn in the past, was also identified early as a person of interest.⁸⁴ Other early suspects included a strange man who visited a local bar late on February 24 with a fresh scrape on his chin and a strange look in his eye.⁸⁵ A sketch artist helped create a rendering, as depicted in *Figure 7*, ultimately leading to no arrests.⁸⁶ Another was a burly hitchhiker with gray hair and beard.⁸⁷

⁷³ *Pippitt Trial*, *supra* note 1, at 219; *Beck Report 03/17/98*, *supra* note 56, at 7-12.

⁷⁴ *See Beck Report 03/17/98*, *supra* note 56, at 7-12.

⁷⁵ *See id.*

⁷⁶ *See Horsman Interview 2/25/98*, *supra* note 16, at 1.

⁷⁷ *Id.* at 3.

⁷⁸ *Id.*

⁷⁹ *Id.* at 13.

⁸⁰ *Id.* at 14.

⁸¹ *Id.* at 28

⁸² Transcript of Interview by Bruce Beck with Gerald Horsman, ICR # 98-476 (Feb. 26, 1998) at 3 [hereinafter *Horsman Interview 2/26/98*]; Interview by Nicholas Foster with Gerald Horsman, McGregor, Minn. (Sep. 21, 2023) at 00:12:20-00:13:22, 00:15:35-00:16:10 [hereinafter *Horsman CRU Interview*].

⁸³ *See Beck Report 03/17/98*, *supra* note 56, at 8.

⁸⁴ *Id.* at 19. He was eventually cleared due to what investigators considered to be a solid alibi. *Id.*

⁸⁵ *Id.* at 7-8.

⁸⁶ *See id.* at 11.

⁸⁷ *Id.* at 10.

Another was a man parked in front of the Dollar Lake Store just before closing on February 24 who had dark straggly hair and appeared to be picking something up off the doorstep.⁸⁸ An anonymous caller told dispatch that she picked up a man with a bleeding right hand who was dark-skinned with white hair and that she dropped him off at a local bar.⁸⁹ None of these individuals were ever found or charged. Simultaneously, a group of five people were implicated after two women in the group were overheard discussing robbing and killing Ms. Malin.⁹⁰ None were charged.

Following a law enforcement meeting on March 2, 1998, Beck wrote in an investigation report that “one of the officers was told that the Misquadace boys might possibly have done this at the Dollar Lake Store...[specifically] Brandon, Keith, Mike, and Wesley.”⁹¹ The officer who reported the lead, along with the source of that information, are not identified in the report.⁹² The Misquadace family is an Ojibwe family who lived in the Native American land trust area in that region known as the Sandy Lake Reservation.⁹³ Agnes Chief, the mother of Brian Pippitt was also the mother of several of Pippitt’s half-siblings, including Anita Misquadace, Bradley Misquadace, Bryan Misquadace, Wanda Misquadace, and Walter Misquadace.⁹⁴ Brandon, Keith, Michael, and Wesley were the sons of Anita, and nephews of Brian Pippitt.⁹⁵

An early statement specifically implicating any of the “Misquadace boys” was on March 3, 1998, from Ben Altergott, a person with whom Brandon spent time while in a juvenile detention center.⁹⁶ Ben stated that Brandon had the idea to rob Evelyn.⁹⁷ When investigators confronted Brandon two days later about the accusation that he committed the burglary/murder,



Figure 7 – BCA Forensic Suspect Drawing

⁸⁸ Transcript of Interview by John Drahota with Floyd Johnson, ICR # 98-476 (Feb 25, 1998) at 1.

⁸⁹ *Beck Report 03/17/98*, *supra* note 56, at 24.

⁹⁰ *Id.* at 15.

⁹¹ *Id.* at 22.

⁹² *See id.*

⁹³ *See* Interview with Brian Pippitt, Applicant, Faribault, Minn. (Jan. 11, 2024) [hereinafter *Pippitt CRU interview*].

⁹⁴ *See Pippitt Trial*, *supra* note 1, at 309.

⁹⁵ *Id.* at 311.

⁹⁶ *Beck Report 03/17/98*, *supra* note 56, at 23.

⁹⁷ *Id.*

he provided them an alibi.⁹⁸ Specifically, Brandon said that he was in Onamia with his brother Michael, Michael's girlfriend, Keith, and his uncle Brian Pippitt.⁹⁹

Michael's statement to investigators mostly matched Brandon's.¹⁰⁰ Michael said that he went to Mille Lacs on February 24, 1998, for a job at the casino in Onamia and had interviewed twice that day.¹⁰¹ After, Michael, Brandon, and Pippitt stopped at the Blue Goose liquor store to purchase 40-oz beers.¹⁰² No further investigative leads focused on the Misquadace family for some time after these initial interviews of Brandon and Michael.¹⁰³

At the end of the first month of the investigation, dozens of people were identified as potentially having *some* information about the murder.¹⁰⁴ None of it panned out; all leads fizzled.¹⁰⁵ The BCA's Forensic Science Laboratory results did not help narrow the investigation.¹⁰⁶ The blood on the concrete window well and on the glass shard from the broken basement window came from a cat, which also appeared to be the source of the hair collected from the window frame and off Evelyn's hip.¹⁰⁷ Of the fingerprints dusted and preserved, only one was good enough for a search in the Midwest Automated Fingerprint Identification Network (MAFIN); it did not reveal any matches.¹⁰⁸

A screwdriver that investigators seized from Peet's home pursuant to a consent-search came back as "inconclusive" as to whether it was used to make the toolmarks on the window frame.¹⁰⁹ The sandy footprints in the store's basement matched a PONY "SB-Trainer" shoe, which was never recovered or linked to any suspect.¹¹⁰ The tire track casts collected in the

⁹⁸ *Id.* at 29.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 27-28.

¹⁰¹ *Id.*

¹⁰² *Id.* at 28; See Transcript of Interview by Bruce Beck with Michael Misquadace, ICR # 98-476 (March 5, 1998) at 2-3 [hereinafter *Michael Interview 3/5/98*].

¹⁰³ See Beck Report 03/17/98, *supra* note 56, at 29-41.

¹⁰⁴ See generally, *id.*

¹⁰⁵ See Rosalind Bentley, *5 charged in the killing of rural storekeeper*, STAR TRIBUNE, May 2, 1999, available at 1999 WLNR 6434664.

¹⁰⁶ See generally Janice Bronson, BCA Forensic Science Lab Supp. Report 1 on the Examination of Physical Evidence, ICR # 98-476, Apr. 2, 1998 [hereinafter *BCA Lab Report 4/2/98*].

¹⁰⁷ *Pippitt Trial*, *supra* note 1, at 248, 251; see Laura Nelson, BCA Forensic Lab Supp. Report 7 on the Examination of Physical Evidence, ICR # 98-476, Mar. 19, 1999, at 5 [hereinafter *BCA Lab Report 3/19/99*].

¹⁰⁸ Dennis Hughes, BCA Forensic Science Lab Supp. Report 2 on the Examination of Physical Evidence, ICR # 98-467, Apr. 20, 1998, at 6 [hereinafter *BCA Lab Report 4/20/98*].

¹⁰⁹ Roger Papke, BCA Forensic Science Lab Supp. Report 3 on the Examination of Physical Evidence, ICR # 98-467, Jun. 9, 1998, at 4 [hereinafter *BCA Lab Report 6/9/98*].

¹¹⁰ *BCA Lab Report 3/19/99*, *supra* note 107, pg. 5.

parking lot of the Dollar Lake Store led nowhere.¹¹¹ The fibers collected from the window frame of the basement window were spider web.¹¹² The wallet, nightgown, hair pins, and hair rollers offered nothing.¹¹³ Ballistics testing of the hole in the sheet showed no trace of gunshot residue or bullet wipe, ruling out a bullet as the cause of the hole.¹¹⁴

An \$11,000 reward was announced, promising cash to anyone who could give information leading to an arrest and conviction.¹¹⁵ Approximately two weeks after the announcement, on March 26, 1998, Brian Pippitt was directly implicated in the murder investigation.¹¹⁶ Kathy Aubid-Martin, reported that “word in the community” was that Mike Misquadace, Keith Misquadace, and Brian Pippitt, along with one other Misquadace, committed the murder.¹¹⁷

The siblings of Brian Pippitt’s mother, Agnes Chief, included Ed Martin, Donald Martin, and Howard “Chip” Martin.¹¹⁸ Ed, Donald, and Chip, along with their children and the mothers of their children, constitute the Martin side of the family.¹¹⁹ Some of the Martins lived in a small tribal enclave in East Lake commonly referred to as “the Orchard.”¹²⁰ It was well known that the Misquadace side of the family did not generally get along with the Martin side.¹²¹

Less than two weeks after Kathy Aubid-Martin named the Misquadaces as potential suspects, Donald Hill—son of Don Martin—gave a statement to police on April 7, 1998, alleging

¹¹¹ *See id.*

¹¹² *Id.*

¹¹³ *BCA Lab Report 4/2/98, supra* note 106, at 5.

¹¹⁴ *BCA Lab Report 6/9/98, supra* note 109, at 4.

¹¹⁵ *McGregor reward offered in death of dollar-store owner*, DULUTH NEWS TRIBUNE, Mar. 10, 1998, available at 1998 WLNR 1991929. The reward money was not paid out. *Pippitt Trial, supra* note 1, at 259. Another report stated that the award was \$13,000. *See Bently, supra* note 105.

¹¹⁶ Bruce Beck, Aitkin County Sheriff Dept. Supp. Report, ICR # 98-476, Apr. 21, 1998, at 4-5 [hereinafter *Beck Report 4/21/98*].

¹¹⁷ *Id.* at 5.

¹¹⁸ *Pippitt Trial, supra* note 1, at 310; Matt Nelson, Murder Mystery Details Emerge, DULUTH NEWS TRIBUTE, May 4, 1999, available at 1999 WLNR 1995410.

¹¹⁹ *Id.* at 309-310.

¹²⁰ *Id.* at 317-318.

¹²¹ *See, e.g.*, Transcript of Interview by Dave Bjerga and Bruce Beck with Donald Hill, Inv. #98000062 (Feb. 2, 1999) at 3 [hereinafter *Donald Interview 2/2/99*] (“[Kathy Hill] said well we [Don Hill and Ed Hill] should never trust [the Misquadaces.]”); Transcript of Interview by Bruce Beck with Neil King, ICR # 98-476 (Nov. 13, 1998) at 10 [hereinafter *King Interview 11/13/98*] (telling investigators that “the Misquadace’s really don’t get along with [the Martin] side of the family.”); Transcript of Interview by Dave Bjerga and Bruce Beck with Raymond Misquadace, Inv. #98000062 (Apr. 28, 1999) at 42 [hereinafter *Raymond Interview 4/28/99*] (“Howard [Martin]...and them other Misquadace, my cousins, they don’t really get along.”).

that Brian Pippitt said he did not mean to hurt her, referring to Evelyn.¹²² The next day, on April 8, 1998, investigators enlisted the help of Aaron Nelson, who had since been cleared as a suspect, as a confidential informant to determine if any the Misquadares, including Pippitt, would admit to the crime.¹²³ They did not.¹²⁴ Less than a week later, on April 14, 1998, Don Martin reported to investigators that he had received a note from a family friend, Louis Quaderer, who wrote that Pippitt—referring to him by nickname “Fats”—made an admission Evelyn was already dead by the time he got in the store, as depicted in *Figure 8*.¹²⁵ At the time he reported this, Don told investigators that he “did not know anything firsthand” about the Malin homicide.¹²⁶

Figure 8 – Note Louis Quaderer provided to Don Martin.

Four months later, Don Martin and his daughter, Dawn Hill, gave recorded statements to investigators, one right after the other.¹²⁷ Don gave his statement first.¹²⁸ Contrary to his earlier statement to investigators that he had no firsthand information, Don now claimed that he had heard Pippitt make an admission and that Pippitt’s accomplices “took Neil’s car out there.”¹²⁹ Don also seemed to suggest in his law enforcement interview that Pippitt implicated Brandon in the crime.¹³⁰ Don said Pippitt implicated three others Keith, Neil, Brandon.¹³¹ Don implied Pippitt said Keith cut

¹²² Brad Barker, BCA Report of Investigation, Inv. # 98000062, Apr. 7, 1998, at 1 [hereinafter *Barker Report 4/7/98*].

¹²³ See *Beck Report 4/21/98*, *supra* note 116, at 7; Dave Bjerga, BCA Report of Investigation, Inv. # 98000062, Apr. 8, 1998_1258, at 1-2 [hereinafter *Bjerga Report 4/8/98_1258*].

¹²⁴ *Beck Report 4/21/98*, *supra* note 116, at 7; *Bjerga Report 4/8/98_1258*, *supra* note 123, at 2.

¹²⁵ See *Beck Report 4/21/98*, *supra* note 116, at 8.

¹²⁶ *Id.*

¹²⁷ Roy Bruggman, Aitkin County Sheriff’s Dept. Supplemental Report, undated, at 2 [hereinafter *Bruggman Report*].

¹²⁸ *Id.*

¹²⁹ See Transcript of Interview by Roy Bruggman with Don Martin, ICR # 98-476 (Aug. 15, 1998), at 2 [hereinafter *Don Martin Interview 8/15/98*].

¹³⁰ See *id.* at 3.

¹³¹ See *id.* at 3-4.

himself on the side going through the window.¹³² Additionally, Don mentioned that Pippitt indicated that “he got stabbed with a knife.”¹³³ Don then went on to say he saw the cut and it was “fresh.”¹³⁴ All of these claims conflicted with other known evidence.

Dawn made her statement immediately following her father’s.¹³⁵ During her interview, Don Martin can be heard speaking loudly in the background.¹³⁶ She said in her interview very simply “[Pippitt] said she was already dead when he went in there.”¹³⁷ She said she could not remember how long after Ms. Malin was killed that he said that.¹³⁸ According to Dawn, Pippitt did not say anything about anyone else being involved.¹³⁹ She could offer no other information.¹⁴⁰ The prosecution called neither to testify at Pippitt’s trial.

Quaderer gave an interview with investigators on August 18, 1998, in which he confirmed that he heard Pippitt make the admission while at Don Martin’s house.¹⁴¹ Like Don’s statement, parts of Quaderer’s statement was inconsistent with known, objective crime facts in the case. For example, Quaderer said Pippitt admitted that he was with his nephews, Michael and Brandon, during the murder, and that one climbed through a “skinny window and cut his sides” and his “hips.”¹⁴² Michael and Brandon were never charged for the murder of Evelyn Malin. Further, no human blood was collected from the crime scene, and no one else described injuries like that. The prosecution never called Quaderer to testify at trial.

According to Keith Misquadace, the Martins did not care for Pippitt particularly because he supposedly took money from someone on that side of the family.¹⁴³ Donald said that Quaderer particularly harbored ill feelings toward Pippitt and the Misquadaces because they would make fun of him.¹⁴⁴ Quaderer himself mentioned in his interview with investigators that the

¹³² See *id.* at 4.

¹³³ *Id.* at 4.

¹³⁴ *Id.*

¹³⁵ *Bruggman Report, supra* note 127, at 2.

¹³⁶ Interview by Roy Bruggman with Dawn Hill, witness, McGregor, Minn. (Aug. 15, 1998), at 00:00:18.

¹³⁷ Transcript of Interview by Roy Bruggman with Dawn Hill, ICR # 98-476 (Aug. 15, 1998), at 3 [hereinafter *Dawn Hill Interview 8/15/98*].

¹³⁸ *Id.*

¹³⁹ See *id.*

¹⁴⁰ *Id.* at 4.

¹⁴¹ Transcript of Interview by Roy Bruggman with Louis Quaderer, ICR # 98-476 (Aug. 19, 1998) at 1-4 [hereinafter *Quaderer Interview 8/19/98*].

¹⁴² *Id.* at 2.

¹⁴³ Transcript of Interview by Dave Bjerga with Keith Misquadace, Inv. #98000062 (Feb. 18, 1999) at 8 [hereinafter *Keith Interview 2/17/99*].

¹⁴⁴ See Interview with Donald Hill, co-defendant, Moose Lake, Minn. (Nov. 21, 2023) at 00:52:00-00:53:13. [hereinafter *Donald CRU interview*].

Misquadaces tried to steal from him.¹⁴⁵ Mike Misquadace even mentioned that Quaderer was spreading rumors about their involvement during the undercover operation with Nelson.¹⁴⁶ Despite the accusations against Pippitt, investigators did not interview him until ten months after Kathy Aubid-Martin first mentioned Pippitt by name.¹⁴⁷

In total, after an initial burst of activity at the beginning, the investigation continued for over a year.¹⁴⁸ Over 100 suspects were named.¹⁴⁹ Most of the information implicating them, however, came from second or third-hand sources.¹⁵⁰ Investigators kept hitting dead-ends.¹⁵¹ The community was on edge.¹⁵² Residents started locking their doors when they never had before.¹⁵³ Some lost sleep.¹⁵⁴ Some bought guns.¹⁵⁵ The investigators were frustrated and overwhelmed.¹⁵⁶ Evelyn's family and residents publicly criticized the Sheriff for his failure to make any arrests.¹⁵⁷ In fact, Beck said that Evelyn's family met with the sheriff every single week behind closed doors.¹⁵⁸ Bjerga said that Evelyn's family was "pushing" them every single day.¹⁵⁹ In January 1999, nearly 10 months after the murder, a new Sheriff was elected.¹⁶⁰ He made it a priority to solve the case.¹⁶¹

On January 26, 1999, Beck interviewed Pippitt; Beck told Pippitt that his name has come up "numerous, numerous times."¹⁶² The only specific references Beck revealed, however, were

¹⁴⁵ *Quaderer Interview 8/19/98*, *supra* note 141, at 3.

¹⁴⁶ Transcript of Interview by Gary Pederson with Aaron Nelson, Inv. #98000062 (Apr. 16, 1998) at 4 [hereinafter *Nelson Interview 4/16/98*].

¹⁴⁷ *See Pippitt Trial*, *supra* note 1, at 621-624.

¹⁴⁸ *Id.* at 225.

¹⁴⁹ Nelson, *supra* note 118.

¹⁵⁰ *See Bentley*, *supra* note 105.

¹⁵¹ Nelson, *supra* note 118.

¹⁵² *See Bentley*, *supra* note 105.

¹⁵³ *Id.*

¹⁵⁴ *See Matt Nelson, Relatives Hope to Reopen Woman's Country Store*, DULUTH NEWS TRIBUNE, May 9, 1999, available at 1999 WLNR 2007387, at 1.

¹⁵⁵ *See id.*

¹⁵⁶ *See Bentley*, *supra* note 105; Nelson, *supra* note 118.

¹⁵⁷ *See Nelson*, *supra* note 118.

¹⁵⁸ Interview with Bruce Beck, Aitkin County Investigator, Aitkin, Minn. Part 2 at 01:05:56-01:06:02 (Nov 20, 2023) [hereinafter *Beck CRU Interview Part 1 and Beck CRU Interview Part 2*].

¹⁵⁹ Transcript of Interview by Dave Bjerga and Gary Pederson with Brandon Misquadace, Inv. #98000052 (Apr. 8, 1998) at 9 [hereinafter *Brandon Interview 4/8/98*].

¹⁶⁰ Amy Mayron, *5 Arrested in Aitkin County Slaying Action Follows Investigation of Store Owner's Death in '98*, ST. PAUL PIONEER PRESS, May 2, 1998, available at 1999 WLNR 2381371.

¹⁶¹ *Id.*

¹⁶² Interview by Bruce Beck with Brian Pippitt, ICR # 98-476 (Jan. 26, 1999) at 00:06:43-00:06:46 [hereinafter *Pippitt Interview 1/26/99*].

two people: Louie Quaderer and Don Hill.¹⁶³ Beck then told Pippitt that Neil King, son of Ed Martin, placed Pippitt at the scene of the crime and that King said that Pippitt was “not one of the first ones in” the residence at the time of the murder.¹⁶⁴ King, however, never implicated Pippitt in his first and only documented interview with investigators on November 13, 1998.¹⁶⁵ Beck also told Pippitt that he could be facing an aiding and abetting charge if Pippitt did not cooperate with the investigation.¹⁶⁶ Pippitt never confessed.¹⁶⁷ Not only did Pippitt tell Beck that he was not there, Pippitt also offered to take a polygraph and provide samples of his hair and blood to clear his name.¹⁶⁸

Investigators returned to Donald Hill again on February 5, 1999, nearly a year after their first interview with him.¹⁶⁹ Donald initiated this contact when he asked to speak with Beck three days after he was arrested and detained at the Aitkin County Sheriff’s Office pending an unrelated charge.¹⁷⁰ Donald provided information on an unrelated case as well as the Malin murder in exchange for favorable treatment given his recent arrest and pending charges unrelated to the Malin murder.¹⁷¹ Specifically, Donald offered to give the location of the goods stolen from the Dollar Lake Store on the evening of Evelyn’s murder in exchange for a deal.¹⁷²

When the Aitkin County Attorney, Bradley Rhodes, agreed to “work with Hill” in exchange for information “of substance,” Donald told investigators that a jewelry box, VCR, and

¹⁶³ *Id.* at 00:08:41-00:08:55, 00:10:36-00:11:05.

¹⁶⁴ *Id.* at 00:11:13-00:11:31.

¹⁶⁵ *See generally King interview 11/13/98, supra* note 121.

¹⁶⁶ *See Pippitt Interview 1/26/99, supra* note 162, at 00:12:20-00:12:40.

¹⁶⁷ *See generally id.*

¹⁶⁸ *Id.* at 00:07:13-00:07:40. Pippitt took a polygraph exam on March 24, 1999. *See generally* Robert Berg, BCA Report of Investigation, Inv. #98000062, Mar. 24, 1999 [hereinafter *Berg Report 3/24/99*]. The results, according to the BCA, was that deception was indicated when he denied involvement in the Evelyn Malin murder. *Id.* at 1. Brandon Misquadace and Raymond Misquadace had similar results. *See generally* Dan Alquist, BCA Report of Investigation, Inv. #98000062, Mar. 16, 1999_1520 [hereinafter *Alquist Report 3/16/99_1520*]; Dan Alquist, BCA Report of Investigation, Inv. #98000062, Apr. 28, 99 [hereinafter *Alquist Report 4/28/99*]. Keith Misquadace and Don Hill had no deception indicated when they answered questions pertaining to their involvement. *See* Dan Alquist, *BCA Report of Investigation*, Inv. #98000062, Feb. 17, 1999 [hereinafter *Alquist Report re Keith 2/17/99*]; Dan Alquist, BCA Report of Investigation, Inv. #98000062, Mar. 16, 1999_1245 [hereinafter *Alquist Report 3/16/99_1245*]. Brandon was never charged despite his polygraph test result. Keith and Don were charged despite their “passing” the polygraph. Bjerga stated in an interview with the CRU on 21 Nov 23 that polygraph tests are just a tool, the results of which should, alone, not dictate charging decisions. *See Bjerga CRU Interview, supra* note 213, at 01:30:39 – 01:31:06.

¹⁶⁹ Bruce Beck, Aitkin County Sheriff Dept. Supp. Report VI, ICR # 98-476, Feb. 22, 1999, at 1 [hereinafter *Beck Report 2/22/99*]

¹⁷⁰ *Id.*

¹⁷¹ *See id.* (“County Attorney Rhodes agreed to work with Hill if the information was of substance.”).

¹⁷² *Id.*

a big jar of change were stolen from the store during the burglary and stashed in the swampy area on the Tribal land located on Big Sandy Lake.¹⁷³ None of these items, however, were ever reported missing from the Dollar Lake Store.¹⁷⁴ Nevertheless, a search was arranged, which included a flyover inspection of a snow-covered lake.¹⁷⁵ Investigators found nothing consistent with Donald's claims.¹⁷⁶

On February 10, 1999, the investigators spoke to Donald's brother, Ed Hill.¹⁷⁷ Ed gave investigators a tennis shoe that Keith Misquadace allegedly wore when he killed Evelyn Malin.¹⁷⁸ The shoe did not match the impressions recovered at the scene of the crime.¹⁷⁹ Nevertheless, one week after speaking to Ed Hill, investigators interrogated Keith Misquadace while he was in custody pending unrelated charges.¹⁸⁰ During his interview on February 17, 1999, Keith denied involvement in the Malin murder, but implicated Ed Hill, Donald Hill, and Raymond Misquadace.¹⁸¹

The day after Keith Misquadace implicated Raymond, Bjerga and Special Agent Brad Barker drove to Bagley, two-and-a-half hours northwest of Shamrock Township, to speak with Raymond.¹⁸² Although his last name was "Misquadace," Raymond aligned himself on the Martin side of the family.¹⁸³ Raymond's mother and Donald's mother were sisters.¹⁸⁴ Raymond lived primarily with his mother in Bagley away from his relatives in Aitkin County,¹⁸⁵ but he spent a significant amount of time with them growing up and continued to frequently visit them in Aitkin County.¹⁸⁶ Donald considered Raymond like a little brother.¹⁸⁷ Raymond confirmed that he was close with Donald his "whole life."¹⁸⁸

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 2.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Beck Report 2/22/99*, *supra* note 169, at 2.

¹⁷⁸ *Id.* Ed said Bradly Misquadace provided the shoe to Don Martin, his father. *See id.*

¹⁷⁹ *Id.* at 3.

¹⁸⁰ *See Keith Interview 2/17/99*, *supra* note 143, at 1.

¹⁸¹ *Id.* at 2; Dave Bjerga, BCA Report of Investigation, Inv. # 98000062, Feb. 18, 1999_1505, at 1-2 [hereinafter *Bjerga Report 2/18/99_1505*]

¹⁸² *Bjerga Report 2/18/99_1505*, *supra* note 181, at 2.

¹⁸³ *See Donald CRU Interview*, *supra* note 144, at 01:12:20.

¹⁸⁴ *Id.* at 00:16:26.

¹⁸⁵ *Keith Interview 2/17/99*, *supra* note 143, at 5.

¹⁸⁶ *Id.*

¹⁸⁷ *See Donald CRU Interview*, *supra* note 144, at 00:12:43.

¹⁸⁸ Interview by Nicholas Foster with Raymond Misquadace, co-defendant, Bagley, Minn. (Aug. 18, 2023) at 00:06:18 [hereinafter *Raymond CRU interview 8/18/23*].

When investigators came to interview Raymond on February 18, 1999, he was in custody for a probation violation in Clearwater County.¹⁸⁹ Raymond denied involvement in the murder, and said he did not remember being in the area at the time of the murder.¹⁹⁰ He initially told investigators that Keith personally confessed to the murder during a phone call.¹⁹¹ Later in the same interview, Raymond provided a different account, telling investigators that he learned of Keith's involvement through a conversation he had with his mother and aunt.¹⁹² Raymond also told investigators that he heard Pippitt was involved.¹⁹³ At the end of the interview, Raymond agreed to take a polygraph examination.¹⁹⁴

On April 28, 1999, Bjerga returned to Bagley with Beck to administer the polygraph test to Raymond.¹⁹⁵ According to Bjerga, Raymond failed the test.¹⁹⁶ After proclaiming his innocence at the beginning of the interrogation, Raymond eventually confessed to being present at the scene of the crime.¹⁹⁷ He said he was with Neil King, Brian Pippitt, Keith Misquadace, and Donald Hill.¹⁹⁸ He said the group went into the store to steal beer and cigarettes.¹⁹⁹ He said "they" were "in there, they were getting' that stuff, then she musta – I don't know where she came."²⁰⁰ Raymond said he was not sure how Evelyn was murdered, and that he was not inside when she was killed.²⁰¹ He said after they left the store, the group went to the former home of his father, Walter Misquadace, on the Sandy Lake reservation.²⁰² Raymond would later tell investigators that the house was unoccupied, and was a ripped up, "kind of junky" party house.²⁰³

¹⁸⁹ *Bjerga Report 2/18/99_1505*, *supra* note 181 at 1.

¹⁹⁰ Transcript of Interview by Dave Bjerga and Brad Barker with Raymond Misquadace, Inv. #98000062 (Feb. 18, 1999) at 7 [hereinafter *Raymond Interview 2/18/99*].

¹⁹¹ *Bjerga Report 2/18/99_1505*, *supra* note 181, at 2.

¹⁹² *Id.*

¹⁹³ *Raymond Interview 2/18/99*, *supra* note 190, at 3.

¹⁹⁴ *Id.* at 22.

¹⁹⁵ *Raymond Interview 4/28/99*, *supra* note 121, at 1.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* at 6.

¹⁹⁸ *Id.* at 11.

¹⁹⁹ *Id.* at 22.

²⁰⁰ *Id.* at 12.

²⁰¹ *Id.*

²⁰² *Id.* at 50; *Pippitt Trial*, *supra* note 1, at 345.

²⁰³ Transcript of Interview by Brad Barker with Raymond Misquadace, Inv. #98000062 (Apr. 30, 1999) at 15-18 [hereinafter *Raymond Interview 4/30/99*].

The next day, Bjerga and Beck visited Donald to take a third statement about the matter.²⁰⁴ At the time of this interview, Donald was no longer in jail.²⁰⁵ After having a conversation “off the record” with investigators, Donald admitted during a recorded interview that he was with Keith Misquadace, Brian Pippitt, Raymond Misquadace and Neil King on the evening of the Malin murder.²⁰⁶ Donald said he did not enter the store, but he said Raymond, Brian and Keith did.²⁰⁷ He also said that when Evelyn surprised them in the store, Keith hit her with something, and Brian grabbed her.²⁰⁸

Shortly thereafter, all five family members implicated by Raymond and Donald were arrested and charged with burglary and murder.²⁰⁹ The local newspaper, Independent Age, featured their booking photographs on the front page, as depicted in *Figures 9* through *13*.²¹⁰ The Aitkin County Sheriff, Dennis J. Landborg, who was four months into his tenure as the newly elected sheriff, personally contacted Evelyn’s son and daughter, Merle and Norma, to update them on the big break.²¹¹ Sheriff Landborg told the media:



Figure 9 - Brian Pippitt, 36, McGregor

Figure 10 - Neil King, 19, Orr

Figure 11 - Keith Misquadace, 19, McGregor

Figure 12 - Raymond Misquadace, 22, Bagley

Figure 13 - Donald Hill, 22, McGregor

²⁰⁴ Bruce Beck, Aitkin County Sheriff Dept. Supp. Report VIII, ICR # 98-476, May 12, 1999, at 3 [hereinafter *Beck Report 5/12/99*].

²⁰⁵ *Id.*

²⁰⁶ Transcript of Interview by Dave Bjerga and Bruce Beck with Donald Hill, Inv. #98000062 (Apr. 29, 1999) at 4 [hereinafter *Donald Interview 4/29/99*].

²⁰⁷ *Id.* at 7.

²⁰⁸ *Id.* at 16.

²⁰⁹ See Mayron, *supra* note 160.

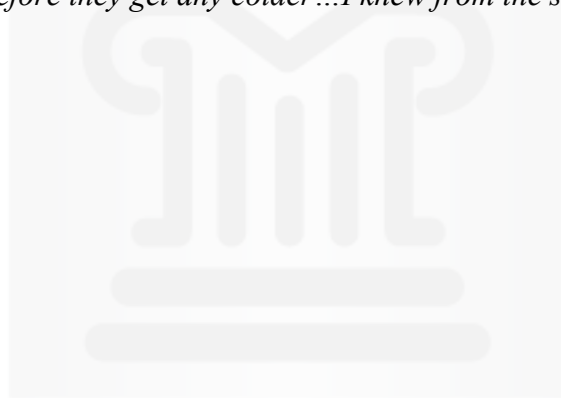
²¹⁰ *Five suspects arrested, arraigned in Malin murder*, INDEPENDENT AGE, May 5, 1999, at 1.

²¹¹ Mayron, *supra* note 160.

*[Merle and Norma] were very relieved and thankful to us that we were finally able to solve this. This has been a who-done-it for the whole town, and I think everyone's resting easier now that there have been some arrests.*²¹²

Bjerga stated in an interview with the CRU on November 21, 2023, however, that this was a difficult case to investigate.²¹³ He commented:

*What was one of the problems with this [case]? [Rhodes was] prosecuting a case based on statements from co-participants. You need some direct evidence to corroborate what they are saying. This case did not have a lot of it. ... We had what we had. We had the witnesses that we had... It was a difficult, difficult case. You can only let these sit out there for so long before they get any colder... I knew from the start that this was going to be a tough one.*²¹⁴



MINNESOTA
JUDICIAL
BRANCH

²¹² *Id.*

²¹³ Interview with Dave Bjerga, BCA Special Agent, Brainerd, Minn. (Nov. 21, 2023) at 00:40:01-00:40:29, 01:35:18-01:36:41 [hereinafter *Bjerga CRU Interview*].

²¹⁴ *Id.*

IV. **Procedural History**

Rhodes filed the criminal complaint on April 30, 1999, the day after Donald's confession and two days after Raymond's.²¹⁵ Years of litigation followed. Raymond and Donald pled guilty. Neil King proceeded to trial and was acquitted. Keith Misquadace pled guilty. Last, Pippitt went to trial. He was convicted and appealed that decision. Finally, Pippitt litigated a postconviction relief petition, followed by an appeal of the court's denial of that petition.

A. Raymond Misquadace's Guilty Plea and Sentencing

Pursuant to a plea agreement, Raymond pled guilty to an amended charge of manslaughter on June 30, 1999.²¹⁶ Instead of eliciting testimony from Raymond at the hearing, the Court decided to review the testimony Raymond provided to the grand jury as the factual basis to support the guilty plea.²¹⁷ At the time Raymond testified before the grand jury in early June 1999, he had already locked in a plea agreement with Rhodes.²¹⁸ Raymond testified mostly consistently with his confession to investigators.²¹⁹ On February 26, 2001, after testifying at Pippitt's trial, Raymond was sentenced in accordance with the plea agreement: 58 months in prison.²²⁰

B. Neil King's Trial

King pled not guilty and elected to proceed to trial by jury; it began on October 26, 1999.²²¹ Rhodes called nine witnesses: Norma Horner, Merle Malin, Investigator Bruce Beck, Sheriff's Deputy Scott Turner, Special Agent Dave Bjerga, Sheriff's Deputy Mark Fredin, Sheriff's Deputy John Drahota, Raymond Misquadace, and the medical examiner, Dr. McGee.²²²

²¹⁵ Complaint at 1, State v. Pippitt, K4-99-258, Apr. 30, 1999 [hereinafter *Pippitt Complaint*].

²¹⁶ Transcript of Guilty Plea at 5, State v. Misquadace, K4-99-323 (1999) [hereinafter *Raymond Guilty Plea*].

²¹⁷ *Id.* at 13-14.

²¹⁸ *Grand Jury Proceedings, supra* note 8, at 453.

²¹⁹ *See id.* at 454-528.

²²⁰ Transcript of Sentencing at 10, State v. Misquadace, K0-99-323 (2001) [hereinafter *Raymond Sentencing*].

²²¹ *See generally* Transcript of Trial, State v. King, K2-99-324 (1999) [hereinafter *King Trial*].

²²² *Id.* at 2, 155, 254.

Horner and Malin testified fairly consistently with their previous statements.²²³ Beck, Turner, Bjerga and Fredin all provided information regarding the investigation into the murder.²²⁴

In addition to testifying about other aspects of the crime, Raymond admitted under cross examination that he previously told investigators that King was “really out of it,” “wasted,” “pretty drunk,” and “coming in and out of consciousness.”²²⁵ He also agreed that there was never any discussion about whether to go into the store among the five.²²⁶ Raymond explained that when they arrived at the store, some just went right in without forethought; King, however, never got out of the car.²²⁷

King’s attorney moved the Court to enter a judgement of acquittal.²²⁸ Over the prosecutor’s objection, the Court granted the motion.²²⁹ The Court stated:

*I don’t think that I can look at myself in the mirror...after I do what I have to do this afternoon; if I don’t ... acquit him, if I honestly believe there is just not evidence sufficient to convict him...I’m just crushed with the enormity of the offense. And yet, I can’t lay it on the shoulders of this young man and give a jury a chance to find him guilty, even though I could act after that because he’ll carry that around the rest of his life if a jury finds him guilty. So I’ve got to act. . .*²³⁰

Ultimately, the judge found that there was insufficient evidence to corroborate Raymond’s testimony and that the evidence of King’s intoxication was sufficient to prevent him from forming intent to commit the crime of aiding and abetting, for which he was charged.²³¹

C. Donald Hill’s Guilty Plea and Sentencing

On January 27, 2000, Donald entered a petition to plead guilty to the reduced charge of manslaughter pursuant a plea agreement.²³² At the combined guilty plea/sentencing hearing, Donald allocuted, agreeing with his counsel’s questions that he was driving with friends around Aitkin County on February 24, 1998, and that when they ran out of beer, they stopped at the Dollar Lake Store.²³³ He testified that they all agreed to break into the store when they

²²³ See *id.* at 21-49.

²²⁴ See *id.* at 50-154.

²²⁵ *Id.* at 229-230.

²²⁶ *Id.* at 235.

²²⁷ *Id.* at 230, 235.

²²⁸ *Id.* at 285.

²²⁹ *Id.* at 319.

²³⁰ *Id.* at 304-305.

²³¹ *Id.* at 316-317.

²³² Transcript of Guilty Plea at 1, 14, State v. Hill, K6-99-326 (2000) [hereinafter *Donald Guilty Plea 2000*].

²³³ *Id.* at 16.

discovered it was closed.²³⁴ Donald agreed that “some of the people” went into the store, creating a substantial risk of death to Evelyn, and that Donald failed to prevent that harm to her.²³⁵

Donald appeared before the Court for sentencing on February 13, 2001.²³⁶ He formally entered his plea of guilty to the Court, something the sentencing judge discovered was inadvertently omitted at the previous hearing.²³⁷ The Court accepted the plea and found him guilty.²³⁸ The Court ultimately sentenced Donald to a term of imprisonment of 58 months, with credit for time served, to run concurrently with a sentence of 18 months for a criminal sexual conduct charge to which Donald pled guilty in March 1999.²³⁹

D. Keith Misquadace’s Guilty Plea and Sentencing

On September 27, 2000, Keith, through his counsel, Edith See, reached a plea agreement with the State.²⁴⁰ The terms of the agreement called for Keith to enter an *Alford*²⁴¹ plea to the amended charge of manslaughter and agree to an upward departure sentence of 180 months on that charge.²⁴² Keith also agreed to plead guilty under *Alford* to unrelated charges of introduction of contraband into the jail; fleeing and theft of a motor vehicle; and burglary, theft, and criminal damage to property, for which he would receive upward departures of 86 months, for a total executed prison sentence of 266 months.²⁴³ The State, in turn, would dismiss an also unrelated criminal sexual conduct charge.²⁴⁴ The judge accepted Keith’s *Alford* plea on each.²⁴⁵

²³⁴ *Id.*

²³⁵ *Id.* at 17.

²³⁶ Transcript of Guilty Plea and Sentencing at 1, State v. Hill, K6-99-236_K5-96-707 (2001) [hereinafter *Donald Guilty Plea and Sentencing 2001*].

²³⁷ *Id.* at 2-4.

²³⁸ *Id.* at 10.

²³⁹ *Id.* at 15, 25-26. See also Transcript of Guilty Plea at 2, 11-12, State v. Hill, K5-96-707_K9-97-431 (1999) [hereinafter *Donald Guilty Plea 1999*].

²⁴⁰ See generally Transcript of Guilty Pleas, State v. Misquadace, K5-99-284_K2-99-64_K9-99-580_K0-99-774_K9-98-648_K9-99-322 (2000) [hereinafter *Keith Guilty Pleas*].

²⁴¹ North Carolina v. Alford, 400 U.S. 25, 38 (1970) (holding that it is constitutional for a court to accept a defendant’s guilty plea, even though the defendant maintained his innocence, where the State demonstrated a strong factual basis for the plea and the defendant clearly expressed his desire to enter the plea based on his belief that the State’s evidence would be sufficient to convict him).

²⁴² *Keith Guilty Pleas*, *supra* note 240, 2-3.

²⁴³ *Id.* at 3.

²⁴⁴ See *id.* at 4-5.

²⁴⁵ *Id.* at 19.

On October 16, 2000, Keith appeared before the Court for sentencing on the charges to which he pled guilty.²⁴⁶ In what appeared to be a surprise to Rhodes and the Court, Keith's attorney Edith See moved to withdraw Keith's guilty pleas.²⁴⁷ Rhodes objected.²⁴⁸ The Court ultimately denied the request, because there was "no good and valid reason" to permit the withdraw.²⁴⁹ The Court sentenced Keith in accordance with the plea agreement.²⁵⁰

E. Brian Pippitt's Trial and Sentencing

Pippitt pled not guilty to the charges and proceeded to trial in International Falls on January 23, 2001.²⁵¹ Rhodes's presentation was essentially a repeat of the prosecution in Neil King's case. Like King's case, Rhodes called Norma Horner, Merle Malin, Dr. Michael McGee, John Drahota, Mark Fredin, Scott Turner, Dave Bjerga, Bruce Beck, and Raymond Misquadace.²⁵² They all testified to generally the same topics that they spoke to at the King trial. Rhodes, however, called two additional witnesses in Pippitt's case that he did not call in King's. The first additional witness Rhodes called was Gary Kaldun, the BCA crime scene team leader for the Malin murder investigation.²⁵³ Second, he called Peter Arnoldi, a fellow inmate of Pippitt's whom he met at the state security hospital in St. Peter, Minnesota.²⁵⁴ Additionally, Rhodes elicited information from Merle that was not drawn out in the King trial.

Kaldun testified about the forensic aspect of the investigation.²⁵⁵ Specifically, he testified to the investigative procedures that were conducted in collecting evidence at the scene immediately after the murder, including creating castings of footwear and tire tracks, collection of fibers and hairs, blood collections, fingerprint dusting, among other forensic review.²⁵⁶ He ultimately concluded that based on the evidence at the crime scene, the point of entry into the store was through the basement window.²⁵⁷ He also testified that the blood found at the scene

²⁴⁶ Transcript of Motion Hearing and Sentencing at 1, State v. Misquadace, K5-99-284_K2-99-64_K9-99-580_K0-99-774 (2000) [hereinafter *Keith Motion to Withdraw Plea and Sentencing*].

²⁴⁷ *Id.* at 3.

²⁴⁸ *Id.* at 3-4.

²⁴⁹ *Id.* at 18.

²⁵⁰ *Id.* at 25.

²⁵¹ *Pippitt Trial*, *supra* note 1, at 1.

²⁵² *Id.* at 2.

²⁵³ *Id.* at 363, 365.

²⁵⁴ *Id.* at 490, 498.

²⁵⁵ *Id.* at 363-399.

²⁵⁶ *Id.* at 366.

²⁵⁷ *Id.* at 373.

was cat blood that was fresh and bright; Kaldun testified that it was “very possibl[e]” that a cat could have cut itself on a small piece of glass still protruding from the frame of the window.²⁵⁸

Arnoldi testified that Pippitt admitted to him that he and one of his cousins, “a guy by the name of Hill,” and two other people broke into the “Dollar store.”²⁵⁹ Arnoldi also said that Pippitt “helped hold her down while somebody else stuffed toilet paper or Kleenex into the lady’s mouth.”²⁶⁰ He also testified that Pippitt admitted to stealing cigarettes and beer.²⁶¹ According to Arnoldi, Pippitt was planning on making Donald look like a liar based on inconsistencies in Donald’s statements.²⁶² He also testified that Pippitt was looking for an alibi and indicated “someone would be giving him an alibi. . .”²⁶³ Arnoldi admitted that Pippitt had let Arnoldi see the criminal complaint, although he claimed that he did not see it until after Pippitt had made the admissions.²⁶⁴ Arnoldi also testified that he was not offered any deals in exchange for his testimony.²⁶⁵

Rhodes recalled Merle toward the end of his case-in-chief to elicit testimony that Evelyn was unable to engage the deadbolt on the front door of the store because it had a sag that caused a misalignment.²⁶⁶ Merle testified that on one occasion he had deadbolted the door and his mother was unable unlock or open the door as a result.²⁶⁷

When the prosecution rested, Murtha moved the court to enter a judgement of acquittal on the basis that Raymond Misquadace’s testimony was not sufficiently corroborated.²⁶⁸ The Court denied the motion, finding:

The evidence of Ray Misquadace, the witness who was an accomplice, indicates that the crime was committed and links it to the defendant. Standing alone, therefore, with that evidence, there can be no conviction. However, there is also the testimony of Mr. Arnoldi. Mr. Arnoldi, in this Court's view, did link, lend, corroborative evidence, which is not required in every element of the offense, but only some, placing him there. This is in the nature of what I would call your confession or statement against interest and for the most part a good amount of

²⁵⁸ *Id.* at 399.

²⁵⁹ *Id.* at 491.

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.* at 492.

²⁶³ *Id.* at 493, 497.

²⁶⁴ *Id.* at 503-504.

²⁶⁵ *Id.* at 495.

²⁶⁶ *Id.* at 510.

²⁶⁷ *See id.*

²⁶⁸ *Id.* at 517-518.

*that evidence came in without objection, not that it was objectionable. And, therefore, I must submit that to the jury on that basis.*²⁶⁹

Murtha then focused his case-in-chief on discrediting Raymond and Arnoldi's testimony. To discredit Arnoldi, Murtha offered Arnoldi's prior convictions for offenses involving dishonesty.²⁷⁰ He also called Beck to testify that Arnoldi had made a request in exchange for providing information on Pippitt—a request to change confinement facilities.²⁷¹

To discredit Raymond, Murtha called Raymond's uncle, James Hill, who testified that Raymond has a reputation for being untruthful and would lie under oath to get out of trouble.²⁷² Murtha also called several witnesses to testify to their recollection of events at the time of the murder in order to undermine details of Raymond's testimony, including Wanda Misquadace and Bryan Lee Misquadace—siblings of Pippitt.²⁷³ Bryan Lee testified that he had never known Raymond to spend any time at all with Pippitt, and would be unlikely to hang out with him for an entire afternoon and evening.²⁷⁴ Murtha also called his defense investigator to discredit Raymond's timeline and provide evidence suggesting Raymond concocted his testimony.²⁷⁵

Murtha then called several witnesses to testify to Pippitt's whereabouts on the evening of the murder, which served to both establish an alibi for Pippitt while further impeaching Raymond's testimony. Specifically, Murtha called Michael Misquadace, Joanne Kruse, Shannon Webb, Wesley Misquadace, and Russ Bower to piece together Pippitt's alibi.²⁷⁶ Michael Misquadace, Pippitt's nephew, testified that he was with Pippitt all day and all night on February 24, 1998, on a trip to Grand Casino in Onamia and back home.²⁷⁷ Michael testified that Pippitt gambled and won \$460.²⁷⁸ Michael's fiancée (Joanne Kruse), her sister (Shannon Webb), and her sister's fiancée (Wesley Misquadace) all testified that Michael, Pippitt, and Brandon visited the Kruse home late in the evening, maybe around 10:00p.m., coming from the casino.²⁷⁹

²⁶⁹ *Id.* at 519-520.

²⁷⁰ *Id.* at 676.

²⁷¹ *Id.* at 527-528.

²⁷² *Id.* at 532.

²⁷³ *See id.* at 534-541.

²⁷⁴ *See id.* at 538.

²⁷⁵ *See id.* at 542-556.

²⁷⁶ *See id.* at 559-603.

²⁷⁷ *Id.* at 562-69.

²⁷⁸ *Id.* at 563.

²⁷⁹ *See id.* at 573-79, 582-86, 587-90.

In rebuttal, the prosecution called Allen Forschen, Vice President of Security at Grand Casino, to testify that despite the fact that Pippitt was a preferred customer card holder at Grand Casino, there was no record of him using his card at the casino on February 24, 1998.²⁸⁰ Forschen testified that even if Pippitt did not use his preferred customer card, if he played Blackjack, winnings would be recorded on a chip sheet.²⁸¹ Forschen testified that in review of the multiple transaction logs and W2G tax forms from that date, there was no record of Pippitt.²⁸² In surrebuttal, Pippitt took the stand to testify.²⁸³ He admitted to having a preferred customer card, but explained that he rarely uses it when he plays Blackjack.²⁸⁴ Rhodes cross-examined him, drawing admissions that on three separate occasions Pippitt had an opportunity to give an alibi to investigators during questioning, and on three separate occasions he failed to do so.²⁸⁵

The jury convicted Pippitt of the two alternate counts of premeditated murder and felony murder.²⁸⁶ Before being sentenced, Pippitt addressed the court saying, “I still maintain my innocence. I have – I have no knowledge of this and I basically don’t feel like this is fair. I don’t know.”²⁸⁷ The court then sentenced Pippitt to two concurrent terms of life in prison.²⁸⁸

F. Brian Pippitt’s Direct Appeal

Pippitt’s direct appeal alleged six issues: first, whether there was sufficient evidence to support the convictions; second, whether Pippitt was entitled to a new trial due to errors in the jury instructions; third, whether the District Court abused its discretion by not admitting into evidence a letter offered by Murtha; fourth, whether newly discovered evidence entitled him to a new trial; fifth, whether the State withheld exculpatory information from the grand jury and misled it to obtain an indictment; and sixth, whether one of his convictions and sentences were required to be vacated.²⁸⁹

²⁸⁰ *See id.* at 613-614, 617.

²⁸¹ *See id.* at 618.

²⁸² *Id.* at 617-618.

²⁸³ *Id.* at 620.

²⁸⁴ *Id.* at 620-621.

²⁸⁵ *Id.* at 621-623.

²⁸⁶ Transcript of Sentencing at 3-4, *State v. Pippitt*, K4-99-325 (2001).

²⁸⁷ *Id.* at 3.

²⁸⁸ *Id.* at 3-4.

²⁸⁹ *State v. Pippitt*, 645 N.W.2d 87, 89 (Minn. 2002).

The first issue centered on whether Arnoldi's testimony was sufficient to corroborate Raymond's accomplice testimony.²⁹⁰ The Minnesota Supreme Court found that Arnoldi's testimony sufficiently corroborated Raymond's testimony.²⁹¹ Pippitt's second issue focused on the Court's failure to give an instruction that the jury should not draw any inference from his failure to testify in his own defense.²⁹² The Court found that because Pippitt did not request the instruction, and because Pippitt testified in surrebuttal, there was no failure on the part of the District Court.²⁹³

The Court rejected issues three through five, which were raised by Pippitt in a *pro se* supplemental brief.²⁹⁴ Finally, the Court granted relief by vacating judgment of conviction and sentence for the first-degree murder while committing burglary and affirmed the conviction and sentence for first-degree premeditated murder.²⁹⁵

G. Brian Pippitt's Postconviction Relief Petition and Appeal

Pursuant to Pippitt's petition for postconviction relief, the District Court held a hearing on May 16, 2006, to accept new evidence discovered after trial.²⁹⁶ Pippitt's counsel, Robert O'Malley, called seven witnesses: Agnes Chief, Merle Malin, Jeri Severson, Howard Martin, Thomas Murtha, Bradley Rhodes, and Brian Pippitt.²⁹⁷

Chief provided testimony that supported Pippitt's alibi at the casino as well as undermined Raymond's trial testimony. Specifically, she testified that Michael, Brandon and Pippitt borrowed Chief's van to get to the casino the day of the murder.²⁹⁸ She said she gave Pippitt a check so he had some money to gamble.²⁹⁹ Chief also testified that she was with Keith that night in her home; she confirmed that Keith was with her until 10:00p.m. or 11:00p.m. because she remembered yelling for him to shut off the television and go to sleep since he had school the next day.³⁰⁰ Since Chief had no other vehicles, Keith had no alternative means to

²⁹⁰ *Id.* at 93.

²⁹¹ *Id.* at 94.

²⁹² *Id.*

²⁹³ *Id.* at 95.

²⁹⁴ *Id.* at 95-96.

²⁹⁵ *Id.* at 96.

²⁹⁶ See Transcript of Postconviction Review at 1, Pippitt v. State, KX-99-325 (2006) [hereinafter *Pippitt Postconviction Review Proceeding*].

²⁹⁷ *Id.* at 2.

²⁹⁸ *Id.* at 10.

²⁹⁹ *Id.*

³⁰⁰ *Id.* at 12.

leave the house.³⁰¹ She also remembered hearing the van return later that evening.³⁰² Finally, Chief testified that the home Raymond claimed to have gone to after the murder, his father's old place, was actually occupied by Bryan Lee Misquadace; it was renovated and did not match the description Raymond provided at trial.³⁰³

Merle testified that while he did not remember what he testified about at trial, he does remember that his mother was capable of closing up the store and locking all locks, including the deadbolt.³⁰⁴ Jeri Severson, the crime victim advocate for the Aitkin County Sheriff's Department at the time of the Pippitt trial, testified that Raymond Misquadace made statements to her after the trial that suggested he fabricated his testimony against Pippitt.³⁰⁵ Howard Martin testified to details that impeached Raymond's testimony at trial.³⁰⁶

Murtha testified in his own defense against allegations of ineffective assistance of counsel.³⁰⁷ He provided explanations for why he did or did not call certain individuals, and why Pippitt did not testify in the defense case-in-chief, essentially saying it was Pippitt's decision.³⁰⁸ Rhodes admitted during his testimony that he did argue at trial that Pippitt had no alibi prior to May 1999 even though he was aware Michael provided a statement early in the case investigation that put Pippitt with Michael at the casino.³⁰⁹

Finally, Pippitt testified in support of his petition.³¹⁰ He explained he had not provided an alibi to investigators when he was initially questioned because he did not remember where he was until he had a conversation with his mother about it sometime after he was charged.³¹¹ Pippitt also provided more detail about his alibi the day of the murder, describing the events of the day that culminated in visiting the casino with his nephews, and a visit to Wesley's girlfriend's house, before returning home after 9:00p.m.³¹²

³⁰¹ *Id.* at 15.

³⁰² *Id.* at 18.

³⁰³ *Id.* at 17.

³⁰⁴ *See id.* at 26.

³⁰⁵ *Id.* at 33-38.

³⁰⁶ *Id.* at 41-49.

³⁰⁷ *Id.* at 51.

³⁰⁸ *Id.* at 51-73.

³⁰⁹ *See id.* at 92-97.

³¹⁰ *Id.* at 102.

³¹¹ *Id.* at 103-104.

³¹² *Id.* at 107-112.

Pippitt testified that he did not see Raymond, Neil, Donald, or Keith that day.³¹³ Pippitt explained that he did have conversations with Arnoldi about the case, but only stated that he was innocent and how he could not understand why people were implicating him in the crime.³¹⁴ Pippitt testified that he allowed Arnoldi to read through the criminal complaint.³¹⁵

In addition to the live witness testimony, Pippitt offered documentary evidence in support of the petition. For example, Pippitt submitted an affidavit from Julie Davison, an investigator, who wrote that during an interview with Donald Hill sometime after the trial, Donald stated that investigators interrogated him “off the record” and “unrecorded” for three hours.³¹⁶ According to Davison, Donald also stated that he was shown Raymond Misquadace’s statement and was “forced” to match his statement to Raymond’s.³¹⁷ Donald also told Davison that his testimony at trial “would not have been good for the state.”³¹⁸

Another affidavit offered was signed by Keith Misquadace which stated that Keith was not at the Dollar Lake Store on February 24, 1998.³¹⁹ He stated that evening, he was at home with Agnes Chief, on the phone speaking with his girlfriend of the time, Theresa Coulton.³²⁰ He also explained in his affidavit that he felt pressure to accept a deal offering a shorter prison sentence in exchange for the *Alford* plea, despite his actual innocence, but later tried to withdraw it unsuccessfully.³²¹

Craig Licari also provided an affidavit which was offered to the Court by Pippitt’s defense team, which explained Licari was incarcerated with Arnoldi and Pippitt and housed at St. Peter’s hospital.³²² Licari explained that he was surprised to learn that Arnoldi testified against Pippitt because Arnoldi told Licari that he believed Pippitt was innocent.³²³ According to Licari, Arnoldi never mentioned that Pippitt made admissions of guilt.³²⁴

³¹³ *Id.* at 112.

³¹⁴ *Id.* at 113.

³¹⁵ *Id.*

³¹⁶ Affidavit of Julie Davison at 2, Pippitt v. State, K4-99-325, Jul 18, 2005.

³¹⁷ *Id.*

³¹⁸ *Id.* at 3.

³¹⁹ Affidavit of Keith Misquadace at 1, Pippitt v. State, K4-99-325, Jun. 25, 2005 [hereinafter *Keith’s Affidavit*].

³²⁰ *Id.*

³²¹ *Id.* at 1-2.

³²² Affidavit of Craig Licari at 1, Pippitt v. State, K4-99-325, Feb. 22, 2005.

³²³ *Id.* at 2.

³²⁴ *See id.* at 1.

The District Court denied relief and provided several reasons why. First, the Court found that Jeri Severson’s testimony about Raymond Misquadace’s recantation was hearsay and excluded from consideration.³²⁵ Further, all the newly discovered evidence was “doubtful, impeaching, or cumulative,” and thus, failed to meet the standard of admissibility in *State v. Race*.³²⁶ Additionally, the Court found that Murtha’s decision about which witnesses to call did not rise to the level of ineffective assistance of counsel.³²⁷ Finally, Rhodes’s comments about Pippitt’s alibi did not warrant a new trial because the issue was procedurally barred under *State v. Knaffla*.³²⁸

On appeal, the Minnesota Supreme Court affirmed the District Court’s decision for three reasons.³²⁹ First, the Court found that the new evidence Pippitt provided at the postconviction hearing failed to meet the requisite standards warranting a new trial.³³⁰ Specifically, the Court found that Severson’s postconviction testimony failed the test in *Larrison v. United States*, which requires the Court to be “reasonably certain that the recantation is genuine.”³³¹ The Court found that Severson’s statement was vague and non-specific.³³² Similarly, the Court found that Licari’s affidavit failed the *Race* test, because it simply impeached Arnoldi’s testimony.³³³ Regarding Merle’s postconviction testimony, the Court found that the evidence suggested that Merle did not lie at trial, he simply made a statement contradicting his earlier testimony.³³⁴

Next, the Court found that the prosecutorial misconduct issue stemming from Rhodes’s comments about Pippitt not having an alibi prior to May 1999 and that his alibi was fabricated, was *Knaffla* barred.³³⁵ Finally, the Court rejected the notion that Pippitt was denied effective assistance of counsel because Pippitt did not show that counsel’s decisions regarding witness

³²⁵ District Court Order re Postconviction Review at 2, *Pippitt v. State*, K4-99-325 (2006) [hereinafter *Postconviction Review Order*].

³²⁶ *Id.* citing *Race v. State*, 504 N.W.2d 214 (Minn. 1993) (stating the standards for admissibility of new evidence in support of a new trial).

³²⁷ *Postconviction Review Order*, *supra* note 325, at 2.

³²⁸ *Id.* citing *Gassler v. State*, 590 N.W.2d 769, 771 (Minn. 1999) (“[o]nce a defendant has had a direct appeal, ‘all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief’) quoting *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976).

³²⁹ See *Pippitt v. State*, 737 N.W.2d, 221, 224 (Minn. 2007).

³³⁰ See *id.* at 224-29.

³³¹ *Id.* at 227 citing *Opsahl v. State*, 710 N.W.2d 776, 782 (Minn. 2006).

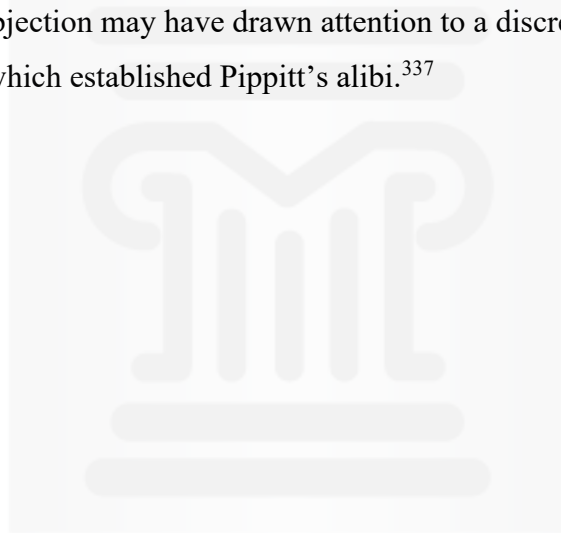
³³² *Id.* at 227.

³³³ *Id.* at 228.

³³⁴ *Id.*

³³⁵ *Id.* at 229.

selection were objectively unreasonable.³³⁶ Further, the Court similarly found that Murtha's failure to object to Rhodes's comment about a lack of alibi did not rise to the level of ineffective assistance of counsel because: (1) there was no evidence on the record of Michael's initial statements to police establishing Pippitt's alibi that would have warranted an objection by Murtha; and (2) there was theoretical rationale for why defense counsel would not object—specifically, because an objection may have drawn attention to a discrepancy in Murtha's own presentation of evidence which established Pippitt's alibi.³³⁷



MINNESOTA JUDICIAL BRANCH

³³⁶ *Id.* at 230.

³³⁷ *Id.* at 230-231.

V.
The CRU's Findings

A. It was implausible for Pippitt to commit the crime in accordance with the prosecutor's theory.

Although the State concluded that the murderers entered the Dollar Lake Store through the basement window, this would have been highly implausible. To enter the basement through the window, one of these large men would have had to crouch into a narrow cement-lined well, where he would encounter a window boarded up from inside the basement. While crouched in the well, he would have to carefully remove two glass panes and break the third without showering the basement floor with glass.

Once the glass was removed, he would then have to reach his arm inside the narrow opening of the window frame and pry off the laths nailed from within. Then, once the laths were removed, he would have to slide through an 18-inch by 34-inch frame without cutting himself (and leaving blood at the scene), without leaving trace evidence, without crushing the boxes below the window, and without leaving footprints immediately underneath of the window. This would all have to happen on a Tuesday night in February, while intoxicated. Two experts have each produced a report that independently concluded this was not plausible.³³⁸

Given the way that law enforcement officers found the crime scene, a far more likely theory is that someone entered the Dollar Lake Store with a motive to kill Malin, given that her body was found smeared with feces. The murderer was more likely a person with a personal vendetta against Evelyn, who entered and exited through the front door of the store which first responders found locked upon arrival. To be able to engage the deadbolt lock upon exit, as evidence suggested, the murderer must have had access to a spare key. Evelyn's key was found hanging inside the store in its normal place. This fact, alone, negates the prosecutor's theory of the case, given that the prosecutor presented evidence at trial that the assailants entered through the window and left through the front door.

Similarly, although the prosecutor's theory was that the defendants' intent was to steal beer and cigarettes, photographic and testimonial evidence demonstrated nothing was taken from the store. Photographic evidence suggested that only parts of the building were searched, like

³³⁸ See generally Netzel, *supra* note 70; Brent Turvey, *Crime Scene Analysis – Minnesota v. Pippitt*, Dec. 30, 2021, at 12.

Evelyn's bedroom, while others, like the store, were untouched. Even the cash register appeared undisturbed. Despite this incongruency, the prosecutor presented evidence that the deadbolt was not locked and presented unreliable testimony.

1. No one climbed through the south basement window.

Dr. Brent Turvey, Forensic Scientist and Criminologist, and Linda Netzel, a forensic expert consultant, each found – without knowledge of the other's conclusions – that the crime scene was staged to make the south basement window appear as the assailants' entry point.³³⁹ Their conclusions contradict that of Gary Kaldun, the Crime Scene Coordinator, who stated that the "south basement window...was used as the point of entry for the intruder(s)."³⁴⁰ Netzel and Turvey concluded that no one climbed through the south basement window.³⁴¹

The experts highlight four points, among others, that challenge the theory that the basement window was the point of entry: (a) analysis of the glass removed from the window; (b) analysis of the laths removed from the window frame; (c) lack of forensic evidence; and (d) placement of items around the scene of the crime.

³³⁹ See Netzel, *supra* note 70, at 26; Turvey, *supra* note 338, at 12. Dr. Turvey completed his report before Ms. Netzel. Ms. Netzel did not know what Dr. Turvey's conclusions were at the time she drafted her expert report. Interview with Linda Netzel, criminalist, telephone (Dec. 18, 2023). In fact, Turvey was hired by Jim Cousins on behalf of Brian Pippitt because of his familiarity with the crime scene. Interview with Jim Cousins, attorney for Brian Pippitt, telephone (May 23, 2024) [hereinafter *Cousins Interview 5/23/24*]. Specifically, Turvey had been hired by Edith See in 2000 in advance of Keith Misquadace's case. See Turvey, *supra* note 338, at 3. Turvey had been in the basement of the Dollar Lake Store and evaluated the crime scene personally as part of his evaluation of the case for Edith See. *Cousins Interview 5/23/24*.

³⁴⁰ *BCA Lab Report 3/13/98*, *supra* note 38, at 9.

³⁴¹ Netzel, *supra* note 70, at 26; see Turvey, *supra* note 338, at 15.

(a) Glass evidence suggests that the basement window was not the actual point of entry.

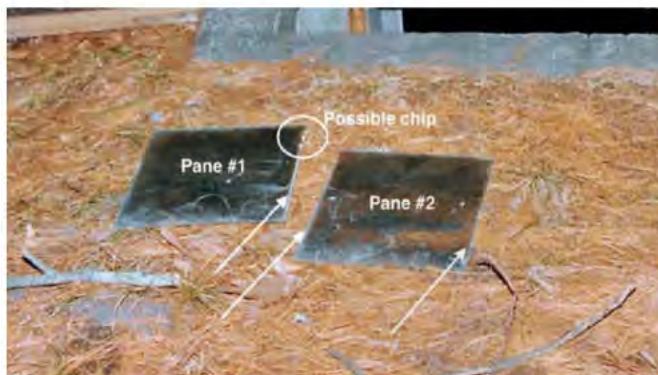


Figure 14 – Photograph 2 from Netzel Report



Figure 15 - Photograph 24 from Netzel report

Three windowpanes were removed from the south window; two were intact and discovered outside in the yard (Figure 14), while one was broken and found in the basement (Figure 15).³⁴² Additionally, small glass fragments were identified in the window well (Figure 16).³⁴³

Most of these glass pieces in the window well were less than 25 millimeters.³⁴⁴ No miniscule glass fragments, however, were noted inside the basement.³⁴⁵ This is significant because when a plate glass window breaks, it



Figure 16 - Photo 4 with marker 3 identifying small glass pieces from Netzel Report



Figure 17 - Photograph 26 from Netzel Report

shatters at the point of impact.³⁴⁶ The majority of the broken glass will move in the same direction as the force causing the break, while some will move in the opposite direction.³⁴⁷ One study found that striking a plate glass window with a smooth round object will create hundreds of glass fragments between .25 and .5

³⁴² See Netzel, *supra* note 70, at 7, 21.

³⁴³ *Id.* at 13.

³⁴⁴ See *id.* at 8.

³⁴⁵ See *id.* at 24.

³⁴⁶ *Id.* at 23.

³⁴⁷ *Id.*

millimeters in size.³⁴⁸ If the assailant entered into the Dollar Lake Store by breaking the south basement window with force from outside, one would expect to find small pieces of glass inside and directly below the window.³⁴⁹ Similarly, the large glass shards found in the basement depicted in *Figure 15* have a break pattern that is inconsistent with an impact break like that featured in *Figure 17*.³⁵⁰

One possible way to reconcile the scene is that the intruder removed each pane of the window with careful precision, successfully removing two from the window frame by meticulously chipping away the glazing putty that kept the glass in place. The intruder would have had to use enough force to break the putty away, but not so much force to shatter the glass plate in a manner that would result in hundreds of glass fragments as depicted in *Figure 17*.



Figure 18 - Photograph 11 from Netzel Report

The white flakes in *Figure 18* are likely window glazing putty or caulk.³⁵¹ They were resting on the top surface of other debris in the window well, consistent with being recently deposited.³⁵² The toolmarks as depicted in *Figures 19* and *20* suggest that the panes of glass were removed from inside.³⁵³ Specifically, the chip marks on the inside of the wooden window frame suggest the windowpanes were pried off and

dismantled from inside the basement.³⁵⁴ If an intruder made these marks to gain entry into the store from outside, the tool marks would have been on the exterior of the window frame instead of the interior of the window frame where they were observed.³⁵⁵

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ *Id.*

³⁵¹ *Id.* at 13.

³⁵² *Id.*

³⁵³ Turvey, *supra* note 338, at 13.

³⁵⁴ *Id.*

³⁵⁵ *Id.*

The experts' findings are incongruent with the prosecutor's theory, that these men happened upon the Dollar Lake Store after consuming large amounts of alcohol.³⁵⁶ It is unlikely that the individuals who had been driving for hours while consuming alcohol would have the patience and dexterity to release the windowpanes in this manner.



Figure 19 – BCA crime scene photo of south basement window frame



Figure 20 – BCA crime scene photo of south basement window frame

(b) Evidence pertaining to the laths suggests that the basement window was not the point of entry.

Two one-inch by three-inch laths were nailed to the inside of the basement window frames of the Dollar Lake Store on the night of the murder, as depicted in *Figure 21*.³⁵⁷ The south basement window still had a portion of the bottom lath attached to the window frame at the time the forensic team conducted its analysis.³⁵⁸



Figure 21 - BCA crime scene picture of an undisturbed basement window

³⁵⁶ See *Pippitt Trial*, *supra* note 1, at 18.

³⁵⁷ *BCA Lab Report 3/13/98*, *supra* note 38, at 9.

³⁵⁸ *Id.*

The cylindrical marks on the interior edges of the frame as well as the tool marks on the underside of the laths suggest a screwdriver was used to pry out the laths.³⁵⁹ To bend the nails to the extent as depicted in *Figure 23* requires rotation of the lath beyond ninety degrees, past the right side of the window frame.³⁶⁰ To produce the toolmarks and bent shape of the nails as depicted in *Figure 22* and *Figure 23*, the intruder would have had to pry the laths from inside the store.³⁶¹ To perform this work in the tight space of the window well from outside the store—without leaving trace evidence deposits on the window frame or boxes stacked below the window—would have been extremely difficult.³⁶² No trace evidence deposits were found.

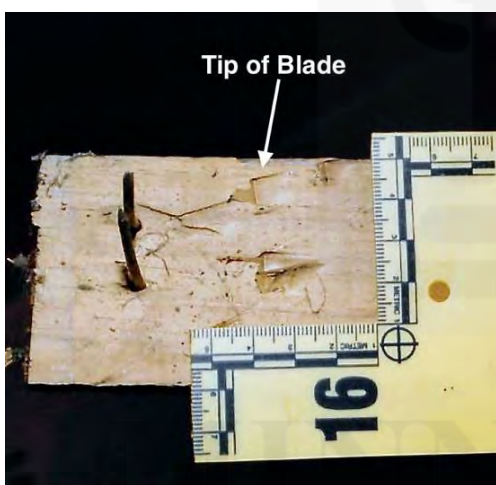


Figure 22- Photograph 19 from Netzel Report

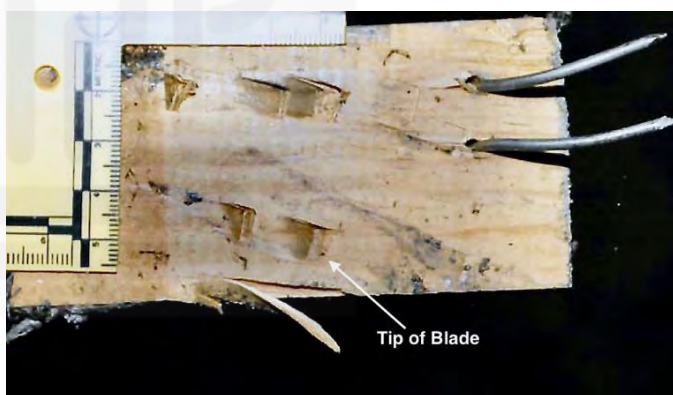


Figure 23 - Photograph 18 from Netzel Report

³⁵⁹ Netzel, *supra* note 70, at 17; see *BCA Lab Report 3/13/98*, *supra* note 38, at 9.

³⁶⁰ Netzel, *supra* note 70, at 18-19.

³⁶¹ *Id.* at 19.

³⁶² *Id.* Bjerga testified that the window well dimensions were eighteen inches wide, two-feet by three-inches deep, and two-feet by ten-inches long. See *Pippitt Trial*, *supra* note 1, at 247.

(c) Lack of trace evidence suggests that the basement window was not the point of entry.

Entry through the broken south basement window would have likely left some trace evidence.³⁶³ The broken muntins exposing raw wood which are encircled in *Figure 24*, appear to



Figure 24 – Photograph 25 from Netzel Report

have sharp points.³⁶⁴ Similarly, a nail juttred out from the outer jamb of the exterior window frame and the splintered edge of the portion of the bottom lath remained attached to the window frame as shown in *Figure 25*.³⁶⁵ These barbs framed the window opening, creating the potential to snag, scrape, and cut.³⁶⁶

Trace evidence was, in fact, collected from the window frame, as illustrated by marker 2 in *Figure 26*. The forensic laboratory concluded, however, that item 2 consisted only of “animal hairs and spider web[s].”³⁶⁷ The only blood collected near the scene—on a piece of glass found inside the basement and on the window well wall—belonged to a cat.³⁶⁸ Kaldun referred to the blood as “bright,” suggesting it was deposited within a day or two.³⁶⁹



Figure 25 – Photograph 25 from Netzel Report

³⁶³ Netzel, *supra* note 70, at 22.

³⁶⁴ *Id.*

³⁶⁵ *Id.*

³⁶⁶ See *Store Diagram*, *supra* note 72, at 2.

³⁶⁷ Netzel, *supra* note 70, at 12 (referencing BCA forensic laboratory bench notes from Forensic Scientist Laura Nelson); see *BCA Lab Report 3/19/99*, *supra* note 107, at 5.

³⁶⁸ *Pippitt Trial*, *supra* note 1, at 248.

³⁶⁹ *Id.* at 398.

This underscores the unlikelihood that one of the charged five men passed through this window. The forensic evidence collected at the scene shows that a cat was unable to navigate through the window without getting cut by the glass, leaving traces of blood and fur behind.



Figure 26 - BCA crime scene photograph of south window well

blotted with footprints.³⁷¹

Therefore, it would have been highly implausible for a human being as large as the men accused in this case to have passed without leaving evidence behind.³⁷⁰ More to this point, there were no leaves or debris transferred into the basement as would be expected with someone squeezing through such a small space, nor were any of the boxes stacked immediately below the window crushed, trampled, or even

(d) Placement of items suggests the crime scene was staged.

One of the most significant findings that each of the experts made was that the intruder took the time and care to stage the crime scene to make it appear as though the south basement window was the entry point.³⁷² Two of three glass panes were outside on the ground and largely intact.³⁷³ The third glass pane was broken and discovered on the dirt floor inside the basement to the right side of four stacks of boxes.³⁷⁴ The broken glass appeared to be a result of dropping, not forceful impact.³⁷⁵ If the window was



Figure 27 – Photo 23 from Netzel report

³⁷⁰ Raymond testified at the grand jury proceeding that he was five-foot, ten inches and weighed 250 lbs. *Grand Jury Proceedings, supra* note 8, at 464. He testified that Donald was six-three or six-four, weighing 260 or 270 lbs. *Id.* Neil King was “smaller” than Raymond and about 150 or 160 lbs. *Id.* Finally, Brian Pippitt was over six feet tall, weighing about 280 lbs. *Id.*

³⁷¹ Turvey, *supra* note 338, at 9-10.

³⁷² Netzel, *supra* note 70, at 26; Turvey, *supra* note 338, at 15.

³⁷³ Netzel, *supra* note 70, at 19.

³⁷⁴ *See id.* at 9, photo 5; *see id.* at 21.

³⁷⁵ *Id.* at 25

broken from outside, the glass shards could not have made it past the stacks of boxes and V8 juice containers depicted in *Figure 27* and could not have done so without leaving miniscule shards along the way.³⁷⁶

Netzel summed up her staging analysis as follows:

*Like items were placed within close proximity to each other and neatly arranged. On the outside of the south window, the two panes of glass were side by side in the same orientation; the two lath boards were side by side with their lengths parallel to the building; the storm window from the southeast, main floor window was resting against the building and within inches of the window well versus nearer the window it came from; the muntins are side by side and in the same orientation; the large shards of glass are also lying next to each other on the box with the muntins and on the floor below this box. Remarkably, all of the shards of glass visible in crime scene images are lying flat and do not overlap at all. This is not consistent with breaking and entering that would typically take seconds to minutes but is consistent with staging that required a prolonged effort.*³⁷⁷

2. The prosecutor's theory at trial was incongruous with the evidence.

Bradley Rhodes was the lead prosecutor and Aitkin County Attorney at the time of the Pippitt trial.³⁷⁸ He joined the Aitkin County Attorney's Office as an assistant county attorney in 1988.³⁷⁹ Rhodes was appointed to Aitkin County Attorney in 1992, and then was elected for two four-year terms.³⁸⁰ Murtha, Pippitt's trial defense attorney, defeated Rhodes for re-election in 2002.³⁸¹ In 2007, Rhodes was disbarred from the practice of law in Minnesota.³⁸²

The primary concern with Rhodes's conduct in this case is that he presented a case theory that conflicted with objective evidence.³⁸³ He did so in at least four ways. First, he presented

³⁷⁶ See Turvey, *supra* note 338, at 10; Netzel, *supra* note 70, at 20.

³⁷⁷ Netzel, *supra* note 70, at 24. Dr. Turvey arrives at a similar conclusion. See Turvey, *supra* note 338, at 15. For a visual aide of Netzel's summation, see Appendix A.

³⁷⁸ See generally *Pippitt Trial*, *supra* note 1; Bentley, *supra* note 105 (establishing Bradley Rhodes was County Attorney at the time of the case).

³⁷⁹ *Former Aitkin County attorney disbarred*, AITKINAGE.COM, Nov. 7, 2007, https://www.messagemedia.co/aitkin/news/former-aitkin-county-attorney-disbarred/article_174e70c9-4f93-5fe7-b3fe-351f9bfec8b3.html (last visited Jan. 21, 2024).

³⁸⁰ *Id.*

³⁸¹ *Id.*

³⁸² In re: Petition for Disciplinary Action Against Bradley C. Rhodes, no. A04-2252, Nov. 1, 2007, pg 3. Rhodes was disbarred for "repeated neglect of client matters and noncommunication with clients, his financial misconduct involving \$5,000 in client funds, his failure to obey the conditions of the prior disciplinary probation, and his repeated failure to cooperate with the disciplinary process." *Id.* at 12. He also had three instances of prior professional discipline for similar misconduct. *Id.* at 3.

³⁸³ The American Bar Association sets the standard on how prosecutors should approach criminal cases:

evidence to the jury that suggested the front door was not deadbolted, which was contradicted by photographic evidence of the crime scene. Second, he offered the jury testimony that beer and cigarettes were stolen from the store, which was also contradicted by photographic evidence. Third, he presented testimony from Raymond which was unreliable. Fourth, he presented unreliable testimony from Peter Arnoldi, person with a documented history of dishonesty and who was experiencing psychosis near the time he testified.

(a) The prosecutor presented unreliable evidence that the front door was not deadbolted.

First responders found the front door locked when they arrived at the scene of the murder.³⁸⁴ The front door of the store had two locking mechanisms: a deadbolt lock and a doorknob lock; a key was required to engage the deadbolt, while the doorknob lock did not require a key.³⁸⁵ None of the first responders' reports, however, specify whether the door was locked by deadbolt, doorknob, or both. Investigators found the key that Evelyn routinely used to operate front door's deadbolt hanging in its normal spot on a nail in the wall behind the cash register.³⁸⁶

Raymond told investigators during his April 30, 1999, interview that Keith, Donald and Pippitt all came out of the front door of the store after the burglary/murder.³⁸⁷ In fact, Raymond said the front door was "wide open."³⁸⁸ At the grand jury proceeding, Beck confirmed this, testifying that in their confessions, both Raymond and Donald stated consistently that the front door was opened to let Pippitt into the store.³⁸⁹ One grand juror noted the potential incongruity

The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict. The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances. The prosecutor should seek to protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants. American Bar Association, Criminal Justice Standards for the Prosecution Function, Standard 3-1.2(b), Fourth Edition (2017).

³⁸⁴ *BCA Lab Report 3/13/98, supra* note 38, at 8; *Grand Jury Proceedings, supra* note 8, at 172 (quoting Deputy Drahota saying "Deputy Turner stated ...both the front and the rear door were locked"; *Pippitt Trial, supra* note 1, at 175 (quoting Undersheriff Turner as saying "[W]hen I arrived at the scene I ... checked the doors to see if the doors were unlocked or locked and found both doors were locked."))

³⁸⁵ *See Grand Jury Proceedings, supra* note 8, at 228-229

³⁸⁶ *Grand Jury Proceedings, supra* note 8, at 207.

³⁸⁷ *See Raymond Interview 4/30/99, supra* note 203, at 8-9, 10, 35.

³⁸⁸ *Id.* at 35.

³⁸⁹ *Grand Jury Proceedings, supra* note 8, at 138.

between the testimony that the door was locked upon investigators' arrival and Raymond's testimony that the door was wide open during the crime:

- G. Juror:* Was the dead bolt locked, or the bottom [knob] locked?
Beck: (No response).
G. Juror: You can't lock a dead bolt going out the door. You've got to do it with a key.
Beck: I'm not sure how to respond.
Rhodes: Well, I think you have already answered the question. The key was found in the position that it was normally found in.
G. Juror: That's [not] what I meant. You can't lock the door on the way out. The key was hanging there.
Rhodes: Not the dead bolt?
G. Juror: Right.
G. Juror: Which one was locked?
Rhodes: I don't know that this witness can answer that.
Beck: Yea, that would be best.
G. Juror: You said that you needed a key on the inside and outside both on that dead bolt?
Beck: Yes, sir.³⁹⁰

Rhodes then questioned Bjerga at the grand jury proceeding regarding the front door:

- Rhodes:* As we sit here today, are you able to say whether that dead bolt had been locked or not?
Bjerga: I have an idea that it was, but I can't specifically say that it was, or that it was not. The dead bolt was not locked, the door knob, I believe, was.
Rhodes: Okay. So, it was possible to turn the knob and lock the bottom lock and exit, and the door would lock behind you?
Bjerga: Right. You need the key, though, to lock that dead bolt.
Rhodes: All right. Why do you believe the dead bolt was not locked?
Bjerga: Because of two individuals that were involved in this particular incident have both told us that they know Keith Misquadace opened the door to allow Brian Pippitt and either Donald Hill or Raymond Misquadace into the store. They both are consist[ent] when they say that, when the perpetrators exited the store, they used the front door. There is no way to lock that door behind you, once you are outside of that building, unless you have a key to do so, with a dead bolt. You can do it with the door handle lock.³⁹¹

³⁹⁰ *Grand Jury Proceedings*, supra note 8, at 207-208.

³⁹¹ *Id.* at 228-229.

Based on his testimony, Bjerga did not appear to rely on any other supporting evidence – direct or circumstantial – to reach his conclusion that the deadbolt was not locked. Despite’s Bjerga’s belief, evidence supports the conclusion that the deadbolt was, in fact, engaged. First, photographic evidence suggested the door was deadbolted. *Figure 28* and *Figure 29* depict the inside front door of the Dollar Lake Store with the deadbolt engaged. Edith See, Keith’s attorney, knew this was a potential vulnerability in the prosecutor’s case, and had a photo of the engaged deadbolt enlarged as a demonstrative aid for Keith’s trial.³⁹² When she met with Rhodes to negotiate a plea during jury selection, See showed Rhodes the exhibit.³⁹³ See said Rhodes took the exhibit and threw it at her, hitting See in her chest.³⁹⁴ See said she knew, based on Rhodes



Figure 28 – BCA photo of crime scene – interior front door to Dollar Lake Store

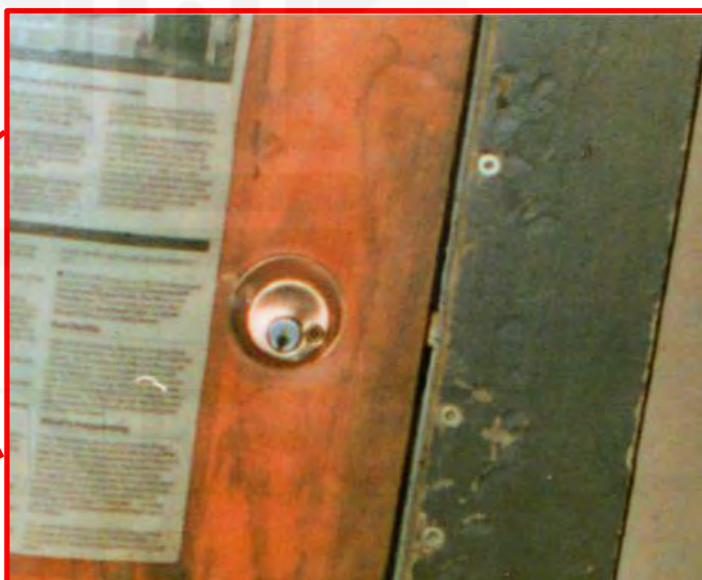


Figure 29– BCA photo of crime scene – interior front door to Dollar Lake Store (zoomed)

outburst, that this was a point of frustration for him.³⁹⁵

Additionally, Norma suggested that the door was deadbolted in her trial testimony, as she described Evelyn’s typical bedroom routine:

*[W]e would go down there and lock the outside door because she’d always lock the screen. Then we would lock the inside door and hang the key up and we’d go on out the back, the back door, and she’d lock it from the inside.*³⁹⁶

³⁹² Interview with Edith See, attorney for Keith Misquadace, telephone (May 17, 2023) [hereinafter *See CRU Interview 5/17/23*].

³⁹³ *Id.*

³⁹⁴ *Id.*

³⁹⁵ *See id.*

³⁹⁶ *Pippitt Trial, supra* note 1, at 65.

Implicit in this statement is that Evelyn hung up the key—the key that was required to operate the lock from inside and outside the front door—each night after locking the deadbolt. When Rhodes asked if Evelyn would lock herself in, Norma testified “Yes, she did.”³⁹⁷ Further, Norma said Evelyn was particularly aware of the need to lock herself in on the day of her murder. Presumably after her interaction with Terry Peet, Evelyn told Norma, “[W]e’ve got to start watching the place and locking the doors because we’ve got a person living up here now.”³⁹⁸

Murtha and Beck had a somewhat contentious exchange at Pippitt’s trial, highlighting the sensitivity regarding the deadbolt issue:

Murtha: Investigator Beck, you were asked by my investigator whether the front door was dead-bolted when you got there and you declined to answer that question, is that correct?

Rhodes: Object, Your Honor, that’s not relevant.

Court: Overruled. Go ahead.

Beck: I told him the information was in the discovery.

Murtha: You declined to answer the question, is that correct?

Beck: I told him I would not respond, yeah.

Murtha: Okay. I’m going to ask you the question now. Was the door dead-bolted when you got there?

Beck: I don’t know.

Murtha: Did you later learn that the door was dead-bolted?

Beck: I don’t know.

Murtha: Did you investigate that?

Beck: I later looked at the door and the lock, yes.

Murtha: And how much later?

Beck: I don’t recall the specific date, but it was after the door was pick[ed] up from the Dollar Lake Store and returned to our office.

Murtha: So they took the door off?

Beck: Yes, sir.

Murtha: That’s when you inspected it?

Beck: Yes.

Murtha: But not before?

Beck: I did not.

Murtha: Did any of your team?

Beck: I can’t state specifically that someone on the team looked specifically at the dead bolt.

Murtha: Now, you are charged with the entire investigation, correct?

Beck: Yes, sir.

Murtha: So you had to know about it if someone did or didn’t, correct?

Beck: That’s correct.

³⁹⁷ *Id.* at 39-40.

³⁹⁸ *Id.* at 37.

Murtha: Did anybody file a report with you saying that they did?
Beck: No, sir, I do not recall any reports stating specifically whether the dead bolt was locked or unlocked.³⁹⁹

Rhodes ultimately reconciled Raymond's testimony regarding Pippitt exiting the front door of the store and evidence that the door was deadbolted in three ways: (1) cross-examining the defense investigator; (2) recalling Merle Malin to testify about his mother's habits; and (3) keeping the door out of the sight of the jury.

(1) The prosecutor cross-examined the defense investigator to suggest the front door was not deadbolted.

First, Rhodes cross-examined Mike Kirt, the defense investigator who testified at Pippitt's trial to lay the foundation for the photo depicted in *Figure 28*.⁴⁰⁰

Rhodes: And you didn't see the door to the Dollar Lake Store in February of 1998?
Kirt: No.
Rhodes: With respect to those photos, there's an area of gold near the lock, is that correct?
Kirt: Yes, sir.
Rhodes: Is that what the photos were blown up to show?
Kirt: I believe so.
Rhodes: Okay. You can't tell us as you sit here what that is, can you?
Kirk: Appears to be the dead bolt activated.
Rhodes: As far as the door?
Kirt: Yes.
Rhodes: You can't say that's the dead bolt for sure?
Kirt: I think if someone looked --
Rhodes: Can you say for sure that's the dead bolt?
Kirt: No.
Rhodes: Can you say for sure it isn't a strike plate?
Kirt: Excuse me.
Rhodes: Can you say for sure it isn't a strike plate?
Kirt: No, I can't.⁴⁰¹

Stanley Paluski, a forensic locksmith, provided an expert opinion based on BCA's pictures of the door—the same ones for which Kirt laid the foundation at trial.⁴⁰² Paluski opined

³⁹⁹ *Id.* at 610-611.

⁴⁰⁰ *Pippitt Trial*, *supra* note 1, at 553-554.

⁴⁰¹ *Id.*

⁴⁰² See generally Stanley Paluski, Expert Opinion re Deadbolt, State v. Pippitt, K4-99-325, undated.

that the photos “all clearly show the deadbolt is locked.”⁴⁰³ In response to Rhodes’s questions about the strike plate, Paluski stated:

*One would not be able to see the strike plate that is recessed onto the door jamb in the area of the deadbolt. The strike plate (a metal component that the deadbolt slides into) is recessed into the door jamb and not visible.*⁴⁰⁴

Further, in an interview with the CRU, Paluski explained that even if you could see the metal from the strike plate, it would be much larger than the deadbolt.⁴⁰⁵ In fact, the strike plate would be approximately the same length as the round locking mechanism which houses the keyhole, as depicted in *Figure 30*.⁴⁰⁶

(2) The prosecutor elicited unreliable testimony from Merle Malin to prove the deadbolt was not locked.

Second, Rhodes recalled Merle to testify about his mother’s door locking habits. Specifically, he testified that every night his mother would get the key from behind the cash register, go to the front door, and “put the key in the door and then lock the bottom knob and take the key out.”⁴⁰⁷ He testified that his mother “couldn’t” engage the deadbolt of the front door with the key due to sag in the door causing a misalignment.⁴⁰⁸ He also testified that the locking mechanism in the knob was a “button to push in” and once pushed in, the door was locked.⁴⁰⁹

Merle’s testimony is unreliable for several reasons. First, Evelyn would have no reason to retrieve the key each night, as he testified, if she could not lock the deadbolt; a key was not needed to push in the button to lock the door according to his testimony. Second, no other witness ever mentioned that Evelyn had difficulty deadbolting her door other than Merle, who



Figure 30 – Photo of locking mechanism for deadbolt and strike plate in evidence

⁴⁰³ *Id.* at 3.

⁴⁰⁴ *Id.*

⁴⁰⁵ Interview with Stanley Paluski, forensic locksmith, (Nov. 7, 2023)

⁴⁰⁶ *Id.*

⁴⁰⁷ *Pippitt Trial*, *supra* note 1, at 510.

⁴⁰⁸ *Id.*

⁴⁰⁹ *See id.* at 511.

had lived over 1,000 miles away from his mother for decades and had not stepped foot in the store for months leading up to his mother's death.⁴¹⁰ Contrary to Merle's testimony, Horsman told the CRU that he knew Evelyn had no problem deadbolting her doors.⁴¹¹ Third, Merle testified incorrectly about other aspects of the case—such as what was taken from the store—discussed at length below.

Contrary to his previous testimony, in 2006, Merle testified at Pippitt's postconviction hearing that Evelyn could lock the deadbolt and all other locks in the store by herself.⁴¹² Regardless of whether Merle's testimony was indicative of intentional fabrication or simply misremembering, Rhodes should have known that Merle's trial testimony was unreliable based on its incongruency with objective evidence.

(3) The prosecutor kept the door out of the sight of the jury.

Some evidence in Pippitt's file suggests that Rhodes actively concealed the door. Specifically, a note from the County Attorney's Pippitt case file indicates that Rhodes did not want the door to be brought into the courtroom, as depicted in *Figure 31*. Without more information, it is difficult to know exactly why Rhodes did not want to bring the door into the courtroom.

Figure 31 – Aitkin County Attorney Office file note from the Pippitt case

One theory is that Rhodes did not want it brought up because he told Murtha it was missing. In his interview with the CRU, Murtha said that when he asked Rhodes to see the door prior to trial, Rhodes told him either they did not have it or they could not find it.⁴¹³ Similarly, when Cousins asked to see the door as part of his investigation years later, the Aitkin County

⁴¹⁰ See *Pippitt Trial*, *supra* note 1, at 200, 203.

⁴¹¹ *Horsman CRU Interview*, *supra* note 82, at 18:44-19:50, 20:08-20:24. Harold Horner, son of Norma Horner, also signed a sworn declaration stating “[Evelyn] was capable of locking [the front door deadbolt lock with a key].” Declaration of Harold Dean Horner, October 5, 2021.

⁴¹² *Pippitt Postconviction Review Proceeding*, *supra* note 296, at 26.

⁴¹³ Interview with Tom Murtha, Trial Defense Attorney, Microsoft TEAMS (Nov. 17, 2023) at 00:29:55-00:31:55 [*hereinafter Murtha CRU interview*]. Murtha, however, has proven to be somewhat of a poor historian and provided other inaccuracies based on his memory of the case. For example, Murtha said that he received “nothing” about Arnoldi prior to his testimony at Pippitt’s trial other than that he may have been on a witness list. *Id.* at 00:36:50-00:39:50. However, according to filings, Arnoldi’s transcribed interview with Beck was disclosed in advance of trial. State Discovery Disclosure, *State v. Pippitt*, K4-99-325, Nov. 13, 2000, at 19 [*hereinafter Discovery Disclosure*].

Undersheriff told Cousins in a letter that he could not find the door or the locking mechanism, despite their protocol to retain all evidence in homicide cases.⁴¹⁴ Attorney See, however, said she did see the door and the locking components, and that Rhodes made it available for her to see upon her request.⁴¹⁵ It is unclear whether See was permitted to see the door and lock before or after the incident with the exhibit.

(b) The prosecutor presented unreliable evidence that beer and cigarettes were stolen from the store.

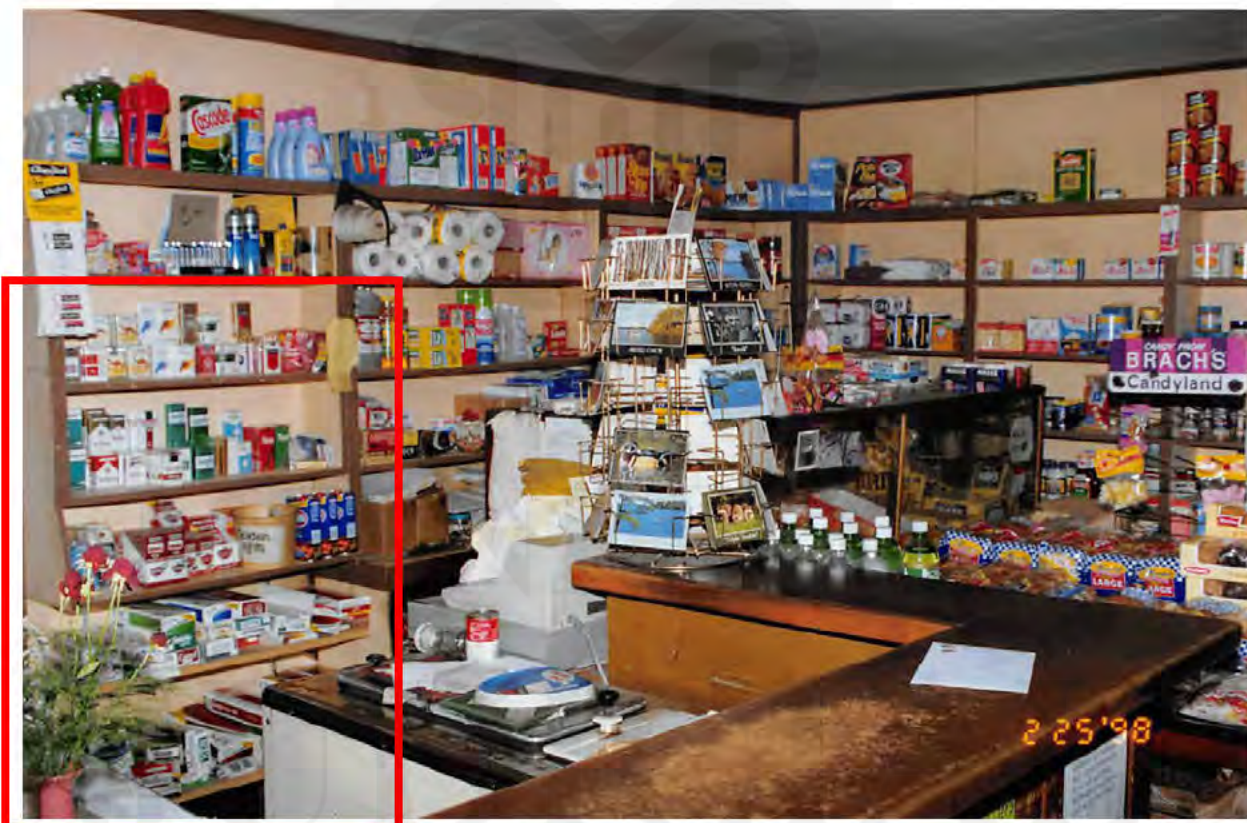


Figure 32 – BCA crime scene photo of inside the Dollar Lake Store, with a red rectangle framing rows of cigarettes

Rhodes's theory at trial was that the defendants entered the closed Dollar Lake Store to get beer and cigarettes.⁴¹⁶ In accordance with this theory, Rhodes presented testimony at trial that beer and cigarettes were stolen from the store.⁴¹⁷ Photographs taken the morning after the

⁴¹⁴ Letter from John Drahota, Aitkin County Undersheriff, to Jim Cousins, Pippitt's defense counsel (Apr. 10, 2015).

⁴¹⁵ Interview with Edith See, attorney for Keith Misquadace, telephone (Nov. 30, 2023) [hereinafter *See CRU Interview 11/30/23*].

⁴¹⁶ *Pippitt Trial*, *supra* note 1, at 18.

⁴¹⁷ *Id.* at 289-294, 343-345.

murder, depicted in *Figures 32 and 33*, however, indicate that the shelves of the Dollar Lake Store were undisturbed.



Figure 33 – BCA crime scene photo of inside the Dollar Lake Store

Merle testified at Pippitt’s trial that beer was taken from a cooler in the Dollar Lake Store.⁴¹⁸ He explained that the whole bottom compartment of that cooler was six packs of beer and all of it but for “two six packs left way at the back” were missing.⁴¹⁹ Merle was specifically referring to the cooler next to the pinball machine, identifying it on a trial exhibit as depicted in *Figure 34*.⁴²⁰ He also testified that the best selling beer was primarily kept under the pinball machine so that Evelyn could restock the cooler easily without the need to retrieve beer from the basement.⁴²¹ He

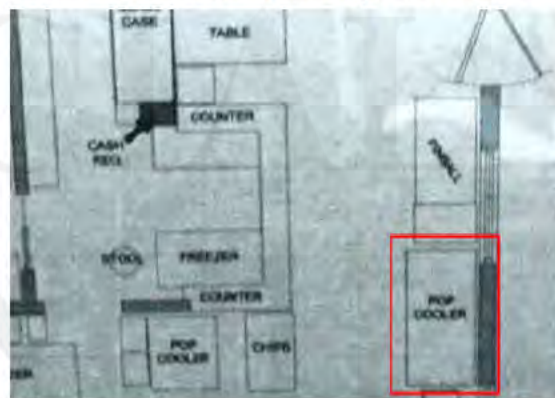


Figure 34 – A diagram of the Dollar Lake Store with red box added for emphasis.

⁴¹⁸ *Pippitt Trial*, *supra* note 1, at 293.

⁴¹⁹ *Id.* at 293-294.

⁴²⁰ *Id.* at 295 (“The record is going to reflect that the cooler [Merle] has been pointing to is ... adjacent to ... the pinball machine, item labeled pinball.”)

⁴²¹ *Id.* at 297-298.

seemed to indicate at trial that beer was missing from there, too.⁴²² Merle also testified that “rows of cigarettes” were missing from the store.⁴²³



Figure 35 – Still frame from BCA crime scene walkthrough



Figure 36 – Still frame from BCA crime scene walkthrough

The BCA’s photographs and videotaped walkthrough of the crime scene, however, directly contradict Merle’s testimony. *Figure 35*, depicting the cooler next to the pinball machine, undermines Merle’s testimony that all beer but for “two six packs left way at the back” of the bottom compartment of the cooler were missing. The still image shows a stocked cooler, brimming with items.

Similarly, *Figures 35, 36, 37 and 38* show stacks of canned products neatly arranged beneath the pinball machine. Given the volume of stock stacked under the machine, it is difficult



Figure 37 – BCA crime scene photo (zoomed)



Figure 38 – BCA crime scene photo (zoomed)

to understand how Merle could conclude anything was missing from there. *Figures 37 and 38* show that the canned items depicted underneath the pinball machine were soda pop and not beer, as Merle testified. *Figure 39*, a photo of a different cooler in the Dollar Lake Store, shows that the packaging of Old Milwaukee is distinct from the plastic shrink-

⁴²² See *id.* at 294 (“In this area (indicating) there was beer missing also.”).

⁴²³ *Id.* at 289.



Figure 39 – BCA crime scene photo of a cooler inside the Dollar Lake Store

wrapped cans nestled on cardboard pallets stacked under the pinball machine. Raymond said they stole Old Milwaukee beer⁴²⁴ which was still cold.⁴²⁵

Moreover, Horsman’s interview with investigators contradicts Merle’s testimony about the missing beer and cigarettes. Horsman told Beck on February 26, 1998, that the last time he had “taken care of the stock” was “that very night [the night of the murder].”⁴²⁶ He was clear that the all the stock was intact, and none was missing.⁴²⁷

Figures 32 and 40 support Horsman’s statements, showing stacked shelves full of various brands of cigarettes. Moreover, Horsman told the CRU in an August 2023

interview that, “I think Merle was trying to make a bigger case against them by saying things were missing.”⁴²⁸

Horsman’s statement is more credible than Merle’s testimony on the topic of missing stock, especially considering that Merle had been living in Albuquerque, NM, for the past 30 years and only visited Evelyn once a year.⁴²⁹ Merle’s testimony that beer and cigarettes were missing appeared to be pieced together from his mother’s habits and practices of stocking over the years.⁴³⁰ Most telling, Merle was not even in Minnesota when the murder occurred and the stock was inventoried.



Figure 40 – BCA crime scene photo of cigarettes inside the Dollar Lake Store

⁴²⁴ See, e.g., *Raymond Interview 4/28/99*, supra note 121, at 15-16; *Raymond Interview 4/30/99*, supra note 203, at 24-25.

⁴²⁵ *Pippitt Trial*, supra note 1, at 456.

⁴²⁶ *Horsman Interview 2/26/98*, supra note 82, at 3.

⁴²⁷ *Id.*

⁴²⁸ *Horsman CRU Interview*, supra note 82, at 57:02-57:11.

⁴²⁹ *Pippitt Trial*, supra note 1, at 291.

⁴³⁰ *Id.*

(c) The prosecutor presented Raymond Misquadace’s unreliable testimony.

The most damning piece of evidence against Pippitt was Raymond’s confession and subsequent trial testimony, which implicated Pippitt as a leading participant in the burglary-murder. Raymond, however, has since recanted his confession and now admits he was not present nor has first-hand knowledge of the crime.⁴³¹ For the reasons outlined below, Raymond’s confession and testimony are unreliable and do not support Pippitt’s conviction.

(1) Raymond provided an unreliable confession.

In 2021, years after Raymond had served his sentence for his purported participation in the murder of Evelyn, Raymond stated in a sworn, signed statement that he was not involved in any manner with the death and robbery of Evelyn Malin, that he was not at the store or with any of the co-accomplices on February 24, 1998.⁴³² In an interview with the CRU, Raymond said that he was in Bagley during the time of the murder.⁴³³

Raymond stated that he confessed to being involved in the crime to avoid a lengthy prison sentence.⁴³⁴ Raymond also said that he named Pippitt, Donald, Keith and King in his initial confession because investigators “already had those names” so Raymond “told them what they wanted to hear.”⁴³⁵ Raymond stated that prior to his confession, Bjerga told Raymond that all of the other co-accomplices had already made statements against Raymond.⁴³⁶ Because Raymond was questioned so many times, he remembered “little stuff . . . that [investigators] would point out that they said they knew what happened.”⁴³⁷ This allowed him to give investigators a narrative that investigators were ultimately satisfied with.⁴³⁸ Ultimately, Raymond

⁴³¹ Affidavit of Raymond Misquadace, *Pippitt v. State*, Jul. 16, 2021 [hereinafter *Raymond Affidavit*]; *see also Raymond CRU interview 8/18/23, supra* note 188.

⁴³² *Raymond Affidavit, supra* note 431, at 1.

⁴³³ *Raymond CRU interview 8/18/23, supra* note 188, at 00:48:25. Emma Hatfield, Raymond’s grandmother, told Bjerga and Rhodes—on separate occasions—that she did not remember Raymond leaving Bagley around that time despite his confession. Transcript of Interview by Dave Bjerga with Emma Hatfield, ICR # 98-476 (May 27, 1999) at 7 [hereinafter *Hatfield Interview 5/27/99*]; Transcript of Deposition of Emma Hatfield at 11-12, *State v. Pippitt, K4-99-325* (Jan. 12, 2000) [hereinafter *Hatfield Deposition*]. In that same deposition, however, Ms. Hatfield said that Raymond admitted to her that he was involved in the death. *Id.* at 8.

⁴³⁴ *Raymond Affidavit, supra* note 431, at 1; *see Raymond CRU interview 8/18/23, supra* note 188.

⁴³⁵ *Raymond Affidavit, supra* note 431, at 1-2.

⁴³⁶ *Raymond CRU interview 8/18/23*, at 00:15:00-00:17:00, 01:00:00.

⁴³⁷ *Id.* at 01:38:15, 01:10:00.

⁴³⁸ *See id.*

said he confessed because investigators told him multiple people had implicated him in the crime, his plea of innocence were rejected, and he was offered leniency.⁴³⁹

Dr. Larry White, a Professor of Psychology at Beloit College and an expert on false confessions, concluded that Raymond Misquadace falsely confessed to police investigators and testified falsely at Pippitt's trial.⁴⁴⁰ One of the reasons Dr. White believes Raymond falsely confessed was due to techniques investigators used during his interrogations.⁴⁴¹

Interrogators may also use inducements, including incentives, to convince a suspect that they will be better off if they confess and worse off if they do not.⁴⁴² The intended effect is to lead the suspect to view a confession as the most expedient means of escape.⁴⁴³ Interrogators may also use minimization, a technique in which an interrogator may offer a subject sympathy and moral justification for committing the crime.⁴⁴⁴ One study has shown that when an interrogator used both inducement and minimization together, 43% of factually innocent people who participated in the study confessed to misconduct they did not commit.⁴⁴⁵ Those with low intelligence, as well as those who are youthful or immature, are particularly vulnerable to false confessions.⁴⁴⁶ According to the National Registry of Exonerations, 435 exoneration cases in the United States had identified false confession as a contributing factor to the wrongful conviction.⁴⁴⁷

At the time of his interrogations in this case, Raymond was 22 years old.⁴⁴⁸ Bjerga and Barker first interviewed Raymond on February 18, 1998.⁴⁴⁹ Bjerga took the lead in the interview.⁴⁵⁰ Bjerga told Raymond:

But we're just having some real problems not putting you there. Because the information we're getting is real credible. Now here, here's what the deal is. We've gone to the county attorney . . . and we've told the county attorney what we've got. And he's ready to start charging people. But the only thing he wants to know is, who's in and who's out.

⁴³⁹ *Id.* at 01:03:45, 01:22:00.

⁴⁴⁰ Larry White, *Ray Misquadace's Confession in the Malin Murder Case*, Dec. 4, 2023, at 24.

⁴⁴¹ *Id.* at 23.

⁴⁴² *Id.* at 7.

⁴⁴³ Saul Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, LAW HUM. BEHAV. 3, 7 (2010).

⁴⁴⁴ *Id.* at 12.

⁴⁴⁵ White, *supra* note 440, at 8.

⁴⁴⁶ *Id.* at 9.

⁴⁴⁷ Email from Jessica Weinstock Paredes, Denise Foderaro Research Scholar, National Registry of Exonerations, to Carrie Sperling, Director of Minn. Attorney General's Conviction Review Unit (Jan. 18, 2024).

⁴⁴⁸ Mayron, *supra* note 160.

⁴⁴⁹ *See generally Raymond Interview 2/18/99, supra* note 190.

⁴⁵⁰ *Id.*

*And whoever the first person is that gives us good credible information about what happened that night . . . is going to get the best deal. And that's the seat that you're sittin' in right now, Raymond. That's the seat that you got, and it's yours only.*⁴⁵¹

There is no indication from the file that Rhodes was ready to start charging anyone at this point in the investigation. A review of the evidence collected at this point in the investigation suggests that there was not enough evidence to charge anyone with the murder.

Bjerga also told Raymond the following during the first interview:

*This is falling down on you and a couple other guys. And you know who I'm talking about. And we need to hear from you what happened that night. And what it's called, Raymond, it's called the first hog to the trough. If you're the first hog at a trough, you get the most to eat. You get the best meal. That's where we're at on this investigation...Like I said before, no one knows that we're up here talking to you today. And we can keep this between us for as long as possible. But we need to hear from you what I think it, what I think it is. I think you're the least responsible for this whole thing. Because I don't see you goin' in and doing that. I've done some background on you. I don't see you goin' in and doing this. Like it happened.*⁴⁵²

...

*And there's no doubt in my mind that you were there at the time it happened, but you didn't have anything to do with it. That's what's in my mind. Now you gotta tell me something different than that.*⁴⁵³

After Raymond repeatedly denied involvement, Bjerga stated:

*All right. Even if you weren't there, and you talked to someone who has told you to give us the story about the Misquadaces, and now you're sticking with that story, that shows misdirection. You're, you're once again, you're an accessory after the fact to a murder...And you're looking at half the sentence of a first-degree murder. Half the sentence of a first-degree murder is 20 years in prison. And I want you to be very comfortable with that before we leave here because the only thing I can guarantee you is that we are going to make arrests on this case. And I don't wanna see you get in front of this deal and get run over if you have no reason to.*⁴⁵⁴

Raymond maintained his innocence throughout.⁴⁵⁵ Before ending the interview,

Raymond agreed to take a polygraph to clear his name.⁴⁵⁶

⁴⁵¹ *Id.* at 9.

⁴⁵² *Id.* at 10-11.

⁴⁵³ *Id.* at 13.

⁴⁵⁴ *Id.* at 19.

⁴⁵⁵ *See generally id.*

⁴⁵⁶ *Id.* at 22.

Investigators returned to administer the polygraph and continue with Raymond's interrogation on April 28, 1999.⁴⁵⁷ They had administered seven other polygraph examinations in this case at this point in the investigation. Raymond would be given the last of the exams. Polygraphs were administered to Kristopher Radtke—an early suspect,⁴⁵⁸ Keith Misquadace,⁴⁵⁹ Jason Whiting—another alternative suspect lead,⁴⁶⁰ Donald Hill,⁴⁶¹ Brandon Misquadace,⁴⁶² Brian Pippitt,⁴⁶³ and Raymond Misquadace.⁴⁶⁴ Terry Peet had also been administered a polygraph, but the results of that exam were never documented in any reports provided to the CRU.⁴⁶⁵ Of those who were administered the polygraph, four had results of “deception indicated”: Whiting, Brandon, Pippitt, and Raymond. Whiting and Brandon were never charged. Keith and Donald both “passed” the polygraph with “no deception indicated,” yet were charged. Bjerga explained his philosophy regarding polygraphs in his interview with the CRU:

*[Polygraph] is an investigative tool. That's the way BCA has always treated it. There [are] other agencies that want to rely on it...They want to rely on that tool and keep focusing on that person or not focusing on them or whatever it is. And for us, it's a way to open up the conversation.*⁴⁶⁶

The charging decisions in this case fit with Bjerga's approach to polygraph results. There does not appear to be any correlation between the results of the polygraph examination for each suspect who took the test and whether that suspect was charged.

Bjerga began his second interview of Raymond on April 28, 1999, referencing Raymond's failed polygraph exam:

Okay, Ray, here's the deal; just like Dan said, ah, there were some problems with the test [the polygraph] and I don't think it's probably any surprise to ya that there were

⁴⁵⁷ *Alquist Report 4/28/99, supra* note 168.

⁴⁵⁸ *See generally* Robert Berg, BCA Report of Investigation, Inv. #98000062, Mar. 10, 1998 [hereinafter *Berg Report 3/10/98*].

⁴⁵⁹ *See generally* *Alquist Report 2/17/99 re Keith*, *supra* note 168.

⁴⁶⁰ *See generally* Dan Alquist, BCA Report of Investigation re Whiting, Inv. #98000062, Feb. 17, 1999 [hereinafter *Alquist Report 2/17/99 re Whiting*].

⁴⁶¹ *See generally* *Alquist Report 3/16/99_1245, supra* note 168.

⁴⁶² *See generally*, *Alquist Report 3/16/99_1520, supra* note 168.

⁴⁶³ *See generally*, *Berg Report 3/24/99, supra* note 168.

⁴⁶⁴ *See generally*, *Alquist Report 4/28/99, supra* note 168.

⁴⁶⁵ *See Beck Report 3/17/98, supra* note 56, at 38. The CRU made a records request to the BCA for: copies of all documents, files, video/audio recordings, and data associated with the polygraph examinations performed for Bureau Number 98000062, “Evelyn Malin Homicide Investigation.” This request includes any information regarding the examinations for: Kristopher Radtke, Jason Whiting, Donald Hill, Brandon Misquadace, Raymond Misquadace, Keith Misquadace, Brian Pippitt, and any others who had polygraph examinations conducted as part of this investigation.

Carman Leone, Letter to BCA for Polygraph Data, Oct. 3, 2023.

⁴⁶⁶ *Bjerga CRU Interview, supra* note 213, at 1:30:38-1:31:06.

*some problems with passing this test, because there is some things that you know about this that we now need to know.*⁴⁶⁷

Bjerga continued:

*And it's time for you to understand that it's over. It's all over. People know what happened inside that store. People know who was involved...and before you bury yourself any deeper on this thing [tell us] specifically what happened and what you did before the other people tell us something different, cuz I wanna get you out there first...*⁴⁶⁸

...

*Because I think that you probably have . . . the least responsibility and that ah, there's some things that work in your favor on this thing, Okay?*⁴⁶⁹

Raymond then told Bjerga that he “wasn’t there” and “didn’t do it.”⁴⁷⁰ Bjerga responded:

*We know everything we need to know right now, as far as whether you were there or not. The test told us that; ah, another person that was there told us that. So we're, we're beyond the part, Ray, where I wasn't there, I don't know anything about it. We're beyond that...*⁴⁷¹

...

*It's now [sic] in anybody else's hands from Sandy Lake or East Lake or anybody. It's sitting right in front of you what you wanna do with the rest of your life...*⁴⁷²

...

*I don't think that you're understanding the importance of you telling us what you saw and what you heard at the store that night. You have to really understand that. You're putting your future in the hands of someone else who doesn't care about you or your future...And you're relying on them to keep their mouth shut about what happened at the store that night and it's not happening, [Ray], because someone has already told us about what happened at the store that night. Now . . . don't let somebody, who doesn't care about you, decide the next how ever [sic] many years of your life. Take charge of your own life and tell us about what happened that night and who you were with. That's what we really need to know.*⁴⁷³

...

And we need to work through this together, Ray. Like I said, we're not here to judge you. We are here to collect information. And that's all that it is. And I just think that something bad happened that night and it was supposed to be a burglary and, and Mrs.

⁴⁶⁷ Raymond Interview 4/28/99, *supra* note 121, at 1.

⁴⁶⁸ *Id.* at 1.

⁴⁶⁹ *Id.* at 2.

⁴⁷⁰ *Id.*

⁴⁷¹ *Id.* at 3.

⁴⁷² *Id.*

⁴⁷³ *Id.* at 5.

*Malin ah , discovered . . . you guys in the store. And that's what, that's what I think happened.*⁴⁷⁴

One interpretation of the transcripts of Bjerga's interrogations of Raymond is that Bjerga was using techniques that induced Raymond's confession.⁴⁷⁵

According to Dr. White, one way to assess the reliability of a suspect's confession is to analyze the "fit" between the suspect's account and the known crime facts.⁴⁷⁶ If the confession fits the crime facts or leads to new evidence of guilt, then the confession is reliable insofar as it tends to prove the guilt of the suspect.⁴⁷⁷ If the suspect cannot provide an accurate description of the crime facts, or provides an account that is full of errors and contradicts independent evidence, the confession is unreliable.⁴⁷⁸

Raymond was unable to provide information to investigators that only he could have known as being a participant in the crime.⁴⁷⁹ For example, during his initial confession, Raymond could not identify who first mentioned going to the Dollar Lake Store.⁴⁸⁰ He could not tell investigators what the others said about what happened to Evelyn while in the store or how she was killed.⁴⁸¹ Raymond denied seeing a screwdriver that night, or whether anyone could have gone through one of the basement windows,⁴⁸² even though evidence at the crime scene suggested that a flat-headed screwdriver was used in the commission of the crimes.⁴⁸³ Raymond denied hearing anything from inside the store.⁴⁸⁴ He could not remember who carried beer and cigarettes out of the store.⁴⁸⁵

The little detail that Raymond did provide came, in part, from information Bjerga gave Raymond during questioning. For example, Raymond told investigators in each of his interviews about the murder-burglary, starting with his confession of April 28, 1999, that beer

⁴⁷⁴ *Id.*

⁴⁷⁵ White, *supra* note 440, at 15-24.

⁴⁷⁶ *Id.* at 10.

⁴⁷⁷ *See id.*

⁴⁷⁸ *See id.*

⁴⁷⁹ *See id.*

⁴⁸⁰ *See Raymond Interview 4/28/99, supra* note 121, at 6.

⁴⁸¹ *Id.* at 8.

⁴⁸² *Id.* at 14.

⁴⁸³ *See supra* footnotes 353 to 355, *infra* footnotes 736 to 739 and accompanying text.

⁴⁸⁴ *Id.* at 36.

⁴⁸⁵ *Id.* at 39.

and cigarettes were stolen from the store.⁴⁸⁶ Bjerga, however, first told Raymond beer and cigarettes were missing during the February 18, 1999, interview:

*What happened that night was some guys broke in to steal some cigarettes and some cash, ah, maybe some beer. This old lady surprises 'em. She starts making some noise. And somebody's gotta put her down.*⁴⁸⁷

When Raymond repeated back the same theory Bjerga provided him during his confession on April 28, 1999, Bjerga stated “[t]hat’s what we’ve thought all along, is that this is just a - - something happened to Mrs. Malin during the course of a burglary.”⁴⁸⁸

Bjerga imbedded additional details in his questions to Raymond, some of which Raymond incorporated in later statements. For example, Bjerga told him during the interrogation on April 28, 1999, but before Raymond confessed, that “*I think that something went bad that night...*”⁴⁸⁹ This narrowed the timeframe of the criminal activity for Raymond to strictly being in the night. During questioning regarding how Raymond could have seen anything if it was dark, Bjerga asked “*do you recall if there’s yard light at the place, in the front?*” to which Raymond responded, “*Yea, I’m pretty sure there was a yard light right in the front of the store there.*”⁴⁹⁰ Raymond later testified before the grand jury that “*there must have been a yard light or something*” that allowed him to see around the car pretty well.⁴⁹¹ Raymond later clarified for a grand juror that he “*d[idn’t] know exactly where it could have been, but [he] figured there was one.*”⁴⁹² At Pippitt’s trial, Raymond recalled a “*little light outside*” the store.⁴⁹³

Bjerga asked a series of additional leading questions which had the potential to contaminate: “*Ever see a screwdriver that night? Was there a screwdriver in the car?*”⁴⁹⁴; “*Do you have any idea if those guys could’ve gone through one of those basement windows? Okay, if, if, if they did, you don’t know about it?*”⁴⁹⁵; “*All right. And there was a plan there -- maybe not a plan -- maybe some people just took it upon themselves to enter the store. Is that what happened?*”⁴⁹⁶

⁴⁸⁶ See *infra* footnotes 898, 906, 907, 920, 931, 932, 947, 951, 952, 953, 963, 964, 974 and accompanying text.

⁴⁸⁷ *Raymond Interview 2/18/99, supra* note 190, at 15.

⁴⁸⁸ *Raymond Interview 4/28/99, supra* note 121, at 10.

⁴⁸⁹ *Id.* at 2.

⁴⁹⁰ *Id.* at 57.

⁴⁹¹ *Grand Jury Proceedings, supra* note 8, at 499.

⁴⁹² *Id.* at 524.

⁴⁹³ *Pippitt Trial, supra* note 1, at 336.

⁴⁹⁴ *Raymond Interview 4/28/99, supra* note 121, at 14.

⁴⁹⁵ *Id.*

⁴⁹⁶ *Id.* at 34.

Bjerga also repeatedly told subjects of interrogation, including Raymond, to “*think real hard*” when he asked about a pivotal piece of evidence: “[t]hink real hard, when they went in the store, Ray, think real hard if you can recall them - - actually seeing them go in the store.”⁴⁹⁷ “All right. I need you to think real hard again, too.....the store was closed, you said? Is that right?”⁴⁹⁸; “You have to think real hard here Raymond [about details], because what is happening is this is sounding like your first statement,”⁴⁹⁹; “When Keith went around the corner, think real hard, when Keith was going around out of your sight, was he carrying anything in his hands?”⁵⁰⁰; “Think real hard again. Is there anything else you saw them remove from the store other than beer and cigarettes?”⁵⁰¹

There is no documented evidence to suggest that Bjerga provided Raymond the names of the co-defendants charged in the case before Raymond named them, as Raymond claims. There is, evidence, however, that Bjerga provided the names to Donald Hill on the day of his confession. On April 29, 1999, Bjerga and Beck interrogated Donald twice—first unrecorded, then recorded.⁵⁰² According to Beck’s notes, Bjerga appeared to provide Donald key details during the unrecorded interrogation. Beck took notes and included them in his written report (Bjerga’s statements/questions are in bold):

DB: Brought up Raymond being there

DH: Denied Ray’s presence

DB: Don and Ray were picked up that night by others...who picked them up.

DH: (long pause)

DB: Keith..

DH: (nodded his head in agreement)

DB: Where did they go

DH: Drove all over the place

DB: Who else was in the car

DH: (pause)

DB: Neil, Fats, Keith and Ray... “is that right?”

DH: Yes, uh huh

DB: Did you stop for beer anywhere overtime

DH: (pause) can’t remember

⁴⁹⁷ *Id.* at 14.

⁴⁹⁸ *Id.* at 15.

⁴⁹⁹ Interview by Dave Bjerga and Bruce Beck with Raymond Misquadace, Part 1, Inv. #98000062 (May 27, 1999) at 00:08:15 [hereinafter *Raymond Interview 5/27/99 – part 1*]. There is a second part to this interview due to the manner in which the recording is made. See generally, Interview by Dave Bjerga and Bruce Beck with Raymond Misquadace, Part 2, Inv. #98000062 (May 27, 1999) [hereinafter *Raymond Interview 5/27/99 – part 2*].

⁵⁰⁰ *Id.* at 00:09:47.

⁵⁰¹ *Id.* at 00:12:40.

⁵⁰² *Beck Report 5/12/99, supra* note 204, at 3-5.

DB: Did you go to any other towns

DH: Just around here

DB: Later you ended up at the store to get beer, who got out of the car?

DH: Brian, Ray and Keith, I got out of the car but didn't go in.

DB: How did they get inn [sic]

DH: I don't know, Keith opened the door from the inside and let them in

DB: Where was the car parked

DH: Along side the store

DB: Would you draw a map

DH: (draws map at this time)

DB: How did Keith get in the store

DH: I don't remember

DB: Think hard, a window

DH: I heard glass busting

DB: Did you see a screwdriver in the car

DH: No

DB: Keith opened the door from the inside

DH: Then Brian, Ray went inside

DB: How long were they inside

DH:

DB: They came out with what

DH: Cigarettes and beer

DB: Did they have a gun

DH: Thought Keith did, a long gun

DB: What was the plan

DH: Just talking about beer and cigarettes

DB: When is the first time you knew something happened to Ms. Malin

DH: The next day

DB: Think hard, you went to somebody's house, "Did you go to Walter's"

DH: I remember going to Wanda's house

DB: Anyone there

DH: No, Brian was staying there

DB: Everyone knew within minutes what happened to Ms Malin, I need to know what happened, I want the truth...the facts

DH: Keith and Brian were doing all the talking, they said she came out and caught them, surprised them. Keith said he hit her with whatever he had in his hand

DB: When he left, who was the driver

DH: Neil

DB: What car was it

DH: Gramma's car, four door bluish color

DB: Does Agnes have it

DH: No, Stanley Chief took it to the Cities and crashed it

DB: What about tennis shoes

DH: The shoes that were given to dad

DB: Did you see Neil go in

DH: I never saw Neil go in

DB: Did Keith go in alone

DH: Yes, then opened the front door for them

DB: I told you about physical evidence from the scene and looking for truthfulness. What happens if physical evidence puts you in the store, if you were there I need to know.

DH: I wasn't there, no prints inside

DB: When you left, which direction did you go

DH: Towards Tamarack, then to Horeshoe Lake road

DB: How many smokes were taken

DH: A plastic green garbage bag of smokes

DB: What about beer

DH: I seen a lot of beer

DB: What we need to do is take a taped statement now and protect you and me. To hear your words and cooperation, not just something I wrote down. To show people Don isn't trying to hide from this, he's doing what's right voluntarily cause it's the right thing to do.⁵⁰³

Beck confirmed with the CRU that his notes were accurate and as close to exactly what was said as possible, including the form and manner of questioning.⁵⁰⁴ According to Beck's notes, Bjerga was the first one to name each of the accomplices for Donald before Donald identified them. The notes also suggest that Bjerga provided Donald several crime facts, including: that entry was made through a window, that a screwdriver was used, that a gun was stolen, and that they went to Raymond's father's house after the murder.⁵⁰⁵ When confronted with these notes in his interview with the CRU, Bjerga said he did not remember the interview with Donald going that way "at all" and that the report "give[s] [him] pause."⁵⁰⁶

It is important to note that there is no evidence that the CRU has reviewed that suggests Bjerga, Beck, or any law enforcement officer involved in Evelyn's investigation set out to coerce anyone into confessing or intended to elicit a false confession in this case.⁵⁰⁷ The investigation team appears to have applied techniques that were widely acceptable at the time, techniques these investigators were likely trained to use in the course of their careers, which have likely

⁵⁰³ *Id.* (emphasis added).

⁵⁰⁴ See *Beck CRU Interview Part 2*, *supra* note 158, at 00:24:20-00:26:18.

⁵⁰⁵ *Beck Report 5/12/99*, *supra* note 204, at 4.

⁵⁰⁶ *Bjerga CRU Interview*, *supra* note 213, at 01:16:02-01:16:19.

⁵⁰⁷ It is also important to note, however, that in 1984, a Minnesota District Court found that Bjerga had elicited an involuntary and coerced statement from a person he suspected of intrafamilial criminal sexual conduct. *State v. Gard*, 358 N.W.2d 463, 467 (Minn. Ct. of App. 1984). In *Gard*, Bjerga told the defendant during a non-custodial interview that several options were open and that just because defendant talked to Bjerga did not necessarily mean he was going to face jail. *Id.* at 465. Bjerga also indicated that "if charges are brought, counseling could be part of the court's disposition." *Id.* The Court of Appeals found that "[c]onsidering that intrafamilial sexual misconduct was the focus of the investigation, any suggestion of lenience had a heavy impact on [the defendant]." *Id.* at 468.

been used successfully in previous cases. Despite their best intentions, however, the techniques may have produced an unreliable confession. Thanks to relatively recent scrutiny of these techniques, we are now able to identify errors from decades ago. Therefore, the criticism in this finding is focused on the interrogation technique used in generating confessions, and not necessarily on the individual investigators.

(2) Raymond’s confession and testimony at trial are uncorroborated.

None of Raymond’s accounts regarding his participation in the burglary-murder are sufficiently corroborated. For example, Raymond told investigators during his initial confession that he got picked up around 3:00p.m or 4:00p.m,⁵⁰⁸ and that they stopped by his Aunt Wanda’s on Sandy Lake.⁵⁰⁹ There is no available documented evidence that Wanda Misquadace corroborated this part of Raymond’s account. Raymond said that before going to the Dollar Lake Store, they stopped at the Village Pump, where Pippitt purchased an 18-pack of Budweiser.⁵¹⁰ There is no available documented evidence that anyone from the Village Pump has ever corroborated this fact. At the Dollar Lake Store, Raymond said he was “pretty sure” Pippitt kicked in the front door to the store to get inside.⁵¹¹ There was no available documented damage to the front door of the store. Raymond remembered Keith said he pushed Evelyn down.⁵¹² There is no documented evidence of Keith ever admitting to this; Keith has denied all involvement in the murder.⁵¹³ Raymond said the type of beer they took from the store was Old Milwaukee, which had a red and white label.⁵¹⁴ The greater weight of the evidence suggests no beer was stolen, as discussed above.⁵¹⁵

Raymond also said they went to his dad’s old house after they left the store and took Route 65 to get there, and that Howard Martin was at the house when they arrived.⁵¹⁶ Howard testified at Pippitt’s postconviction review hearing, however, that he never visited that house

⁵⁰⁸ See *Raymond Interview 4/28/99*, *supra* note 121, at 30.

⁵⁰⁹ *Id.* at 32.

⁵¹⁰ *Id.* at 49.

⁵¹¹ *Id.* at 35.

⁵¹² *Id.* at 45.

⁵¹³ *Keith’s Affidavit*, *supra* note 319, at 1.

⁵¹⁴ *Raymond Interview 4/28/99*, *supra* note 121, at 16. This is probably the most significant point that Raymond makes. The Dollar Lake Store did carry Old Milwaukee beer, but whether any was missing from the store remained a point of dispute and conflicting testimony.

⁵¹⁵ See *supra* footnotes 416 through 430 and accompanying text.

⁵¹⁶ *Raymond Interview 4/28/99*, *supra* note 121, at 17, 41.

around time of the Malin murder.⁵¹⁷ After leaving Raymond's father's old house, Raymond said that he and Donald went to Kathy Hill's house.⁵¹⁸ There is no available documented evidence that Kathy Hill corroborated this part of Raymond's account.

The only corroboration that was used or referenced by Rhodes came in the form of corroborating testimony by Donald Hill and Peter Arnoldi. For the reasons outlined below, neither constitute reliable corroboration today.

i. Donald Hill does not corroborate Raymond's account.

Rhodes argued at the grand jury proceedings that Donald Hill's confession corroborated Raymond's.⁵¹⁹ Rhodes also indicated in his opening statement at Pippitt's trial that he was going to call Donald to elicit testimony regarding the burglary-murder that matched Raymond's.⁵²⁰ Donald, however provided information on April 29, 1999, that conflicted with Raymond's confession the day before. For instance, Raymond reported that they drove a Toronado,⁵²¹ and later, a gold, two-door car.⁵²² Donald Hill described the car they drove as a dark blue, four-door Sunfire.⁵²³ Additionally, as depicted in *Figures 41, 42, and 47* in Appendix E, Donald and Raymond gave conflicting statements regarding how the car was parked and who sat where in the vehicle.

Raymond never stated he saw a screwdriver in any of his statements; Donald, however, initially denied seeing a screwdriver before eventually admitting that he saw Keith grab a screwdriver.⁵²⁴ Raymond stated did not go in the store, but that Donald did; Donald stated that he did not go in the store, but Raymond did.⁵²⁵ Raymond said that they went to the former home of his father via route Highway 65, while Donald said they went to Wanda's home via a gravel road.⁵²⁶

⁵¹⁷ *Pippitt Postconviction Review Proceeding*, *supra* note 296, at 47.

⁵¹⁸ *Raymond Interview 4/28/99*, *supra* note 121, at 50.

⁵¹⁹ *See Grand Jury Proceedings*, *supra* note 8, at 14.

⁵²⁰ *See Pippitt Trial*, *supra* note 1, at 17-18.

⁵²¹ *Raymond Interview 4/28/99*, *supra* note 121, at 15.

⁵²² *Raymond Interview 5/27/99 – part 1*, *supra* note 499, at 00:04:05.

⁵²³ *Donald Interview 4/29/99*, *supra* note 206, at 4-5.

⁵²⁴ *Raymond Interview 4/28/99*, *supra* note 121, at 14. *Compare Beck Report 5/12/99*, *supra* note 204, at 4, with Transcript of Interview by Dave Bjerga and Bruce Beck with Donald Hill, ICR # 98-476 (Jan. 26, 2000) at 6-8 [hereinafter *Donald Interview 1/26/00*].

⁵²⁵ *See, e.g., Grand Jury Proceedings*, *supra* note 8, at 137.

⁵²⁶ *Id.* at 140.

Similarly inconsistent, Raymond testified at Pippitt's trial that Pippitt carried a long object—perhaps a gun—out of the store,⁵²⁷ while Donald's narrative points to Keith as carrying a gun out of the store.⁵²⁸ Raymond stated in one of his accounts that Donald came out of the store carrying a light-colored shopping bag.⁵²⁹ Donald, however, said Pippitt was carrying a green garbage bag upon his exit from the store.⁵³⁰

Rhodes never called Donald to the stand to testify. Moreover, Donald recanted his participation in the crime shortly after he confessed. On April 29, 1999, Donald confessed to being with the group at the scene of the murder.⁵³¹ On or about May 13, 1999, Donald recanted and said he was not with the group, was not in the area, and that he was simply covering for someone else when he confessed days before.⁵³² On November 21, 2023, Donald told the CRU that at the time of the murder, he was three hours away working at Shooting Star Casino in Mahnommen, MN.⁵³³

Donald Hill's inconsistencies, along with the evidence of contamination of his confession by Bjerga and his recantations render Donald's prior statements sufficiently unreliable to corroborate Raymond's confession or subsequent statements.

ii. Peter Arnoldi does not corroborate Raymond's account.

At Pippitt's trial, the Court determined that Peter Arnoldi's testimony provided sufficient evidence to corroborate Raymond's.⁵³⁴ Arnoldi testified to admissions Pippitt allegedly made about his involvement in the murder.⁵³⁵ During his testimony, Arnoldi testified that Pippitt said he "helped hold [Evelyn] down while somebody else stuffed toilet paper or kleenix [sic] into the lady's mouth."⁵³⁶ No investigative report described Kleenex or toilet paper being stuffed into Evelyn's mouth, however. The medical examiner never reported this.

⁵²⁷ *Pippitt Trial*, *supra* note 1, at 344.

⁵²⁸ *Donald Interview 1/26/00*, *supra* note 524, at 10; *see also Donald Interview 4/29/99*, *supra* note 206, at 11-12.

⁵²⁹ *Raymond Interview 6/3/99*, *supra* note 552, at 12-13.

⁵³⁰ *Donald Interview 4/29/99*, *supra* note 206, at 11.

⁵³¹ *See generally Donald Interview 4/29/99*, *supra* note 206.

⁵³² Donald Hill, Letter of Recantation (undated). The letter is stamped May 13, 1999, but its not clear this is the day it was written by Donald, the date it is received as evidence in the investigation, or both. *Id.*

⁵³³ *Donald CRU Interview*, *supra* note 144, at 00:33:58. This information has not been independently verified.

⁵³⁴ *Pippitt Trial*, *supra* note 1, at 629-630.

⁵³⁵ *Id.* at 491-495.

⁵³⁶ *Id.* at 491.

The criminal complaint did, however, contain the following language based on the medical examiner's findings:

*In his provisional report Michael B. McGee, MD, Medical Examiner who performed the autopsy indicated the cause of death as asphyxia with multiple **soft tissue** injuries due to manual strangulation with blunt trauma due to assault. In the final autopsy protocol Dr. McGee details **soft tissue** injuries associated with manual strangulation and multiple blunt traumatic injuries to the scalp region, facial region, and upper extremities as well as closed head trauma.*⁵³⁷

Arnoldi admitted to having read Pippitt's complaint.⁵³⁸ Pippitt also testified in his postconviction relief hearing that he allowed Arnoldi to read the complaint.⁵³⁹

Moreover, Arnoldi told Beck in a pretrial interview that Pippitt had told him: some of the accomplices were Pippitt's cousins and some were not;⁵⁴⁰ they took the van that belonged to Pippitt's mother;⁵⁴¹ one of the accomplices was from the cities and another was from Deerwood;⁵⁴² after the murder they left and went back to Pippitt's mother's house;⁵⁴³ and a couple of the accomplices involved were named Hill.⁵⁴⁴ These statements conflict with incontrovertible facts of the case.⁵⁴⁵

In 2020, Arnoldi walked back his testimony against Pippitt at trial. Specifically, Arnoldi stated in a deposition with Pippitt's defense lawyers that "[a]fter several months of having been shown evidence by [Jim] Cousins, the investigator on this case, I believe that what I believed at that time to be true is not true."⁵⁴⁶ He further explained that Cousins showed him "facts" like "they did not put Kleenex or toilet paper" in Evelyn's mouth and that "there was no breaking and entering to enter the building."⁵⁴⁷ Therefore, Arnoldi concluded, "I now believe that Brian Pippitt

⁵³⁷ *Pippitt Complaint*, *supra* note 215, at 1 (emphasis added).

⁵³⁸ *Pippitt Trial*, *supra* note 1, at 503.

⁵³⁹ See *Pippitt Postconviction Review Proceeding*, *supra* note 296, at 113.

⁵⁴⁰ Transcript of Interview by Bruce Beck with Peter Arnoldi, ICR # 98-476 (Jul. 15, 1999) at 3 [hereinafter *Arnoldi Interview 7/15/99*].

⁵⁴¹ *Id.* at 4.

⁵⁴² *Id.*

⁵⁴³ *Id.* at 10.

⁵⁴⁴ *Id.* at 13.

⁵⁴⁵ In addition to the factual errors he made in his pretrial interview and testimony at Pippitt's trial, Arnoldi also told a federal judge at his sentencing hearing approximately ten months after Pippitt's trial that "[Evelyn] was choked to death with Kleenex and raped and killed, so I felt that was wrong...The only thing that I was hoping for was a downward departure to at least, like, ten years..." Transcript of Sentencing at 25, *United States v. Arnoldi*, Crim. No. 00-307 (Oct 2, 2001). There was no evidence that Evelyn was sexually assaulted at or near the time of her murder.

⁵⁴⁶ *Arnoldi Deposition*, *supra* note 623, at 7.

⁵⁴⁷ *Id.* at 8.

at the time was telling me what he was accused of, and at the time he was telling me this, I believed he was telling me what they did.”⁵⁴⁸

Although Arnoldi once provided sufficient corroboration to Raymond’s testimony against Pippitt at trial, the facts as they stand today suggest that Arnoldi’s trial testimony is unreliable and does not corroborate Raymond’s confession or subsequent testimony.

(3) Raymond’s confession and testimony conflict with each other and other evidence in the case.

In addition to lacking corroboration, Raymond’s confession and subsequent statements about his involvement have insufficient indicia of reliability to be of any probative value. Raymond would be questioned at least nine times concerning his knowledge of the crime.⁵⁴⁹ Details that he provided about the events surrounding the murder changed over the course of those statements. For example, regarding the car they drove that day, Raymond first describing the car as a Toronado in his April 28, 1999 interview.⁵⁵⁰ On May 27, 1999, he described the car as being his grandmother’s gold-colored, two-door car.⁵⁵¹ Six days later, he said the car was either his grandmother’s or his aunt’s.⁵⁵² When Bjerga asked whether “it belonged to Agnes Chief,” Raymond agreed, saying “at the time it did, yeah.”⁵⁵³

Other parts of Raymond’s account also changed. Appendix C’s *Table 2* details the way Raymond’s testimony evolved in five topics: the direction the getaway car was parked while at the store; what Raymond heard while at the store; the items Raymond saw that were stolen from the store; how Raymond’s purported accomplices exited the store after the burglary/murder; and what the purported accomplices discussed after the commission of the crime. Each of the columns of *Table 2* depicts the evolution of a topic, while each row represents a specific recorded statement Raymond made about each topic. These five topics are just some of the ways, among others, in which Raymond’s story changed.

⁵⁴⁸ *Id.*

⁵⁴⁹ Raymond was interrogated on Feb 18, 1999; April 28, 1999, April 30, 1999, May 27, 1999; June 3, 1999; and April 12, 2000. He gave sworn testimony at a legal proceeding on June 4, 1999 (grand jury proceedings); October 27, 1999 (Neil King’s trial); January 23, 2001 (Brian Pippitt’s trial). See discussion *infra* Appendix C; Transcript of Interview by Bruce Beck with Raymond Misquadace, ICR #98-476 (Apr. 12, 2000) at 1.

⁵⁵⁰ *Raymond Interview 4/28/99*, *supra* note 121, at 15.

⁵⁵¹ *Raymond Interview 5/27/99 – part 1*, *supra* note 499, at 00:04:05.

⁵⁵² Transcript of Interview by Dave Bjerga with Raymond Misquadace, Inv. #98000062 (Jun. 3, 1999) at 19 [hereinafter *Raymond Interview 6/3/99*].

⁵⁵³ *Id.*

Not only are Raymond's accounts inconsistent with one another on key detail, his overall narrative conflicts with other evidence in the case. For example, it seems unlikely that this group of co-defendants would voluntarily spend time together. According to Keith, Raymond was rumored to be "looking" for Keith at that time because he wanted to "kick [his] ass" for unclear reasons.⁵⁵⁴ Keith also mentioned in his interview with the CRU that Raymond was unwelcomed by the Misquadace side of the family because he was believed to be "touching" Keith's sisters around the 1993 to 1994 timeframe.⁵⁵⁵ Similarly, Donald wrote in his recantation letter that Ray "hates me so bad it aint [sic] funny."⁵⁵⁶

Further, it is puzzling why Donald would deny involvement in the crime but name Keith and Pippitt as suspects in his interview on February 2, 1999, if all three were actually part of the crime; this essentially would amount to Donald's self-incrimination because his accomplices could easily and credibly implicate him, too.⁵⁵⁷ Similarly, it makes no sense that Raymond would tell investigators on February 18, 1999, that he heard rumors that Keith and Pippitt were responsible for the murder⁵⁵⁸ when this information would simply lead investigators right back to Raymond if he was truly involved in the murder.⁵⁵⁹ The same is true for Keith; to implicate Donald and Raymond in his interview on February 17, 1999, would be to implicate himself.⁵⁶⁰ While there appeared to be strained relationships among these men, it seems unlikely that each of these three accomplices would independently self-sabotage and risk a murder conviction just to spotlight the other.

Raymond's account also conflicts with timing facts. Raymond testified at Pippitt's trial that the group of five, after leaving Aunt Wanda's house in Sandy Lake, stopped to buy beer at the Village Pump in Tamarack in the "early evening."⁵⁶¹ It was "still light out," according to

⁵⁵⁴ *Keith Interview 2/17/99*, *supra* note 143, at 5.

⁵⁵⁵ Interview with Keith Misquadace, co-accused, telephone (Nov. 21, 2023) at 00:09:18 [*hereinafter Keith CRU interview*].

⁵⁵⁶ Donald Hill, Letter of Recantation (undated), *supra* note 532.

⁵⁵⁷ *See generally Donald interview 2/2/99*, *supra* note 121.

⁵⁵⁸ *Raymond Interview 2/18/99*, *supra* note 190, at 3, 20.

⁵⁵⁹ In fact, Bjerga makes this point in his interview with Donald Hill on Apr. 29, 1999. *Donald Interview 4/29/99*, *supra* note 206, at 19 ("Because you had told us before about Keith and Brian and I was just curious why you would name those two guys when you also were there. I was curious why you would do that because you know that those two people could point the finger at you also.") Donald's response was "cause they were the ones that went in and mostly did it..." and agreed with Bjerga when he said "you told me about Keith and Brian because they are the ones that put down Mrs. Malin." *Id.*

⁵⁶⁰ *Keith Interview 2/17/99*, *supra* note 143, at 4-5.

⁵⁶¹ *Pippitt Trial*, *supra* note 1, at 329.

Raymond.⁵⁶² Then, intending to go to a party in Cloquet, they continued east along Highway 210, but never made it; they instead turned around in Sawyer and headed back to Sandy Lake.⁵⁶³ The driving distance from the Village Pump in Tamarack, to Sawyer, then to the Dollar Lake Store, totals 59 miles.⁵⁶⁴ Sunset in Tamarack on February 24, 1998, was at 5:52p.m.⁵⁶⁵

The faintest possible light might have been seen as late as 7:31p.m.⁵⁶⁶ Evelyn Malin was killed no earlier than 9:40p.m.; customer Bradley Haussner bought cigarettes from her as she was closing.⁵⁶⁷ The latest the group could have been in Tamarack with it being “still light out,” therefore, was 7:31p.m. Further assuming that the group arrived at the Dollar Lake Store immediately after Haussner departed shortly after 9:40p.m., it would have taken two hours, nine minutes to drive from Tamarack to Sawyer to the Dollar Lake Store, all on paved state or county

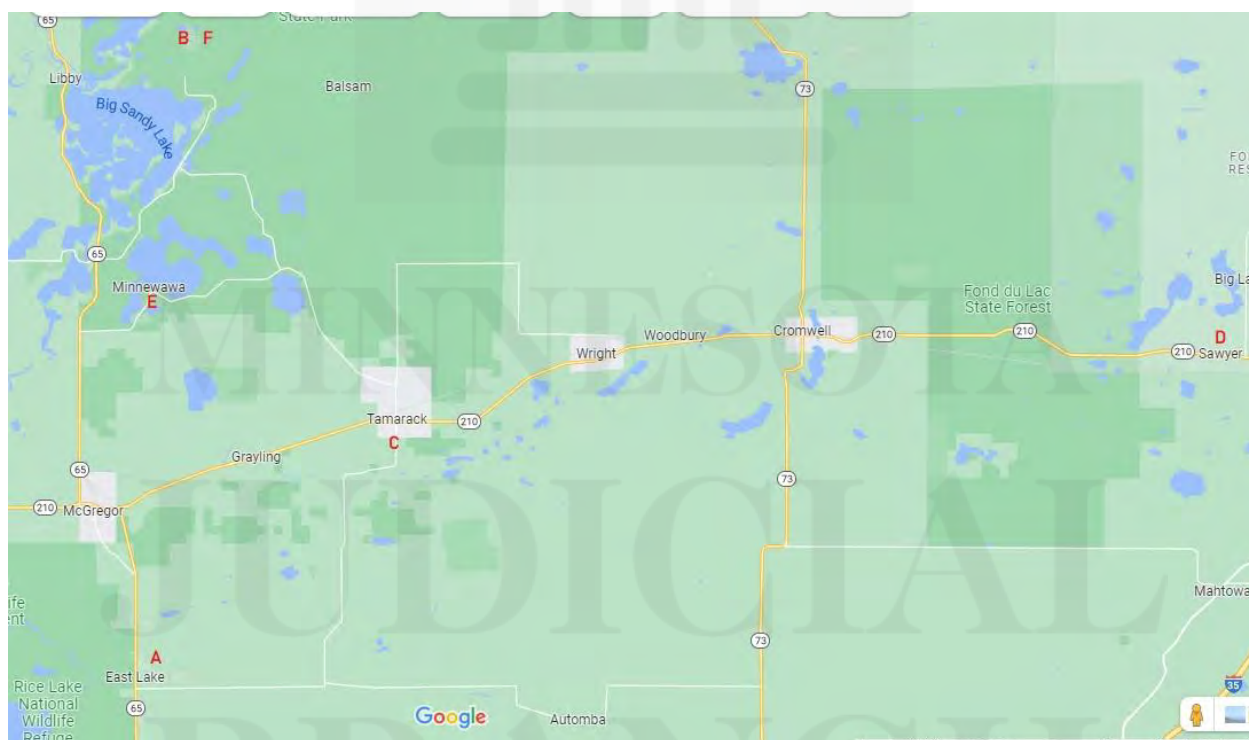


Figure 43 - Approximate locations of notable events in Raymond Misquadace's testimony, using capital letters superimposed on a Google Map. (A): Kathy Hill's house in East Lake. (B): Wanda Misquadace's house in Sandy Lake. (C): the Village Pump in Tamarack. (D): turnaround point in Sawyer. (E): Dollar Lake Store. (F): Raymond's father's old house in Sandy Lake.

⁵⁶² *Id.* at 335.

⁵⁶³ *Id.* at 331-332.

⁵⁶⁴ *Id.* at 551.

⁵⁶⁵ *February 1998 – Tamarack, Minnesota – sunrise and sunset calendar*, SUNRISE-SUNSET.ORG, <https://sunrise-sunset.org/us/tamarack-mn/1998/2> (last visited Jan. 16, 2024).

⁵⁶⁶ *Id.*

⁵⁶⁷ Transcript of Interview by Bruce Beck with Bradley Haussner, ICR # 98-476 (Feb. 25, 1998) at 1 [hereinafter *Haussner Interview 2/25/98*].

highways. This would result in an average speed of just 27 miles per hour during that leg of the trip, assuming they did not stop between those three points.⁵⁶⁸

Raymond also testified on direct examination that the group turned around at Sawyer “because there was really barely enough gas.”⁵⁶⁹ On cross examination at Pippitt’s trial, Raymond testified that they turned around at a *gas station* in Sawyer and headed back towards Tamarack.⁵⁷⁰ Raymond confirmed at the grand jury proceeding, however, that the group never stopped anywhere to get gas.⁵⁷¹

More evidence conflicts with Raymond’s accounts. For example, Raymond testified at Pippitt’s trial that after leaving the Dollar Lake Store following the murder, they went to the abandoned home of his late father, Walter Misquadace.⁵⁷² Raymond also testified that, Howard Martin was the only one at the house as the group arrived, and he left shortly thereafter.⁵⁷³ He described the flooring as “shag carpet.”⁵⁷⁴ Raymond also told investigators that the house was unoccupied at the time, that it was “ripped up” and “kinda junky.”⁵⁷⁵ He agreed that it was “a party house where no one was livin’.”⁵⁷⁶

Raymond’s description of the condition of the house conflicts with other evidence. Mari Blegen, the former partner of Bryan Lee Misquadace, stated in a sworn declaration that she lived in the former home of Walter Misquadace on February 24, 1998.⁵⁷⁷ She knew it was Walter Misquadace’s home because Bryan Lee told her that before they moved into the home; in fact, she said the family believed the house was haunted by Walter.⁵⁷⁸

Agnes Chief also confirmed in sworn testimony that Bryan Lee lived in Walter’s former home at that time.⁵⁷⁹ Blegen stated that the home was tiled at that time, not shag carpeted, and that the group of five never came to her home, nor could they have had access if she were not

⁵⁶⁸ Raymond told Investigator Bjerga during his April 28, 1999, interview that they “stopped a alongside the road a couple times to go to the bathroom” during the trip, but he does not specify which leg of the trip(s) they did this. *See Raymond Interview 4/28/99, supra* note 121, at 49.

⁵⁶⁹ *Pippitt Trial, supra* note 1, at 331.

⁵⁷⁰ *Id.* at 436 (emphasis added).

⁵⁷¹ *Grand Jury Proceedings, supra* note 8, at 507.

⁵⁷² *Pippitt Trial, supra* note 1, at 345.

⁵⁷³ *Id.* at 360-361. As previously discussed, Howard denied this. *See* footnotes 516-517 and accompanying text.

⁵⁷⁴ *Id.* at 456.

⁵⁷⁵ *Raymond Interview 4/30/99, supra* note 203, at 15.

⁵⁷⁶ *Id.* at 18.

⁵⁷⁷ Affidavit of Mari Blegen, *Pippitt v. State*, K4-99-325, Jul. 15, 2021, at 1 [hereinafter *Blegen Affidavit*].

⁵⁷⁸ Interview with Mari Blegen, witness, telephone (Dec. 14, 2023) at 12:42-13:10 [hereinafter *Blegen CRU Interview 12/14/23*].

⁵⁷⁹ *Pippitt Postconviction Review Proceeding, supra* note 296, at 17.



Figure 44 – Photo from Mari Blegen’s home in 1997-1998



Figure 45 – Photo from Mari Blegen’s home in 1997-1998 (blurred)

home.⁵⁸⁰ She subsequently produced pictures (Figures 44, 45, and 46) that she claims come from



Figure 46 – Photo from Mari Blegen’s home in 1997-1998

within the home in the 1997-1998 time frame.⁵⁸¹ She knows these pictures are from around that time based on the age of her child as featured in Figures 44 and 45⁵⁸² The pictures do not depict a home with “shag” carpet.⁵⁸³

An occupancy agreement between Bryan Lee and the Mille Lacs Housing Authority corroborates that Bryan Lee occupied tribal housing starting in August 1997. Letters from the Housing Authority from March 1998, suggest that Bryan Lee was living in a house administered by the Housing Authority at least as late as March 1998.⁵⁸⁴ Additionally, not only did Howard Martin testify at Pippitt’s postconviction review hearing

⁵⁸⁰ Interview with Mari Blegen, witness, Anoka, Minn. (Dec. 18, 2023) at 00:13:50-00:14:14, 00:18:12-00:19:20 [hereinafter *Blegen CRU Interview 12/18/23*].

⁵⁸¹ *Id.* at 01:08:42-01:14:06; Email from Mary Blegen to Carman Leone (Dec. 21, 2023).

⁵⁸² *Id.* at 1:08:40-1:14:25.

⁵⁸³ See Savanna Lentz, *Loop vs. Cut Pile Carpet (Differences and Similarities)*, HOME STRATOSPHERE (Oct. 29, 2020), <https://www.homestratosphere.com/loop-vs-cut-pile-carpet/> (explaining shag style is cut pile carpet).

⁵⁸⁴ Ray Kegg, Letter to Bryan Misquadace, Mar. 10, 1998; Ray Kegg, Letter to Bryan Misquadace, Mar. 20, 1998. The letter does not indicate the address of the home in which Bryan Lee lived. See *id.*

that he never visited that house around time of the Malin murder, Howard also testified that he never interacted with Raymond, Donald, King, Keith, and Pippitt together in February of 1998.⁵⁸⁵

Similarly, Raymond's testimony at Pippitt's trial about Keith's hand injury following the murder conflicts with other evidence in the case. Specifically, Raymond testified that when Keith came out of the store, he thought Keith had a cut on his hand.⁵⁸⁶ Raymond testified to seeing some blood on the back of his hand and that when Keith got back into the car, his hand was folded into the bottom of his shirt, like he had wrapped his hand in the shirt.⁵⁸⁷ Beck, however, checked Keith's hands on March 5, 1998, nine days after the murder.⁵⁸⁸ Beck wrote in his report documenting that interview that he "did not notice any cuts or scrapes."⁵⁸⁹

Raymond's accounts also conflict with the alibis of each of the four he implicated. King, for example, signed an affidavit in October 2021, in which he declares under penalty of perjury that he had no involvement or knowledge of Evelyn's death and that "on February 24, 1998 I was not in McGregor. Rather, I was with Bradley Misquadace and my father, Ed Martin in Virgia, Minnesota where my car was being repaired."⁵⁹⁰ Two witnesses corroborate King's alibi in so far as they establish that he was out of the area during the day of February 24, and at his father's residence for the entire evening.⁵⁹¹

Keith Misquadace stated he was at his grandmother's home, that of Agnes Chief, that night.⁵⁹² Agnes confirmed this herself, under oath, in Pippitt's postconviction review hearing.⁵⁹³ He also spent some time watching television with his Aunt Wanda at her house, then came back home about 10:00p.m. or 11:00p.m.⁵⁹⁴ Keith's girlfriend at the time partially corroborates his alibi; she told the CRU that she remembers talking to Keith that evening—starting sometime

⁵⁸⁵ *Pippitt Postconviction Review Proceeding*, *supra* note 296, at 48.

⁵⁸⁶ *Pippitt Trial*, *supra* note 1, at 343.

⁵⁸⁷ *Id.* at 359-360.

⁵⁸⁸ *Beck Report 03/17/98*, *supra* note 56, at 28.

⁵⁸⁹ *Id.* at 28.

⁵⁹⁰ Affidavit of Neil King at 2, *Pippitt v. State*, K4-99-325, Oct. 2021.

⁵⁹¹ See David Langfeld, Investigation Report re Bradley Misquadace, *State v. Pippitt*, K4-99-325, Dec. 15, 1999, at 1. Mrs. Trudy King, Neil's mother, corroborated Bradley's statement regarding the fact that Neil had car trouble and stayed at his father's house, Edward Martin. See Interview by Nicholas Foster with Trudy King, witness, telephone (October 16, 2023) at 00:18:56-00:20:02.

⁵⁹² Transcript of Interview by Bruce Beck with Keith Misquadace, ICR # 98-476 (Mar. 5, 1998) at 2 [hereinafter *Keith Interview 3/5/98*].

⁵⁹³ *Pippitt Postconviction Review Proceeding*, *supra* note 296, at 12.

⁵⁹⁴ *Keith Interview 3/5/98*, *supra* note 592, at 2-3.

around 8:00p.m. or 9:00p.m. until about 10:00p.m. or 11:00p.m.—because they got in an argument about another woman whom she believed was romantically involved with Keith.⁵⁹⁵ She recalled that the conversation took place on the evening before the murder was announced in the news because she was babysitting at a home very close to the Dollar Lake Store, and her parents were upset that she was so close to the murder scene the night it occurred.⁵⁹⁶

Donald has also provided an alibi, but it has not been corroborated. It has also changed over time. He initially told investigators on in February 1999, that he was at home with his mother the night of the murder.⁵⁹⁷ The following month he said that he was at the scene of the murder.⁵⁹⁸ He recanted and said he was not in the area the very next month.⁵⁹⁹ In November 2023, Donald said he was in Mahanomen, MN, at the time of the murder.⁶⁰⁰ While not dispositive of his whereabouts on February 24, 1998, a clerk at the Fireside Lounge Off Sale Liquor store in McGregor said that she witnessed Donald come into the liquor store the day after the murder and purchase liquor with a silver certificate.⁶⁰¹ Merle Malin testified before the grand jury that

⁵⁹⁵ See Interview by Nicholas Foster with Teresa Colton-Schalz, witness, telephone (Nov. 30, 2023) at 00:05:09-00:05:46, 00:12:45-00:13:20.

⁵⁹⁶ *Id.* at 00:04:25-00:05:07. Ms. Colton-Schalz stated she has not spoken to Keith for about 10 years. *Id.* at 00:28:37-00:28:50.

⁵⁹⁷ See *Donald interview 2/2/99*, *supra* note 121, at 4.

⁵⁹⁸ See generally *Donald Interview 4/29/99*, *supra* note 206.

⁵⁹⁹ Donald Hill, Letter of Recantation (undated), *supra* note 532.

⁶⁰⁰ *Donald CRU Interview*, *supra* note 144, at 00:33:58. This information has not been independently verified.

⁶⁰¹ Transcript of Interview by Jesse Tabolich with Sandy Rian, ICR # 98-476 (May 27, 1999) at 2-4 [hereinafter *Rian Interview 5/27/99*]. The information provided from Sandy Rian is a bit suspicious. The first recorded statement that she provided was in May 1999, nearly 15 months after the murder. See generally Transcript of Interview by Jesse Tabolich with Sandy Rian, ICR # 98-476 (May 12, 1999) [hereinafter *Rian Interview 5/12/99*]. Rian indicated in her May 27, 1999, interview that she notified police immediately after Donald purchased liquor with a silver certificate because it was unusual for someone so young to have a rare currency like that. *Rian Interview 5/27/99*, at 3-4. She could not provide the name of the young man at that time. *Id.* Earlier in the interview, however, she said she knew his name because she saw his identification card, but never explained why she could not provide the name when she alerted police immediately after her interaction with Donald. See *id.* at 2; see also Dave Bjerga, BCA Report of Investigation, Inv. # 98000062, Feb. 25, 1998_2020, at 2 [hereinafter *Bjerga Report 2/25/98_2020*]. Rian also provided Officer Tabolich three cash register receipts and a kitchen note that stated: “Dwayne Hill / Nike cap / Blk + Wh tennis shoes / 6’2” born 1974.” *Rian Interview 5/27/99*, at 1-2; see also Sandy Rian, Kitchen Check Number 150175, ICR # 98-476 (Mar. 25, 1998). If Rian had written down Hill’s name at the time of the incident, why did she not provide his name to police when she spoke to them when she first reported the incident? What’s further unclear is why she did not provide the cash register receipts and kitchen note while she provided the silver certificate to police. See Jesse Tabolich, Evidence Receipt for Kitchen Check and Cash Register Receipts, ICR # 98-476 (May 13, 1998). An evidence receipt indicates that a silver certificate was provided to police on March 17, 1998. See Dave Bjerga, Evidence Receipt for Silver Certificate, Bureau No. 98-062 (May 19, 1999). Finally, and even more suspicious, Bjerga’s report dated “2/25/98 (2020 hrs)” outlines his interactions with Rian on February 25, 1998, but references his discovery of Rian’s interactions with McGregor police in May 1999, 15 months into the future. See *Bjerga Report 2/25/98_2020*, at 2. Clearly, Bjerga backdated the report without making reference to the fact this report was drafted at least 15 months after the investigative activity had occurred.

Evelyn would save silver certificates.⁶⁰² Later, Merle testified at Pippitt's trial that in addition to beer and cigarettes, a white envelope containing a "substantial amount of money" including the silver certificates that Evelyn saved was also missing.⁶⁰³

Pippitt's alibi is that he was with his nephews in Onamia at Grand Casino.⁶⁰⁴ After the casino, Pippitt testified that he went to the liquor store prior to going to the home of Wesley's girlfriend.⁶⁰⁵ Pippitt also testified that he got home after 9:00p.m., when he briefly went to his mother's home, before going to his sister Wanda's for the remainder of the evening.⁶⁰⁶ Pippitt's alibi was corroborated by Michael Misquadace, Pippitt's nephew, as early as March 5, 1998, before Pippitt was a suspect.⁶⁰⁷ Michael told Beck, and later testified consistently, that Pippitt was with him and Brandon at the casino where Michael was interviewing for a job.⁶⁰⁸ Kathy Thompson, Director of Human Resources at Grand Casino, confirmed that Michael had an interview scheduled on February 24, 1998, and was subsequently hired after the interview.⁶⁰⁹ Michael could not say when they arrived home that night, other than it was starting to get dark when he got home.⁶¹⁰

Wesley Misquadace testified at Pippitt's trial that Pippitt, Brandon, and Michael went to the home of Wesley's fiancé, Shannon Webb.⁶¹¹ Shannon Webb testified that she "very vaguely" remembered seeing Michael, Brandon, and Pippitt coming to her home in late February 1998 after 10:00p.m. and staying about 30-45 minutes.⁶¹² Brandon Misquadace's statement to investigators aligns with the statements of his brothers, placing Pippitt with himself and Michael

⁶⁰² *Grand Jury Proceedings*, *supra* note 8, at 57.

⁶⁰³ *Pippitt Trial*, *supra* note 1, at 290. At least one person familiar with this case found that this was a contributing factor to focusing on Don Hill and his co-accomplices, and is a convincing inference that suggests that Pippitt's conviction is sound. The CRU is unconvinced that this piece of evidence outweighs the rest of the evidence of Pippitt's innocence for several reasons. First, there remains some questions about how Donald Hill passed this note and when it was taken into evidence by investigators. See Footnote 601, *supra*. Second, assuming Donald Hill did pass the silver certificate, there is no evidence in the record that the silver certificate he passed at the Fireside came from Evelyn's store. Third, Raymond, upon whose testimony Rhodes based his case against Pippitt, consistently denied knowing whether/seeing any money taken from the store. See *Appendix C, infra*. Fourth, even if one may conclude Donald Hill had participated in the murder based on this connection, this does not necessarily implicate Brian Pippitt.

⁶⁰⁴ *Pippitt Postconviction Review Proceeding*, *supra* note 296, at 107-110. Surveillance footage was unavailable to corroborate Pippitt's alibi.

⁶⁰⁵ *Id.* at 111.

⁶⁰⁶ *Id.* at 111-112.

⁶⁰⁷ See *Michael Interview 3/5/98*, *supra* note 102, at 3.

⁶⁰⁸ *Id.*; *Pippitt Trial*, *supra* note 1, at 560-563.

⁶⁰⁹ See *Pippitt Trial*, *supra* note 1, at 571-573.

⁶¹⁰ See *id.* at 568-569.

⁶¹¹ *Id.* at 588-589.

⁶¹² *Id.* at 583-586.

at the casino, and getting back later that night.⁶¹³ While he could not remember the precise time he got home, he remembered his grandmother, Agnes Chief, was awake and dinner was done.⁶¹⁴ Agnes Chief also corroborated Pippitt's alibi, placing him with Michael and Brandon that evening.⁶¹⁵

(d) The prosecutor presented unreliable jailhouse informant testimony.

Rhodes should have reasonably suspected that Arnoldi was relying on Pippitt's complaint to fashion his testimony, as discussed previously. Arnoldi also had a criminal history involving crimes of dishonesty, including 13 convictions for theft, theft by false pretenses, check forgery, and burglary.⁶¹⁶ The Star Tribune featured a story on Arnoldi on July 18, 1999, a year and a half before Pippitt's trial.⁶¹⁷ The article details Arnoldi's expertise in disarming and manipulating victims of his thefts, burglaries and forgeries.⁶¹⁸ The article quotes Chisago County District Judge Linn Slattengren as describing Arnoldi as "an opportunistic criminal that just can't be trusted."⁶¹⁹ The article also stated:

Psychiatrists at the regional treatment center in St. Peter, Minn., where Arnoldi was evaluated this spring prior to sentencing for several thefts, called him an "unreliable historian." They said he falsely claimed he had been awarded the Congressional Medal of Honor, had been held prisoner in Vietnam, had a master's degree in engineering and once raced cars professionally. The report says Arnoldi's mother told a different tale: That her son was dishonorably discharged from the Army, had only been a prisoner in the United States and received his high school equivalency diploma while imprisoned.⁶²⁰

Arnoldi also had mental health issues around the time of Pippitt's trial that called into question his competency to testify and undermined his credibility. Specifically, a staff psychiatrist from Federal Medical Center Rochester documented in a mitigation letter, dated July 16, 2001, prepared for Arnoldi's attorney to use in his sentencing case:

Along with the symptoms of depression outlined above, Mr. Arnoldi said that he also began to experience an auditory hallucination of a female voice which urges

⁶¹³ Transcript of Interview by Bruce Beck with Brandon Misquadace, ICR # 98-476 (Mar. 5, 1998) at 8 [hereinafter *Brandon Interview 3/5/98*].

⁶¹⁴ *Id.* at 10.

⁶¹⁵ *Pippitt Postconviction Review Proceeding*, *supra* note 296, at 10-14.

⁶¹⁶ *Pippitt Trial*, *supra* note 1, at 666.

⁶¹⁷ See Richard Meryhew, *Charmingly disarming: Con is expert at taking people in*, STAR TRIBUNE, Jul. 18, 1999. A Westlaw search revealed the same article for the same date and author under a different title: "Con plays his victims, works the system Felonies stacked up for 54-year-old as he targeted friends, employers." Richard Meryhew, *Con plays his victims works the system*, Star Tribune, Jul. 19, 1999.

⁶¹⁸ Meryhew, *supra* note 617, at 1.

⁶¹⁹ *Id.*

⁶²⁰ *Id.* at 2.

him to kill himself and which tells him that he is worthless. Mr. Arnoldi said that the voice is that of someone whom he does not recognize. He said that the voice occurs intermittently, but at times, when his symptoms are more severe, he hears the voice constantly. Mr. Arnoldi said that the voice does not usually tell him specifically how he should kill himself, but at times, it urges him to overdose on his insulin (he is a diabetic). Mr. Arnoldi said that sometimes, he perceives visual images of people he knows either standing next to him or “getting hurt next to me.”⁶²¹

The staff psychiatrist diagnosed Arnoldi with Severe Major Depression with Psychotic Features.⁶²² Arnoldi later testified in a deposition with Pippitt’s postconviction lawyers that he had those hallucinations at or near the time of Pippitt’s trial.⁶²³ Arnoldi also said that he was sent to the facility in Rochester in November 2000, and he stayed there for about two and a half years.⁶²⁴

Arnoldi’s mental illness was not presented at Pippitt’s trial. It is unclear whether Rhodes knew of Arnoldi’s hallucinations when he called him to testify. Rhodes knew, however, that Arnoldi met Pippitt at St. Peter State Hospital.⁶²⁵ St. Peter has long been known throughout the state as a hospital that conducts evaluations and administers treatment related to mental health.⁶²⁶

Equally unclear is the extent to which Rhodes made a promise to support Arnoldi prior to Arnoldi’s testimony at Pippitt’s trial. At Pippitt’s trial, Rhodes asked Arnoldi about this:

Rhodes: At the time you wrote the letter [offering information on Pippitt], were there any deals offered to you for your testimony?
Arnoldi: Never asked for any.
Rhodes: As we sit here today have you been offered any deals?
Arnoldi: No.
Rhodes: Did you ask for any?
Arnoldi: No.⁶²⁷

Beck, however, testified that when Arnoldi first contacted the authorities, he asked to be moved to a different confinement facility in exchange for giving information about Pippitt’s alleged

⁶²¹ Letter from Andrew Olnes, BOP staff psychiatrist, to Katherine Menendez, defense attorney for Peter Arnoldi (Jul. 16, 2001), at 2-3.

⁶²² *Id.* at 4.

⁶²³ See Transcript of Deposition of Peter Arnoldi at 22-23, State v. Pippitt, K4-99-325 (Jan. 15, 2020) [hereinafter *Arnoldi Deposition*].

⁶²⁴ *Id.* at 15.

⁶²⁵ Bruce Beck, Aitkin County Sheriff Dept. Supp. Report XI, ICR # 98-476, Jul. 24, 1999, at 2 (“I ... reviewed the information with the County Attorney.”)

⁶²⁶ See *Saint Peter Regional Treatment Center*, MINNESOTA LEGISLATIVE REFERENCE LIBRARY, Feb. 24, 2015, <https://www.lrl.mn.gov/agencies/detail?AgencyID=1417> (last visited Jan. 22, 2023).

⁶²⁷ *Pippitt Trial*, *supra* note 1, at 495.

involvement in Malin's murder.⁶²⁸ Agreeing to move an inmate in exchange for giving information is a deal.

Further, a letter from Arnoldi's lawyer located in the Aitkin County Attorney's file revealed that Rhodes had provided support in the form of writing a letter to the judge in Arnoldi's criminal matter outlining his cooperation and the impact of his testimony in securing the conviction.⁶²⁹ The letter, dated June 12, 2001, does not indicate when Rhodes made his offer for support.⁶³⁰

Ultimately, Arnoldi's testimony should not have been used at Pippitt's trial. Evidence suggests, however, that Arnoldi's testimony was one of the linchpins for the state in securing Pippitt's conviction. Specifically, the letter Rhodes wrote for Arnoldi stated:

*Mr. Arnoldi's testimony was crucial to the State in obtaining two first degree murder convictions in the above-referenced matter. I spoke with nine of the twelve jurors after the trial. They indicated to me that Mr. Arnoldi was one of two pivotal witnesses whose testimony was significant during their deliberations in convincing them of the guilt of the defendant.*⁶³¹

3. Pippitt's attorney had neither the experience nor capacity to properly challenge the implausibility of the prosecutor's theory at trial.

Tom Murtha was Brian Pippitt's second appointed public defender at his trial.⁶³² Murtha took the case over from Pippitt's first attorney, Christopher Davis, after Pippitt's first trial resulted in a mistrial due to illness of the judge.⁶³³ At the time of Pippitt's trial, Murtha had been practicing for approximately two years.⁶³⁴ This was his first homicide case.⁶³⁵ Not only was he inexperienced, he had no co-counsel.⁶³⁶ Murtha stated in an interview with the CRU that he was carrying a caseload at that time that exceeded the national standard.⁶³⁷ He admitted that his

⁶²⁸ *Id.* at 527-528.

⁶²⁹ Facsimile from Katherine Menendez, Federal Public Defender, to Bradley Rhodes, Aitkin County Attorney (Jun. 12, 2001).

⁶³⁰ *See id.*

⁶³¹ Letter from Bradley Rhodes, Aitkin County Attorney, to Judge Richard Kyle (Sep. 5, 2001) [hereinafter *Letter to Judge Kyle*]

⁶³² *Pippitt Trial*, *supra* note 1, at 1.

⁶³³ Affidavit of Thomas F. Murtha, State v. Pippitt, K4-99-258, Dec. 5, 2000 [hereinafter *Murtha Affidavit*].

⁶³⁴ *Murtha CRU Interview*, *supra* note 413, at 0:01:40; Record of Bar Admission for Thomas Murtha, Minnesota Judicial Branch, available at <https://mars.courts.state.mn.us/AttorneyDetail.aspx?attyID=0287386> (last visited Mar. 7, 2024).

⁶³⁵ *Murtha CRU Interview*, *supra* note 413, at 0:09:05.

⁶³⁶ *Id.* at 0:09:10. He did, however, have an undergraduate student who helped him. *Id.*

⁶³⁷ *Id.* at 00:03:24.

overload of cases prevented him from reviewing all the discovery in Pippitt's case.⁶³⁸ Due to a venue change, Murtha tried the case at Koochiching County Courthouse in International Falls.⁶³⁹ This resulted in Murtha, an inexperienced lawyer, trying a murder case alone, three-and-a-half hours from his home.⁶⁴⁰

Murtha admitted that he was ineffective at Pippitt's trial at times and was surprised some of the things he did—or failed to do—were not raised as ineffective assistance of counsel on appeal.⁶⁴¹ In fact, in his interview with the CRU, he said that he is “horrified” at some of the mistakes he made.⁶⁴² Murtha failed to perform at a reasonable level of competence in this case in three primary ways: (a) he failed to impeach key prosecution witnesses, (b) he failed to consult with experts, and (c) he failed to present alternative perpetrator evidence at trial. Murtha's failure to impeach key witnesses and consult with experts are discussed in the sections that immediately follow. An analysis of his failure to present alternative perpetrator evidence at trial is discussed in section V(B)(3) below.

(a) Pippitt's attorney failed to impeach key prosecution witnesses.

Despite the photographic evidence of the crime scene that was provided to him in discovery, Murtha failed to impeach Merle and Raymond on their testimony that beer and cigarettes were stolen from the store.⁶⁴³ Similarly, Murtha failed to call Horsman to impeach Merle about missing stock, despite the fact that transcripts of Horsman's interviews were provided to Pippitt's defense over a year prior to Pippitt's trial.⁶⁴⁴

In his interview with the CRU, Murtha offered no strategic reason for failing to use the pictures and video of the store and its inventory during the trial to impeach Merle. He said he was “really pissed” at himself for missing it and for “not having the will at the time to go there.”⁶⁴⁵ Similarly, Murtha did not have a strategic reason for not calling Horsman. Murtha remembered that the defense investigator wanted Murtha to call Horsman, but that Murtha

⁶³⁸ *Id.* at 00:18:45.

⁶³⁹ *Pippitt Trial*, *supra* note 1, at 1.

⁶⁴⁰ *See* Driving Directions from Koochiching County Courthouse to Brainerd Public Defender's Office, GOOGLE MAPS, <https://www.google.com/maps/dir/Koochiching+County+Court+Administration,+4th+Street,+International+Falls,+MN/Public+Defender's+Office,+11610+Andrew+St,+Brainerd,+MN+56401> (last visited Jan. 19, 2023).

⁶⁴¹ *Murtha CRU interview*, *supra* note 413, at 01:00:23.

⁶⁴² *Id.* at 01:02:31.

⁶⁴³ *Discovery Disclosure*, *supra* note 413, at 5.

⁶⁴⁴ *Id.* at 1.

⁶⁴⁵ *Murtha CRU interview*, *supra* note 413, at 01:01:55.

“screwed that up.”⁶⁴⁶ Murtha was “at a loss” for why he did not.⁶⁴⁷ Murtha, himself, admits that he had no strategy. His conduct clearly fell below an objective standard of reasonableness. To his credit, Murtha admits this.⁶⁴⁸

Similarly, Murtha failed to properly impeach Raymond on a prior inconsistent statement Raymond made in a letter to a friend, Joseph Randberg, claiming he was in Bagley at the time of the murder.⁶⁴⁹ Although the letter is undated, the context of the letter suggests that Raymond wrote this after his guilty plea and sentencing. The handwriting in this letter is similar to Raymond’s handwriting located elsewhere in the file.⁶⁵⁰

On April 27, 2000, Pippitt’s defense investigator interviewed Randberg and wrote the following in an investigation report:

*According to Joe Randberg, he and Ray Misquadace were like “best friends” while growing up together as small kids in the Bagley, MN area. Joe stated that the two haven't been close friends for years. Joe Randberg told me that while he was incarcerated in the Faribault Correctional Facility, he had heard that Ray Misquadace had been physically abusing his daughter Skye. Apparently, Skye's [sic] mother Linnea Fiskari had been involved with Ray Misquadace at one time. Joe told me that he wrote Ray a letter asking him about what he was doing to his daughter and why some of his relatives had seen Skye with a black eye. According to Mr. Randberg, Ray Misquadace responded to his letter shortly before his release from prison. When asked if he would recognize the letter if he saw it again, Joe stated that he would remember the letter. Joe Randberg indicated that the letter in my possession was the exact letter he received from Ray Misquadace.*⁶⁵¹

Murtha failed to properly impeach Raymond with the prior inconsistent statement at trial while cross-examining him:

Q. Okay. Do you know someone by the name of Joseph Ranberg?

A. Yeah.

Q. How do you know Joseph Ranberg?

A. I met him a long time ago when we were smaller.

Q. Is he a friend of yours?

A. Yeah, he was a friend of mine, yeah.

Q. He was?

⁶⁴⁶ *Id.* at 00:59:30.

⁶⁴⁷ *Id.* at 00:59:43.

⁶⁴⁸ *Id.* at 00:59:30-01:00:30.

⁶⁴⁹ See *Pippitt Trial*, *supra* note 1, at 482-483; Raymond Misquadace, Letter to Joseph Randberg, State v. Pippitt, K4-99-325 (undated) [hereinafter *Letter to Randberg*]. Although the letter is undated, Joseph Randberg confirmed receiving this letter on April 27, 2000, almost one year after Raymond confessed to the crime.

⁶⁵⁰ See, e.g., Raymond Misquadace, Letter to Hatfield, State v. Pippitt, K-4-99-325 (Jul. 7, 2000).

⁶⁵¹ See Pam Gregg, Investigation Report, State v. Pippitt, K4-99-325, Apr. 27, 2000, at 2 [hereinafter *Gregg Report 4/27/00*].

A. Yeah.

...

Q. Did you ever write to Joseph Ranberg?

A. No.

Q. Did you ever have correspondence with him?

A. No. I got a letter from him, yeah.

Q. Did you ever write a letter to him?

A. No, I didn't.

Q. Never?

A. No.

Q. If I were to show you a letter can you identify if you wrote it or not?

A. Yeah.

Q. You can do that?

A. Yep.⁶⁵²

At this point, Rhodes objected on the grounds of untimely disclosure of the letter, but the judge never ruled on the objection.⁶⁵³ Instead, Murtha continued his questioning:

Q. (Continuing) Mr. Misquadace, did you ever write a letter to Joseph Ranberg claiming that when this stuff happened you were actually not at the Dollar Lake Store?

A. To who?

Q. Joseph Ranberg?

A. No.

Q. No. Okay. Did you ever talk to Joseph Ranberg?

A. I didn't talk to him in years.

Q. You never wrote a letter to him?

A. No.

Q. But he wrote a letter to you?

A. Yeah, he did.

Q. You didn't respond to that letter?

A. No.⁶⁵⁴

When Murtha was unable to get Raymond to admit to the fact that he wrote the letter, which he needed in order to lay the foundation to elicit the prior inconsistent statement, he gave up and moved on to a different point in cross examination.⁶⁵⁵

Assuming Murtha could have overcome the nondisclosure issue, he should have called Joseph Randberg during the defense case-in-chief to introduce the letter as extrinsic evidence of a prior inconsistent statement.⁶⁵⁶ Since he could not do so through Raymond, Murtha would have had to lay a foundation through Randberg's testimony, specifically that Randberg personally

⁶⁵² Pippitt Trial, *supra* note 1, at 481-482.

⁶⁵³ *Id.* at 482-483.

⁶⁵⁴ *Id.* at 483.

⁶⁵⁵ *Id.* at 484.

⁶⁵⁶ Minn. R. Evid. 613(b).

received the letter and that the context of the letter aligns with information that Raymond would know.⁶⁵⁷ Murtha, however, failed to do this. When asked about this during his interview with the CRU, Murtha “remembered this going sideways” on him and he acknowledged that he “screwed up executing” the impeachment.⁶⁵⁸

This letter was an important piece of impeachment. Raymond had already made at least four statements at the time the letter was written, of which the latter three necessarily placed Raymond at the Dollar Lake Store in Shamrock Township. This is only recorded statement Raymond made after his initial denial to investigators in February 1999 in which Raymond disavows his presence at the Dollar Lake Store on the night of the murder until his recantation in 2021.⁶⁵⁹

Murtha also failed to effectively impeach Arnoldi. Even though Murtha realized that Arnoldi was confusing the language he read from Pippitt’s complaint in his testimony about stuffing Kleenex’s into Evelyn’s mouth, he did not properly impeach him on the fact:

Q. Do you remember indicating in your statement that you gave to law enforcement, do you remember talking about being told that they stuffed paper in her mouth?

A. That they told me that?

Q. Yes.

A. No, it was Brian that told me that.

Q. Okay. What exactly did he tell you about that?

A. He said they were holding her down and sticking kleenix [sic] in her mouth to suffocate or choking her. That's what was said.

...

Q. Isn't it true that you got information about this case by reading the material that belonged to Mr. Pippitt?

A. No.

Q. Isn't it true you read a copy of his complaint?

A. I did eventually read a copy of the complaint, yes, I did, but it was not -- I didn't read this complaint first and then that. I read the complaint a week or 10 days after I knew Mr. Pippitt.⁶⁶⁰

Murtha then moved on to another point on cross examination. Murtha failed to connect the issues for the jury to show that Arnoldi likely took the complaint language regarding soft tissue as meaning a Kleenex tissue. To properly impeach Arnoldi’s testimony that Pippitt made this admission, and to further connect Arnoldi’s testimony to what he read in the complaint,

⁶⁵⁷ State v. Vance, 714 N.W.2d 428, 444 (Minn. 2006).

⁶⁵⁸ Murtha CRU interview, *supra* note 413, at 01:33:19.

⁶⁵⁹ Raymond Affidavit, *supra* note 431.

⁶⁶⁰ *Id.* at 501, 503.

Murtha needed to introduce evidence that no Kleenex or toilet paper was ever found in Evelyn's mouth, and that Arnoldi jumped to that assumption by reading the language about soft tissue in the criminal complaint.

To impeach Arnoldi, Murtha should have recalled the Medical Examiner or any of the first responders for the limited purpose of establishing that no foreign objects were found in Evelyn's mouth, including tissue or toilet paper. To establish that Arnoldi was relying on the complaint in formulating Pippitt's admission on this point, Murtha should have asked Arnoldi on cross whether he read the specific quoted language in the complaint. The language itself is not hearsay, as the purpose of reading the quote is not to establish the truth of the matter, but rather, the effect it had on Arnoldi. Further, if Arnoldi denied reading it or claimed he could not remember, Murtha could have used the complaint to impeach or refresh his recollection.

Murtha's failure to do this cannot be explained away with strategy or reason. The record is clear that he tried to impeach Arnoldi, but he failed to complete the process.

(b) Pippitt's attorney failed to consult with experts.

Additionally, Murtha should have consulted with a crime scene analyst as well as a false confession expert prior to trial. Two accident reconstructionist experts were consulted since 2021 on this case, and both came to the same conclusion: the entry point into the Dollar Lake Store was not through the south basement window.

Dr. Turvey, who rendered an opinion that the basement window was not the entry point, has been a forensic scientist since 1996, and had been privately consulting on cases since as early as 1999.⁶⁶¹ In fact, he had provided consultation and a report for Keith Misquadace's defense team in 2000, in which Dr. Turvey reached the same conclusion as his report for Pippitt twenty-one years later.⁶⁶² Therefore, Dr. Turvey was available to testify, and rendered a favorable conclusion for Pippitt on the very crime scene at issue in Pippitt's case before his trial. The fact that Keith Misquadace's lawyer looked at the same crime scene in 2000, and had the wherewithal to consult with an accident reconstructionist at that time, establishes Murtha's failure to meet an objective standard of reasonableness by failing to do the same.

⁶⁶¹ *Turvey*, *supra* note 338, at 1, 10, 21.

⁶⁶² *Id.* at 3-4.

Similarly, Murtha failed to consult with a false confession expert. Although he realized that the confessions in this case seemed “different,” “really fishy,” and “squirrely,” Murtha never pursued an expert to help him understand what, if anything, was concerning about the confessions.⁶⁶³ Experts, however, were available to consult with Murtha on the issue of coerced or false confessions. Dr. Larry White, who produced a report to the CRU, has been publishing on the topics of police interrogations, false confessions, and reliability of witnesses since he earned his Ph.D. in Social Psychology in 1984.⁶⁶⁴

Murtha’s explanation for failing to consult with a false confession expert was that he did not have the time or the budget to request one. Murtha could have, however, requested funding from the District Court for necessary expert witness services related to the case since Pippitt was unable to afford them.⁶⁶⁵ Murtha, however, never tried. Similarly, Murtha could have requested a continuance to further develop his defense. He never did. There was no strategic reason for not consulting with an expert. Given the fact that the primary evidence against Pippitt was Raymond’s confession, expert consultation on this topic could have resulted in a different outcome at trial given the opinion White provided in this case.

B. Two credible suspects of Evelyn’s murder were neither fully investigated, nor fully presented to the jury by Pippitt’s attorney.

Initially, the investigation team appeared overwhelmed with the amount of suspects they had. Bjerga testified that the investigation team received “lots of names” for potential suspects.⁶⁶⁶ In the first couple months, BCA actively investigated 25 to 30 people, not including those investigated by the Aitkin County Sheriff’s Office.⁶⁶⁷ Bjerga also testified that all alternative suspect leads were followed up and excluded as persons of interest.⁶⁶⁸ The primary reason for excluding suspects, he said, was not being in the area at the time of the murder.⁶⁶⁹ The investigative file, however, does not clearly exclude all potential suspects. Two alternative

⁶⁶³ *Murtha CRU Interview*, *supra* note 413, at 01:36:02.

⁶⁶⁴ *See White*, *supra* note 440, at 2.

⁶⁶⁵ *See State v. Volker*, 477 N.W.2d 909, 910 (Minn. Ct. of App. 1991). Murtha knew this, too, as evidenced by his request to the Court to provide funding for lodging, meals and mileage so as to provide an adequate defense. *See Murtha Affidavit*, *supra* note 633.

⁶⁶⁶ *Pippitt Trial*, *supra* note 1, at 228.

⁶⁶⁷ *Id.*

⁶⁶⁸ *See id.* at 228-229.

⁶⁶⁹ *Id.* at 229.

suspects stand out as having opportunity, means, and motive, with no clear alibi: Terry Peet and M██████████. Murtha failed, however, to present this evidence at Pippitt's trial.

1. Terry Peet is a credible alternative suspect.

At the time of the investigation into Ms. Malin's death, Peet was 37-years old.⁶⁷⁰ Peet had gray hair, stood five-feet, nine-inches tall, and weighed—according to his license—approximately 165 lbs.⁶⁷¹ He also had a gray beard.⁶⁷² Peet was a felon, with a criminal history that included convictions for third-degree burglary and fifth-degree assault.⁶⁷³ Peet had known Ms. Malin for approximately 30 years.⁶⁷⁴ He had stayed in the McGregor area on and off over the years.⁶⁷⁵ Peet had recently, however, moved back to the McGregor area full-time after being released from jail.⁶⁷⁶ On the day of the murder, Peet was moving into a trailer located less than half a mile away from the Dollar Lake Store.⁶⁷⁷

Peet had been in the Dollar Lake Store at least twice on the day of the murder.⁶⁷⁸ Peet first visited the Dollar Lake Store around 2:00p.m.⁶⁷⁹ Jenny Pike, the daughter of the man who sold the trailer Peet lived in, gave him a ride from her parent's house.⁶⁸⁰ On the way, Peet asked to stop at the Dollar Lake store because he wanted to get propane; Peet was low on money and had charged previously at the Dollar Lake Store.⁶⁸¹ He went into the store without Pike.⁶⁸² When

⁶⁷⁰ Adult Master Name and Incident Listing for Terry Peet, Aitkin County Sheriff's Department, Jan. 5, 1999.

⁶⁷¹ *Id.*

⁶⁷² See Transcript of Interview by Bruce Beck with Marcia Doten, ICR # 98-476 (Feb. 25, 1998) at 1 [hereinafter *Doten Interview*]; see *Bjerga Report 2/25/98*, *supra* note 46, at 3.

⁶⁷³ See Register of Actions, State v. Peet, 27-CR-87-900508, Feb. 20, 1987; see also Register of Actions, State v. Peet, 27-CR-92-032590, Apr. 27, 1992.

⁶⁷⁴ See Transcript of Interview by Bruce Beck with Terry Peet, ICR # 98-476 (Feb. 27, 1998) at 13 [*Peet Interview 2/27/98*].

⁶⁷⁵ See *id.*

⁶⁷⁶ See *id.* at 3, 7, 13.

⁶⁷⁷ See *id.* at 3-5; Transcript of Interview by Scott Turner with Jenny Pike, ICR # 98-476 (Feb. 25, 1998) at 7 [hereinafter *Pike Interview*]; Transcript of Interview by Dave Bjerga with Melissa Boyd, ICR # 98-476 (Mar. 2, 1998) at 6 [hereinafter *M. Boyd Interview*].

⁶⁷⁸ See Transcript of Interview by Bruce Beck with Terry Peet, ICR # 98-476 (Feb. 25, 1998) at 2 [hereinafter *Peet Interview 2/25/98*]; see also *Peet Interview 2/27/98*, *supra* note 674, at 9.

⁶⁷⁹ See *Peet Interview 2/27/98*, *supra* note 674, at 8; see also *Pike Interview*, *supra* note 677, at 3.

⁶⁸⁰ *Pike Interview*, *supra* note 677, at 3.

⁶⁸¹ See *id.* at 5.

⁶⁸² See *id.*

Peet came out, he told Pike that Ms. Malin would not let him charge the gas.⁶⁸³ Peet then said, “maybe I should go rob her,” and laughed.⁶⁸⁴ Pike then dropped Peet off at his trailer.⁶⁸⁵

The second time he went into the store at approximately 8:00p.m.⁶⁸⁶ At Peet’s request, Melissa Boyd gave Peet a ride to his trailer from her home, where she was hosting a birthday party for her husband earlier in the evening.⁶⁸⁷ On the way, Peet asked to stop at the Dollar Lake Store.⁶⁸⁸ Melissa described Peet as scary and drunk.⁶⁸⁹ She left her children at home because she “didn’t want the kids in the car with Terry.”⁶⁹⁰ Just as he did earlier, Peet went in the store alone.⁶⁹¹ Peet asked Evelyn for a job.⁶⁹² She rejected him.⁶⁹³ Evelyn had a history of rejecting Peet. Years before, she refused to sell him 3.2 ABV beer on a Sunday morning.⁶⁹⁴

Peet bought some donuts, chips, and a pack of cigarettes during that second trip to the store.⁶⁹⁵ After Melissa dropped Peet off, he used a flashlight and candles to see around his trailer, which otherwise had no electricity.⁶⁹⁶ Peet then said he “ate some doughnuts and went to bed.”⁶⁹⁷ Peet told investigators that he got up at 6:00a.m., shivering from the cold and hung over, and turned the gas on—gas he did not have at the time he was trying to acquire on charge at the Dollar Lake Store earlier that day.⁶⁹⁸

No independent evidence corroborated Peet’s alibi. To the contrary, witnesses provided information to investigators that conflicted with Peet’s narrative, suggesting that Peet lied about his whereabouts the night of the murder. For example, George Boyd, a 58-year-old local resident, reported that on February 24, between approximately 11:30p.m. to 11:45p.m., he was heading west on County Road 6 after leaving pool night at Bann’s Bar, when he saw a man holding a flashlight walking west bound only .2 mile east of the Dollar Lake Store on the south

⁶⁸³ See *id.* at 5-6.

⁶⁸⁴ See *id.* at 7.

⁶⁸⁵ See *id.*

⁶⁸⁶ See *Peet Interview 2/25/98*, *supra* note 678, at 1.

⁶⁸⁷ See *M. Boyd Interview*, *supra* note 677, at 2-4.

⁶⁸⁸ See *id.* at 5.

⁶⁸⁹ See *id.* at 4.

⁶⁹⁰ See *id.* at 5.

⁶⁹¹ See *id.*

⁶⁹² See *Peet Interview 2/25/98*, *supra* note 678, at 2.

⁶⁹³ See *id.*

⁶⁹⁴ See *Peet Interview 2/27/98*, *supra* note 674, at 13.

⁶⁹⁵ See *id.* at 10.

⁶⁹⁶ See *id.* at 11.

⁶⁹⁷ *Peet Interview 2/25/98*, *supra* note 678, at 3.

⁶⁹⁸ See *Peet Interview 2/27/98*, *supra* note 674, at 11. Peet indicated he was surprised that he actually had gas left in the tank. See *id.*

side of the road, as depicted in Appendix D's *Figure 53*.⁶⁹⁹ George said that the man was wearing a dark gray plaid shirt, jeans, and a stocking cap.⁷⁰⁰ The next day, George saw Peet wearing identical clothing except for the hat.⁷⁰¹ George also said that the person walking on the side of the road was the same size as Terry Peet.⁷⁰²

Similarly, Kay Peltó, a bartender at the Sportsmen's Bar—also known as Sporty's—in McGregor, told investigators days after the murder that she recalled Terry Peet being at Sporty's on February 24th.⁷⁰³ She reported that Peet had three Bacardi-Coke drinks between 8:00p.m. and 9:00p.m., and then left.⁷⁰⁴ Peet never reported this to investigators in the statements he provided.

Moreover, Kermit Schmock reported to investigators that he picked up Peet while Peet was hitchhiking on February 25th between 3:30p.m. and 4:00p.m.⁷⁰⁵ Schmock said that the man identified himself when he got in the car as Peet.⁷⁰⁶ He described Peet as a Native American man, six-feet tall, 240 lbs., with a two-week-old gray beard with dark, longer hair.⁷⁰⁷ Schmock said that as he was giving him a ride, Peet told Schmock that the night before, Peet was "in town and was real drunk and didn't remember how he got home...."⁷⁰⁸

Peet admitted to investigators that he that had been hitchhiking between his two visits at the Dollar Lake Store.⁷⁰⁹ He, however, did not tell investigators he was so drunk that he could not remember how he got home. While Peet did admit to "bits and pieces" of his memory missing, he denied being "blacked out" the evening of February 24 because he did not drink that much alcohol.⁷¹⁰ In truth, Peet had been drinking heavily throughout the day.⁷¹¹ At noon that day, he had purchased a case of 24 beers and a pint of whisky.⁷¹² He consumed all of it.⁷¹³ He

⁶⁹⁹ See Transcript of Interview by Scott Turner with George Boyd, ICR # 98-476 (Feb. 26, 1998) at 2-7 [hereinafter *G. Boyd Interview*].

⁷⁰⁰ *Id.* at 3-4.

⁷⁰¹ *Id.* at 10, 12.

⁷⁰² *Id.* at 11.

⁷⁰³ *Beck Report 3/17/98*, supra note 56, at 24-25.

⁷⁰⁴ *Id.* at 25.

⁷⁰⁵ See Transcript of Interview by Bruce Beck with Kermit Schmock, ICR # 98-476 (Mar. 2, 1998) at 1 [hereinafter *Schmock Interview*].

⁷⁰⁶ *Id.*

⁷⁰⁷ *Id.* at 1-2.

⁷⁰⁸ *Id.* at 2.

⁷⁰⁹ *Peet Interview 2/27/98*, supra note 674, at 15-16.

⁷¹⁰ See *id.* at 19.

⁷¹¹ See *id.* at 4; *Pike Interview*, supra note 677, at 4 (telling Beck that Peet smelled strongly of beer and that she could tell he was drinking).

⁷¹² See *Peet Interview 2/27/98*, supra note 674, at 4.

⁷¹³ See *id.* at 20-21.

admitted to waking up the next morning feeling “pretty sick, hung over.”⁷¹⁴ Witnesses who came in close contact with Peet that day described him as smelling of alcohol.⁷¹⁵

Further, multiple witnesses gave statements that suggested Peet had motive, means, and opportunity to commit the murder. For example, on February 25, Norma Horner reported that she recalled Peet stopping in the Dollar Lake Store between 7:00p.m. and 8:00p.m. In reference to Peet, Evelyn told Norma, “[H]e just moved up. That’s the one I, I’m worried about” and that he was “bad news.”⁷¹⁶ Norma stated that Peet asked Evelyn for gas again, even after she told him no earlier that day.⁷¹⁷ Horsman described Peet as “still griping about [how he] couldn’t get no bottle of gas” when Peet left the store.⁷¹⁸

Similarly, Evelyn told Jack Hooper, one of her regulars, the day before her murder that “the one who did me two years ago, the guy with the eyes” was “back.”⁷¹⁹ Evelyn was referring to a robbery and assault she endured by two men, one of whom was wearing a ski mask.⁷²⁰ Evelyn told Hooper that she remembered his eyes “real well.”⁷²¹ She also told him that she was only scared of two Native Americans; one was deceased, and the other was Peet.⁷²²

The day of her murder, Evelyn told Joe Rian, a local resident who visited the Dollar Lake Store nearly every day, about how Peet tried to charge a tank of gas and she refused him.⁷²³ Rian described Evelyn as “fairly concerned about her safety” with Peet so close by.⁷²⁴ Evelyn told Rian, “[y]ou’d better nail down everything in the county or it’s gonna disappear,” in reference to Peet having just moved to the area the day before.⁷²⁵ She even told a UPS Driver who was delivering a package, “an Indian had just been in here and wanted some more credit and I told

⁷¹⁴ *See id.* at 11.

⁷¹⁵ Norma Horner, for example, told investigators that she could tell, however, that he was drunk because he smelled of booze. *Horner Interview 2/25/98, supra* note 10, at 10. *See also M. Boyd Interview, supra* note 677, at 4 (describing Peet as “drunk”) and *Pike Interview, supra* note 677, at 4 (describing Peet as smelling strongly of beer).

⁷¹⁶ *Horner Interview 2/25/98, supra* note 10, at 9, 11.

⁷¹⁷ *Id.* at 10-11.

⁷¹⁸ *Horsman Interview 2/25/98, supra* note 16, at 22.

⁷¹⁹ *Beck Report 3/17/98, supra* note 56, at 21.

⁷²⁰ *Id.* at 21-22.

⁷²¹ *Id.* at 21.

⁷²² *Id.* at 22.

⁷²³ Transcript of Interview by John Drahota with Joseph Rian, ICR # 98-476 (Feb. 25, 1998) at 1-2, 4 [hereinafter *J. Rian Interview*].

⁷²⁴ *Id.* at 2.

⁷²⁵ *Id.* at 4.

him no because he owed me money already and I told him to get out of here.”⁷²⁶ The driver described Evelyn as being “upset.”⁷²⁷

Bradley Haussner, a local who lived in the area for 19 years and the last person to see Evelyn alive before she was murdered, reported that when he visited the Dollar Lake Store at approximately 9:40p.m. on February 24, Evelyn was coming from behind counter to lock the front door for the evening.⁷²⁸ Haussner found this surprising because, normally, Haussner would find Evelyn sleeping with her head resting on the chest freezer.⁷²⁹ The first thing she said when she saw Haussner was, “trouble in the neighborhood...some guy just got out of jail and moved into the neighborhood and came down here to...get some bottle gas and he wanted to charge it. And I told him no.”⁷³⁰ Evelyn told Haussner that Peet was mad when he left.⁷³¹ According to Haussner, Evelyn reported the same concern to another one of her customers, and a co-worker of Haussner’s, earlier that night.⁷³²

Others implicated Peet’s involvement in the murder. One of the correctional staff, or jailers, at Aitkin County Jail reported that Kim Peet, Terry’s brother, made a comment while he was incarcerated to the effect of “at least I didn’t kill someone like my brother.”⁷³³ Kim later, however, stated Terry never admitted to, nor acknowledged, being the one who committed the murder.⁷³⁴ Several other people reported hearing rumor in the community that Peet committed the murder.⁷³⁵

⁷²⁶ Transcript of Interview by John Drahota with Clifford Johnson, ICR # 98-476 (Feb. 25, 1998) at 2 [hereinafter *Johnson Interview*].

⁷²⁷ *Id.*

⁷²⁸ *Haussner Interview 2/25/98, supra* note 567, at 1.

⁷²⁹ *Id.* at 2-3.

⁷³⁰ *Id.* at 1.

⁷³¹ *Id.*

⁷³² *Id.* at 4.

⁷³³ Bruce Beck, Aitkin County Sheriff Dept. Supp. Report, ICR # 98-476, Jun. 4, 1998, at 1-2 [hereinafter *Beck Report 6/4/98*].

⁷³⁴ *Id.*

⁷³⁵ See Dave Bjerga, BCA Report of Investigation, Inv. # 98000062, Mar. 5, 1998, at 1-2 [hereinafter *Bjerga Report 3/5/98*] (documenting that McGregor School Principal reported that a kindergartener told a teacher’s aide that she heard from her uncle that Peet killed Ms. Malin). Maurice Benjamin heard from Mike Misquada that Peet was involved in Malin’s murder. Transcript of Interview by Bruce Beck with Maurice Benjamin, ICR # 98-476 (Oct. 6, 1998) at 10. Michael, himself, confirmed this in an interview with investigators. *Michael Interview 3/5/98, supra* note 102, at 1. Lyle (no last name indicated), who had a cabin near the Dollar Lake Store on Sheshebe Point, reported to Investigator Beck that he and his neighbors thought that Terry Peet and his friends were responsible. Bruce Beck, Aitkin County Sheriff Dept. Supp. Report IV, ICR # 98-476, Jan. 23, 1999, at 2 [hereinafter *Beck Report 1/23/99*]. Heather Viney reported to Investigator Beck that she overheard people talking at the Buckhorn Bar on Saturday, Feb. 28, 1999, that Terry Peet was a suspect in the crime. *Beck Report 3/17/98, supra* note 56, at 23.



Figure 48 – BCA Evidence Item 34 – Terry Peet’s screwdriver

Figure 49 – BCA Evidence Item 16A – wood frame from Dollar Lake Store south basement window

Figure 50 – BCA Evidence Item 16B – wood lath from crime scene

Figure 51 – BCA Evidence Item 16B – wood lath from crime scene

Further, a screwdriver seized from his home provides at least some connection of Peet’s involvement to the crime. Although Beck testified at the grand jury proceeding the BCA forensic laboratory’s analysis of Peet’s screwdriver revealed that “there [were] no paint striations” and that “there was no paint transfer on that tool,”⁷³⁶ the laboratory’s actual results were different. BCA’s analysis of the tool revealed an “inconclusive” result as to whether the screwdriver produced the tool marks found on the wood laths broken off the Dollar Lake Store’s south basement window.⁷³⁷

Specifically, the report stated that the screwdriver “failed to show adequate detail to determine if Item 16 was the tool used to make the marks.”⁷³⁸ The lab’s photos, however, show a remarkable consistency in detail between the tool recovered from Peet’s residence and the marks produced on the wooden lath which were pried off the window. Gray paint from the marking in *Figure 49* appear to be transferred to the markings in *Figure 50* and *Figure 51*. Residue of gray

⁷³⁶ *Grand Jury Proceedings*, *supra* note 8, at 77.

⁷³⁷ *BCA Lab Report 6/9/98*, *supra* note 109, at 4.

⁷³⁸ *Id.*

matter appears in the indented portion of the ribbed lines of the screwdriver as depicted in *Figure 48*.

The laboratory notes indicate that the forensic scientist examining the screwdriver as well as the window frame also noted consistencies:

*16A3 - consistent w/ reverse taper of blade flat – shows grooved pattern.
toolmarks on item 16 appear consistent w/ marks made by item 34 – screwdriver-*

*Marks on 16A are primarily shank mks & appear to be from cylindrical shank
except for mark 16A3-*

*16A3 appears to be marks from the ridged surface of the blade furthest from the
tip – shows reverse taper -*

*Marks on 16B&C appear to be consistent with the blade end of item 34 – approx.
¼” typical screwdriver type blade – although some are partials/ overlaps/or faint
scrapes -*

Item 16A is painted wood, items 16 B&C are raw wood –

TM 16A3 was cast in [incomprehensible] and compared to item 34 (blade, ridged)

*The patterns are consistent in size/interval – 16A3 pattern is shallow &
incomplete, lacks sufficient detail for ID – consistent, cannot be eliminated –*

*TM 16B5, 16B7, 16B8, 16B9 were [incomprehensible] compared directly with
casts of the blade of item 34 – they are also consistent in size & interval, also
shallow & incomplete, although the apparent dirt pattern on 16B5 is reasonably
deep, but fragmentary. None show adequate detail to ID. Consistent-⁷³⁹*

Given the evidence implicating Peet in the murder, it is unclear why he was cleared as a suspect in the investigation. Beck testified at the grand jury proceeding that “[t]hrough[ou]t the course of numerous other interviews we basically ruled it out. Mr. Pete [sic] was not involved in this incident.”⁷⁴⁰ Beck never explained which interviews convinced him that Peet was not involved. Neither Bjerga nor Beck could offer an explanation of how Peet was cleared during their interviews with the CRU in November 2023.⁷⁴¹

⁷³⁹ Bench Notes, BCA Forensic Lab Supp. Report, Lab # 978-4385, May 1998, at notes 6-9.

⁷⁴⁰ *Grand Jury Proceedings*, *supra* note 8, at 76.

⁷⁴¹ *Bjerga CRU Interview*, *supra* note 213, at 00:21:01-00:27:48; *Beck CRU Interview Part 1*, *supra* note 158, at 00:19:00-00:22:24; *Beck CRU Interview Part 2*, *supra* note 158 at 00:03:34-00:03:43.

The only reference to Peet being cleared as a suspect in the file came from what appears to be a BCA laboratory note.⁷⁴² The note states “Terry Joe Peet – definitely cleared as a suspect” as depicted in *Figure 52*. Peet died in a fire five months into Evelyn’s murder investigation.⁷⁴³

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case notes

Aitkin Co. S.O.
218-927-2138

Dave Bjerga
218-825-3010

Terry Joe Peet - definitely cleared as a suspect

Figure 52 – BCA forensic laboratory note re: Terry Peet

There are some limitations in concluding Peet was the killer. First, like those convicted in this case, there was no forensic evidence linking Peet to the scene of the crime. On February 28, 1998, three days after law enforcement’s first interview with Peet and a day after their second in which they indicated Peet was a person of interest, Peet consented to a search of his trailer.⁷⁴⁴ Peet voluntarily gave samples of his blood, hair, and prints.⁷⁴⁵ They were also submitted for comparison to evidence collected at the scene, but none matched.⁷⁴⁶

Further, nothing distinguishes Peet from the expert analyses of Netzel and Turvey who opined of the improbability of large, intoxicated men entering through the tiny basement window without leaving a trail of evidence or having the wherewithal and means to stage the crime scene.⁷⁴⁷ Moreover, there is no evidence to suggest Peet had a key to the store, or worked in concert with anyone else who did. What is unique about Peet, however, unlike those convicted of Evelyn’s murder, is that he had familiarity with the store and perhaps Evelyn’s habits; his visit to the store twice the day of her murder suggests he could have been casing. Peet also fits Turvey’s theory that the vicious beating and smearing of her feces on her body was motivated by anger.⁷⁴⁸

⁷⁴² See Bjerga CRU Interview, *supra* note 213, at 00:21:51-00:21:59 (after reviewing the note, hypothesized that the note came from the laboratory).

⁷⁴³ Bruce McLaughlin, Fire Investigation Report, File # 98010337 (Jul. 28, 1999), at 1.

⁷⁴⁴ Consent to Search Peet’s Property, Aitkin County Sheriff Dept., ICR # 98-476, Feb. 28, 1998.

⁷⁴⁵ Consent to Search Peet’s Person, Aitkin County Sherriff Dept., ICR #98-476, Mar. 2, 1998.

⁷⁴⁶ BCA Lab Report 3/13/98, *supra* note 38, at 5; BCA Lab Report 4/20/98, *supra* note 109, at 5-

⁷⁴⁷ According to Aitkin County Jail’s data, Peet stood 5’9” and weighed 165 lbs. as of April 10, 1998, two months after the murder of Evelyn Malin. Person Record Search Result Report - Terry Joe Peet, Minn. Dept. of Corrections, dated Apr. 23, 2024.

⁷⁴⁸ Turvey, *supra* note 338, at 12.

2. M█████ is a credible alternative suspect.

M█████ is the grandson of Evelyn Malin.⁷⁴⁹ He is also Merle Malin's son.⁷⁵⁰ At the time of the murder, M█████ was 27 years old and lived in Hill City.⁷⁵¹ Hill City is approximately 45 minutes' driving distance from the Dollar Lake Store.⁷⁵² M█████ would frequently help stock for Evelyn.⁷⁵³ In fact, M█████ had helped stock in her store basement as recently as two months prior.⁷⁵⁴ Norma Horner described M█████ as being Evelyn's "pet" since he was little.⁷⁵⁵ She acknowledged, however, that M█████ could be a "dickens."⁷⁵⁶ She thought M█████ was "bad news."⁷⁵⁷

Specifically, Norma said that M█████ had a drug problem.⁷⁵⁸ An Aitkin County Sheriff Report from June 1994, mentioned M█████ in a report of a drug overdose for which an ambulance was dispatched:

*RMKS FOR m█████ 06/01/94...m drug overdose...narrative: c called 214 to report drug over dose m█████ dob/092970 hill city 214 head north meet itasca amb...*⁷⁵⁹

Days after this incident, the County petitioned for M█████ to be civilly committed due to chemical dependency.⁷⁶⁰ James Irish, a one-time suspect of the murder who was later cleared via alibi, told investigators that M█████ "used to be into a lot of drugs" in March 1998.⁷⁶¹

In April 2017, police responded to an incident involving M█████, during which a witnesses reported that M█████ "was on methamphetamine and talking crazy."⁷⁶² Two months later, police found methamphetamine and a pipe on M█████—specifically, in his pocket—along with

⁷⁴⁹ See Horner Interview 2/25/98, *supra* note 10, at 16.

⁷⁵⁰ See Transcript of Interview by Bruce Beck with Norma Horner, ICR # 98-476 (Feb. 26, 1998) at 5-6 [hereinafter Horner Interview 2/26/98].

⁷⁵¹ See *id.* at 16; Register of Actions, State v. M█████, 01-K6-94-000677, Apr. 17, 1995 [hereinafter M█████ Register of Actions 4/17/95].

⁷⁵² See Driving Directions from Shamrock Township, Minn. to Hill City, Minn., GOOGLE MAPS (last visited Jan. 19, 2024).

⁷⁵³ See Horner Interview 2/25/98, *supra* note 10, at 16.

⁷⁵⁴ Horner Interview 2/26/98, *supra* note 750, at 2-4.

⁷⁵⁵ *Id.* at 15.

⁷⁵⁶ *Id.* at 16. *Dickens* is a substitute word for *devil*. See *What Does Like the Dickens Mean?*, WRITING EXPLAINED, <https://writingexplained.org/idiom-dictionary/like-the-dickens> (last visited Dec. 22, 2023).

⁷⁵⁷ See Horner Interview 2/25/98, *supra* note 10, at 16.

⁷⁵⁸ Horner Interview 2/26/98, *supra* note 750, at 15.

⁷⁵⁹ Aitkin County Sheriff ICR Report, case no. 1994001062, Jun. 1, 1994, at 3.

⁷⁶⁰ Register of Actions, In re Civil Commitment of M█████, 01-P6-94-000291, Jun. 7, 1994.

⁷⁶¹ Transcript of Interview by Bruce Beck with James Irish, ICR # 98-476 (Mar. 7, 1998) at 17 [hereinafter *Irish Interview*].

⁷⁶² Aitkin County Sheriff ICR Report, case no. 17000828, Apr. 5, 2017, at 3.

hypodermic needles and shotgun shells in a car he was using.⁷⁶³ Two months after that incident, while in custody, M■■ admitted to “using a lot of drugs” and trying to burn down the double-wide trailer that his brother, Matthew, purchased for him to live in on family-owned land—the same land on which the Dollar Lake Store sits.⁷⁶⁴ He also admitted “things were pretty out of hand” and that he stole some of his brother’s things and pawned them for money.⁷⁶⁵

Between 1994 and 1996, M■■ was implicated in numerous complaints concerning theft and burglary.⁷⁶⁶ In 1995, he was convicted of felony theft.⁷⁶⁷ M■■ was mentioned in two arrest reports as a suspect for assault.⁷⁶⁸ In January 1997, he was arrested for selling marijuana to juveniles.⁷⁶⁹ In 2007, M■■ was listed as being “mentioned” in a complaint from a McGregor homeowner who reported that while out of town, her home’s basement window was “broke out;” cash and weapons were missing.⁷⁷⁰ Similarly, he was mentioned in a police report following a burglary of a café in McGregor during which someone “busted in the back door and took money.”⁷⁷¹

In 2008, the 16-year-old daughter of M■■’s long-term girlfriend accused M■■ of several incidents of sexual assault, including an incident of forcible sodomy.⁷⁷² M■■ was eventually convicted of criminal sexual conduct in the first degree for sexually assaulting a child under the age of 13.⁷⁷³ The victim in the case testified that M■■ had used drugs and alcohol

⁷⁶³ Aitkin County Sheriff ICR Report, case no. 17001660, Jun. 20, 2017, at 3.

⁷⁶⁴ Aitkin County Sheriff ICR Report, case no. 17002213, Aug. 5, 2017, at 3; *see* Address 20001 Goshawk Street, McGregor, MN, 55760, GOOGLE MAPS (last visited Feb. 2, 2024), available at <https://www.google.com/maps/place/20001+Goshawk+St,+McGregor,+MN+55760/@46.6962804,-93.294889,15z/data=!3m1!4m6!3m5!1s0x52b1a9f6ad588005:0xd7de050ab605da0d!8m2!3d46.6962819!4d-93.276435!16s%2Fg%2F11dzip18q93?entry=ttu>.

⁷⁶⁵ *Id.*

⁷⁶⁶ *See, e.g.*, Aitkin County Sheriff ICR Report, case no. 1994000911, May 14, 1994 (reporting a complaint from the owner of an auto repair shop who was holding M■■’s vehicle as collateral until payment for services was made, but the car went missing); Aitkin County Sheriff ICR Report, case no. 1994001932, Sep. 2, 1994 (documenting an arrest of M■■ in connection with a burglary of a cabin); Aitkin County Sheriff ICR Report, case no. 1994002141, Sep. 24, 1994 (documenting an arrest of M■■ for theft of two snowmobiles and a trailer); Aitkin County Sheriff ICR Report, case no. 1996003305, Dec. 23, 1996 (documenting burglary and that someone entered a home and left a cassette tape referring to raping and killing kids).

⁷⁶⁷ M■■, *Register of Actions 4/17/95*, *supra* note 751.

⁷⁶⁸ *See* Aitkin County Sheriff ICR Report, case no. 1994002473, Nov. 8, 1994; Aitkin County Sheriff ICR Report, case no. 1996002938, Nov. 8, 1996.

⁷⁶⁹ Aitkin County Sheriff ICR Report, case no. 1997000141, Jan. 17, 1997.

⁷⁷⁰ Aitkin County Sheriff ICR Report, case no. 2007002523, Jun. 26, 2007.

⁷⁷¹ Aitkin County Sheriff ICR Report, case no. 2007004404, Oct. 18, 2007.

⁷⁷² *See generally* Steven Sandberg, Aitkin County Sheriff’s Investigative Report, case no. 08-0148, Jan. 15, 2008.

⁷⁷³ *Register of Actions, State v. M■■*, 01-CR-08-366, Feb. 29, 2008.

“daily” prior to an assault in June 2004.⁷⁷⁴ The victim also alleged that M■■ had abused her in 1998, but recanted when her mother told her that the victim would never see her family again unless she said the allegations against M■■ were false.⁷⁷⁵ In 2017, he was convicted of a fifth-degree controlled substance charge.⁷⁷⁶ M■■ was also convicted of check forgery in 2017, but according to Norma, M■■ had a history of forging checks as early as the 1990’s.⁷⁷⁷

In 2004, police found him walking in the middle of the road at 8:30p.m.⁷⁷⁸ While M■■ was incarcerated in December of 2017, he had to be restrained by correctional staff.⁷⁷⁹ One officer had to tase M■■ twice to subdue him.⁷⁸⁰ As he was being buckled into a restraint chair, M■■ threatened the officer that he and his friends would come and “get [him]” when M■■ was released from jail.⁷⁸¹ In 2018, Robin Horner, M■■’s cousin, called the police to report M■■ as a missing person.⁷⁸² Robin reported that when M■■ was last seen, M■■ was “hearing voices and suicidal and was not talking in his ‘right mind.’”⁷⁸³

Shortly after that missing person report, police responded to an incident in which M■■ appeared to disassociate.⁷⁸⁴ His aunt, with whom M■■ was staying, reported that M■■ was holding a garden tool, staring into her house and not responding when she tried to speak with him, as if she was not there.⁷⁸⁵ In a somewhat similar display of strange behavior, during an interaction with police in 2020, M■■ said the voices in his head were “harassing” him and that a chip was implanted in him.⁷⁸⁶

Norma told investigators that “M■■’s got a terrible temper when he’s on something.”⁷⁸⁷ Joel Torgerson, whose wife left him for M■■, told investigators that he heard rumors that M■■

⁷⁷⁴ State v. M■■, 2010 WL 4721317, *1 (Ct. of App. of Minn. 2010).

⁷⁷⁵ *Id.*

⁷⁷⁶ Register of Actions, State v. M■■, 01-CR-17-625, Jun. 22, 2017.

⁷⁷⁷ Register of Actions, State v. M■■, 01-CR-17-957, Dec. 18, 2017; *see Horner Interview 2/26/98, supra* note 750, at 21.

⁷⁷⁸ Aitkin County Sheriff ICR Report, case no. 2004001296, Apr. 14, 2004, at 2.

⁷⁷⁹ Aitkin County Police Dept. ICR Report, case no. 17003484, Dec. 11, 2017, at 2-3.

⁷⁸⁰ *Id.* at 2.

⁷⁸¹ *Id.* at 3.

⁷⁸² Aitkin County Sheriff ICR Report, case no. 18002570, Sep. 10, 2018, at 2.

⁷⁸³ *Id.* at 1. They later found M■■ on the property, and he denied being suicidal at that time, but would reach out for help “if he started feeling that way again.” *Id.* at 3.

⁷⁸⁴ *See* Aitkin Police Department ICR Report, case no. 18002875, Oct. 8, 2018, at 2-3.

⁷⁸⁵ *Id.* at 2-3.

⁷⁸⁶ Aitkin County Sheriff ICR Report, case no. 20000994, May 6, 2020, at 3.

⁷⁸⁷ *See Horner Interview 2/26/98, supra* note 750, at 22.

“has been rough with his grandma before” and that he knew M■■■■ had “stolen things from her.”⁷⁸⁸

According to Norma, M■■■■ and Evelyn got along well together, except for “the money situation.”⁷⁸⁹ Norma said M■■■■ used to ask Evelyn for money “real often,” but since he had been working, it “hasn’t been that bad.”⁷⁹⁰ Evelyn would usually give it to him.⁷⁹¹ Evelyn intended that the money would be used for groceries and other living expenses, but Norma suspected it went to drugs.⁷⁹² The last time Norma was aware that M■■■■ asked for money was approximately three weeks prior to the murder, on February 1.⁷⁹³ He asked for \$150, but Evelyn refused to give him any money that time.⁷⁹⁴ Occasionally, he would cash his checks at her store.⁷⁹⁵ Norma said before she passed, Evelyn was still upset that M■■■■ had recently asked Evelyn to honor a check, promising there were funds to back it.⁷⁹⁶ The check came back, however.⁷⁹⁷

Horsman told investigators that M■■■■ was “the only other one that really [knew] where the money was laying and anything in the basement or anything about anywhere.”⁷⁹⁸ Investigator Beck wrote in one of his reports that “[t]he Malins . . . said around the first of February, Evelyn had M■■■■ go to three different locations in the store and get money for her.”⁷⁹⁹ Irish told Beck that M■■■■ has stolen money from Evelyn before.⁸⁰⁰

Irish denied being involved in the murder, but admitted to discussing burglarizing the Dollar Lake Store with a 21-year-old man named Kris Radke months before the murder.⁸⁰¹ According to Irish, Radke told Irish that he knew where Evelyn kept her money.⁸⁰² According to

⁷⁸⁸ See Transcript of Interview by Bruce Beck with Joel Torgerson, ICR # 98-476 (Dec. 8, 1998) at 12 [hereinafter *Torgerson Interview*]

⁷⁸⁹ See *Horner Interview 2/26/98*, *supra* note 750, at 16.

⁷⁹⁰ See *id.*

⁷⁹¹ See *id.*

⁷⁹² See *id.*

⁷⁹³ See *id.*

⁷⁹⁴ See *id.* Beck later wrote in his report that “Norma states that on the first of this month, M■■■■ wanted to borrow \$450 from Evelyn.” *Beck Report 3/17/98*, *supra* note 56, at 14.

⁷⁹⁵ See *Horner Interview 2/26/98*, *supra* note 750, at 17; see *Horner Interview 2/25/98*, *supra* note 10, at 13.

⁷⁹⁶ See *Horner Interview 2/26/98*, *supra* note 750, at 17.

⁷⁹⁷ See *id.*

⁷⁹⁸ See *Horsman Interview 2/26/98*, *supra* note 82, at 5.

⁷⁹⁹ *Beck Report 4/21/98*, *supra* note 116, at 3.

⁸⁰⁰ *Irish Interview*, *supra* note 761, at 7.

⁸⁰¹ *Id.* at 4-6. Both Radke and Irish denied being involved in the murder, however. Irish was under house arrest in a foster home at the time of the murder, which was corroborated. *Id.* at 11. Radke’s alibi—that he was at work—checked out, too. Brad Barker, BCA Report of Investigation, Inv. # 98000062, Mar. 9, 1998, at 2 [hereinafter *Barker Report 3/9/98*].

⁸⁰² *Irish Interview*, *supra* note 761, at 5.

one person, Radke was friends with M■■■■. ⁸⁰³ Radke, however, said he “knows” M■■■■, but “hasn’t had anything to do” with him for years. ⁸⁰⁴

On February 25, 1998, investigators visited M■■■■’s place of employment, Nor-Tech industries, to interview him. ⁸⁰⁵ Employees, however, told investigators that M■■■■ was “extremely distraught” when he learned of the death of his grandmother, and requested to leave work immediately. ⁸⁰⁶ He was gone by the time investigators arrived. ⁸⁰⁷

Later that afternoon, investigators went to M■■■■’s home. ⁸⁰⁸ Shortly after they arrived, “SA Bjerga was requested to speak via telephone with Merle Dean Malin.” ⁸⁰⁹ Due to the nature of the way Bjerga wrote this note in his report, it is unclear who requested that Bjerga speak with Merle—whether M■■■■ asked investigators to call his father, or whether Merle interjected himself when he discovered investigators wanted to speak with M■■■■. Regardless, while Bjerga spoke with Merle, Special Agent Gary Pederson spoke with M■■■■. ⁸¹⁰

M■■■■ told Pederson that the last time he saw his grandmother was three or four weeks prior. ⁸¹¹ He provided a couple names of people that may have had information which could be of assistance to the investigation. ⁸¹² Nothing developed from that information. There is no indication from the report of investigation that Pederson ever asked M■■■■ of his whereabouts the evening of February 24. ⁸¹³ Pederson did not ask M■■■■ about his drug use. ⁸¹⁴ Pederson did not ask about his money concerns, his relationship with his grandmother, or whether he knew where she stored her money. ⁸¹⁵

Two days later, investigators returned to re-interview M■■■■ and get his shoe prints for elimination purposes. ⁸¹⁶ When Pederson arrived at the residence, however, Merle was arriving at

⁸⁰³ *Barker Report 3/9/98, supra* note 801, at 2. Specifically, the grandmother of Radke’s girlfriend, with whom Radke was living, told investigators that Radke was friends with M■■■■. *Id.*

⁸⁰⁴ *See id.* at 2.

⁸⁰⁵ *Bjerga Report 2/25/98, supra* note 47, at 2-3.

⁸⁰⁶ *Id.*

⁸⁰⁷ *Id.* at 3.

⁸⁰⁸ *Id.*

⁸⁰⁹ *Id.*

⁸¹⁰ *Id.*

⁸¹¹ Gary Pederson, BCA Report of Investigation, Inv. # 9000062, Feb. 25, 1998, at 2 [hereinafter *Pederson Report 2/25/98_1450*].

⁸¹² *Id.* at 1.

⁸¹³ *See generally id.*

⁸¹⁴ *See generally id.*

⁸¹⁵ *See generally id.*

⁸¹⁶ Gary Pederson, BCA Report of Investigation, Inv. # 9800062, Feb. 27, 1998_1305, at 1.

the same time.⁸¹⁷ The interview focused on questioning Merle, who had just arrived from New Mexico.⁸¹⁸ Merle gave Pederson a list of 11 items that he claimed were missing from the Dollar Lake Store, and detailed money that was missing from specific hiding locations.⁸¹⁹ There is no indication that investigators asked M■■ a single question. Investigators left without taking shoe impressions.⁸²⁰

Investigators returned to interview M■■ for a third time on March 17, 1998.⁸²¹ In this interview, M■■ mentioned a colleague with whom M■■ worked, giving several reasons why he thought the colleague may have committed the crime: he has spent time in prison for charges related to methamphetamine, he had a scratch on his neck following the murder, he recently purchased new shoes and clothing, he was a heavy drinker, he was acting nervous around M■■, and he had been smoking a type of cigarette that was purportedly stolen from the store.⁸²² The investigation report gives no indication that any questions were directed at M■■ as suspect. M■■ did, however, in the course of implicating his colleague, reveal that he remained absent from work for eight days following the death of his grandmother.⁸²³

M■■ had the means to travel from Hill City to the store.⁸²⁴ There is no documented evidence proving that M■■ had a key to the Dollar Lake Store. Based on the way Norma described M■■ as Evelyn's pet, and how he helped out so frequently around the store, it seems likely that he would have had unrestricted access to the property. This is the most significant factor in the alternative suspect analysis, because if the accident reconstruction experts are correct, the person who killed Evelyn Malin must have had a key—or knew where a key was hidden on the property—to be able to unlock upon entry and relock upon exit.

It is difficult to know whether—or how much—money was stolen from the store. Despite early reports that money and checks were stolen as part of the burglary-murder, the record is

⁸¹⁷ *Id.*

⁸¹⁸ *Id.*

⁸¹⁹ *Id.* at 1-2.

⁸²⁰ *See generally id*; *BCA Lab Report 3/19/99*, *supra* note 107.

⁸²¹ Dave Bjerga, *BCA Report of Investigation*, Inv. # 98000062, Mar. 18, 1998_1530, at 2 [*hereinafter* Bjerga Report 3/18/98_1530].

⁸²² *Id.*

⁸²³ *Id.*

⁸²⁴ *See Horner Interview 2/26/98*, *supra* note 750, at 17 (referencing M■■'s car).

muddled with contradictions about what was later found.⁸²⁵ The record is clear, however, that M■■ inherited \$1,000 from Evelyn, as directed by her will.⁸²⁶

There is no indication in the file that M■■'s hair, blood, or fingerprints were ever collected by investigators for comparison purposes. He was also never offered a polygraph. There are no transcripts of any of the three interviews investigators had with M■■. Bjerga and Beck both recalled M■■ being a person of interest, but neither could explain why or how he was ruled out.⁸²⁷

3. Pippitt's attorney failed to fully present alternative perpetrator evidence at trial.

Murtha failed to fully develop an alternate perpetrator strategy at trial. When asked about this during the CRU interview, Murtha said this was strategic.⁸²⁸ Specifically, Murtha was hesitant to provide an alternate perpetrator theory out of fear of risking credibility with the jury considering he believed he had a solid alibi defense.⁸²⁹ He also did not believe he had enough to present in good faith that another specific person or people were responsible for the crimes.⁸³⁰

Despite Murtha's claim of not advancing an alternative perpetrator theory on strategic grounds, his failure to fully develop it at trial still fell below an acceptable level of competence. First, counsel is only given the benefit of the doubt on strategic decisions when counsel makes the decision "after thorough investigation of law and facts."⁸³¹ Here, Murtha admitted that he had not been through all the discovery in the case.⁸³² He admitted that he had not properly indexed the materials, which was crucial before the advent of searchable PDFs and use of computers during trial.⁸³³ He admitted to knowing the case too superficially to try it properly.⁸³⁴ Therefore, Murtha is unable to justify the failure to advance alternative perpetrator evidence as a strategic decision.

⁸²⁵ Compare *Horner Interview 2/26/98*, *supra* note 750, at 1 (describing money missing from store) with *Pippitt Trial*, *supra* note 1, at 302-304 (describing money being found in store after initial reports of being missing) and *Bentley*, *supra* note 105, at 1 ("Aitkin County Attorney Bradley Rhodes said it appeared that no money was taken.")

⁸²⁶ *Beck Report 4/21/98*, *supra* note 116, at 3.

⁸²⁷ See *Bjerga CRU Interview*, *supra* note 213, at 01:23:44-01:23:57; *Beck CRU Interview Part 2*, *supra* note 158, at 00:06:15-00:08:12.

⁸²⁸ *Murtha CRU Interview*, *supra* note 413, at 00:53:51.

⁸²⁹ *Id.* at 00:53:34.

⁸³⁰ *Id.* at 00:48:17.

⁸³¹ *Strickland v. Washington*, 466 U.S. at 668, 690 (1984).

⁸³² *Murtha CRU Interview*, *supra* note 413, at 00:18:36; 00:19:13.

⁸³³ *Id.* at 00:19:40; 00:19:53.

⁸³⁴ See *id.* at 00:20:44.

Second, Murtha had enough evidence to advance an alternative perpetrator defense. The sections above provide sufficient evidence linking Terry Peet and M██████ as viable alternative suspects in this case. The only limitations for Peet—lack of access to a front-door key and lack of forensic evidence tying him to the scene—are the same limitations the prosecution met in advancing their case against Pippitt. Murtha would have had, or could have had with due diligence, all the same information as presented in this report on Terry Peet. Similarly, Murtha would have or could have had all the same evidence inculcating M██████ as detailed in this report, except for his bouts with the law after 2000.

Third, Murtha did begin to present some alternative perpetrator evidence at trial, undermining his claim that his decision to not develop the theory was strategic. Specifically, with regard to Peet, Murtha elicited testimony from Bjerga that Peet made a threat to Evelyn before she was murdered and that Peet lived a half mile—within walking distance—of the Dollar Lake Store.⁸³⁵ After eliciting these two points, Murtha inexplicably changed the course of his examination and never returned to the topic. It is puzzling why Murtha elicited any testimony about Peet at all if he did not believe he had enough to pursue the topic in good faith.

Fourth, Murtha stated in the CRU interview that during Pippitt’s trial, Murtha came to believe with certainty that M██████ was the true murderer.⁸³⁶ Murtha acknowledged that he should have requested a continuance mid-trial so that he could investigate and explore his theory once he formed an opinion that M██████ was the murderer, but he did not because his inexperience prevented him from overcoming the pressure he felt to “not rock the boat.”⁸³⁷

⁸³⁵ *Pippitt Trial*, *supra* note 1, at 259-260.

⁸³⁶ *Murtha CRU Interview*, *supra* note 413, at 00:54:06.

⁸³⁷ *Id.* at 00:54:55.

VI.

Response to Preliminary Stakeholder Input Regarding the CRU's Findings

To be fully collaborative and transparent with all stakeholders in the outcome of this case, the CRU provided an early draft of its analysis and recommendations to its partners in justice: the Aitkin County Attorney's Office, the Aitkin County Sheriff's Office, and the Bureau of Criminal Apprehension (BCA). The CRU provided expert reports to the BCA on January 19, 2024.⁸³⁸ The CRU provided its draft report—along with all original source documents cited to in the report—to Jim Cousins, Jim Ratz (Aitkin County Attorney), and Scott Mueller (BCA's Deputy Superintendent of Investigative Services) on March 21, 2024.⁸³⁹ In the same email in which the CRU provided the draft report, it also requested a meeting to discuss the report. The CRU met with County Attorney Ratz, Lisa Rakotz (Senior Assistant Aitkin County Attorney), the Aitkin County Undersheriff (Heidi Lenk), and the Aitkin County Sheriff (Daniel Guida) on April 18, 2024.⁸⁴⁰ Following that meeting, the CRU requested feedback or input regarding the report by May 2, 2024, 42 days after sending the draft report.⁸⁴¹ Sheriff Guida provided a response by that date in the form of a letter.⁸⁴²

Deputy Superintendent Mueller responded to the CRU's March 21st email request to meet on April 22, 2024.⁸⁴³ The CRU met with members of the BCA on April 29, 2024.⁸⁴⁴ In response to their request for more time to allow a team of three experts that the BCA hired to review the CRU's report, the CRU agreed to delay finalization of the report for three additional weeks.⁸⁴⁵ On May 20, 2024, the BCA provided preliminary input.⁸⁴⁶

⁸³⁸ Email from David Voigt, Deputy Attorney General, to Carman Leone, Assistant Attorney General (Jan 19, 2024).

⁸³⁹ Email from Carman Leone, Assistant Attorney General, to James Cousins, Brian Pippitt's Defense Attorney (Mar 21, 2024); Email from Carman Leone, Assistant Attorney General, to James Ratz, Aitkin County Attorney (Mar 21, 2024); Email from Carman Leone, Assistant Attorney General, to Scott Mueller, Deputy Superintendent of Investigative Services (Mar 21, 2024).

⁸⁴⁰ Email from Carman Leone, Assistant Attorney General, to stakeholders (Apr 18, 2024).

⁸⁴¹ *Id.*

⁸⁴² Appendix F, *infra*.

⁸⁴³ Email from Scott Mueller, Deputy Superintendent of Investigative Services, to Carman Leone, Assistant Attorney General (Apr 22, 2024).

⁸⁴⁴ Email from Carman Leone, Assistant Attorney General, to Scott Mueller, Deputy Superintendent of Investigative Services (Apr 29, 2024).

⁸⁴⁵ *Id.*

⁸⁴⁶ Appendix G, *infra*.

A. The Aitkin County Sheriff's input does not persuade the CRU to alter its recommendation.

The Aitkin County Sheriff's Office provided verbal and written input. This was solicited by the CRU, without any obligation under law or policy, to ensure the CRU is making an accurate, equitable, and reasoned recommendation. For the reasons outlined below, the Sheriff's input ultimately did not change the recommendation of the CRU to vacate Pippitt's conviction.

1. The Aitkin County Sheriff's Office provided input regarding the CRU's report.

During their meeting with the CRU on April 18, 2024, the Sheriff and Undersheriff expressed several concerns about the findings and recommendations of this report.⁸⁴⁷ For example, Sheriff Guida questioned the CRU's finding that no one entered through the south basement window because the experts who rendered opinions which were featured in the CRU report did not try to recreate the scene to determine plausibility of entry or exit.⁸⁴⁸ Sheriff Guida suggested that Keith could have entered and exited through the basement window because he knows Keith and believes he could fit through the window.⁸⁴⁹ Sheriff Guida also mentioned that Keith allegedly committed a burglary of a similar nature close in time to the Malin murder, but he did not provide further specifics.⁸⁵⁰ To explain the lack of common footprints, Sheriff Guida suggested that Keith or an accomplice could have brushed the sandy floor behind him as he exited through the basement window.⁸⁵¹

Undersheriff Lenk also provided her misgivings with the report at the meeting.⁸⁵² Undersheriff Lenk suggested that she found convincing evidence of Pippitt's guilt the fact that Donald Hill had offered a silver certificate at the Fireside the day after the murder.⁸⁵³ She also mentioned that Terry Peet was not a small person, and therefore, the same concerns the CRU has with respect to the theory that any of the charged men fit through the window would equally apply to Peet, a person the CRU has identified as a credible alternative suspect.⁸⁵⁴

⁸⁴⁷ Meeting between CRU, Aitkin County Sheriff's Office, and Aitkin County Attorney's Office at Aitkin County Government Center (Apr 18, 2024) [hereinafter *Aitkin Meeting 4/18/24*].

⁸⁴⁸ *Id.*

⁸⁴⁹ *Id.*

⁸⁵⁰ *Id.*

⁸⁵¹ *Id.*

⁸⁵² *Id.*

⁸⁵³ *Id.*

⁸⁵⁴ *Id.*

Finally, Sheriff Guida sent an undated letter to the CRU on May 1, 2025, in which he raised several concerns.⁸⁵⁵ He stated that it is unrealistic to respond to the report in the time period provided.⁸⁵⁶ Sheriff Guida said his office will need to conduct its own review and investigation of the CRU's report because the CRU appears to have a "limited understanding of the entire case and investigation" and that the CRU "seems more focused on the process of the case than substantive evidence."⁸⁵⁷

2. The CRU carefully considered the Aitkin County Sheriff's Office input but was unpersuaded.

Regarding Sheriff Guida's concern that the CRU failed to reconstruct the crime scene and attempt to send someone through the window before concluding it's implausibility, it's worth noting that none of the original investigators involved in this case tried to recreate the entry through the window after the murder. Netzel explained in an interview with the CRU that there is no way to reconstruct the environment with precision to determine whether it was possible for Keith or an accomplice to get through the window while leaving the crime scene exactly as it appeared the morning of February 25, 1998.⁸⁵⁸ For example, the variables at play include finding someone of Keith's height, weight, strength at that time, intoxication level as described in testimony, at night and with materials that are identical or as close as possible to the materials used at that time.⁸⁵⁹ There are many variables for which we have unknown quantity.⁸⁶⁰ For instance, there is no way to determine the fiber content of the clothing Keith was wearing that night.⁸⁶¹ There is no way to determine how full the boxes were that were stacked under the window that night which would have been used as leverage for getting in or out of the window.⁸⁶²

Netzel explained that the scientific method would support reconstruction in limited circumstances, such as testing the trajectory of glass after breaking, blood spatter/stain patterns,

⁸⁵⁵ Email from Daniel Guida, Aitkin County Sheriff, to Carman Leone, Assistant Attorney General (May 1, 2024); Appendix F, *infra*.

⁸⁵⁶ Appendix F, *infra*, at 1.

⁸⁵⁷ *Id.*.

⁸⁵⁸ Interview with Linda Netzel, criminalist, telephone (April 19, 2023) [hereinafter *Netzel CRU Interview 4/19/24*].

⁸⁵⁹ *Id.*

⁸⁶⁰ *Id.*

⁸⁶¹ *Id.*

⁸⁶² *Id.*

and bullet trajectory.⁸⁶³ The scientific method can be used to analyze these types of reconstruction because these tests are based on physics and mathematics.⁸⁶⁴ In fact, Netzel did a limited reconstruction in her review of the original Pippitt investigation by prying laths from a window frame to determine it could have only been done from inside the basement, which is detailed in her report.⁸⁶⁵ But as proposed by Sheriff Guida, a reenactment as part of a broader reconstruction has too many unknown variables that cannot be conclusively proven or disproven by science.⁸⁶⁶

Netzel acknowledged that while it may be possible for someone of Keith's purported height and weight to theoretically get in and out of the window, the analysis is not limited to whether a person of those dimensions can physically fit through the window.⁸⁶⁷ Rather, it is whether the person can do so while leaving crime scene exactly as it was found.⁸⁶⁸

Finally, and most persuasively to the CRU, Netzel highlighted that reports from first responders describe finding a kitchen chair resting on top of the propped open trap door leading to the basement.⁸⁶⁹ According to Sheriff Guida's theory, Keith came in and out through the south basement window.⁸⁷⁰ Netzel proposed there was no way Keith could descend the stairs, prop the trap door a few inches, and place the chair on top of the door.⁸⁷¹ Moreover, Sheriff Guida's theory of Keith's exit through the basement window was explicitly rejected by Bjerga,⁸⁷² was never a theory advanced by the prosecution, and conflicts with the testimony of Raymond and Donald. No one proposed this theory at or before Pippitt's trial.

Regarding Sheriff Guida's suggestion that Keith committed a similar burglary near in time to the Malin murder, Keith does appear to have a conviction for third degree burglary, dated January 21, 1999.⁸⁷³ He pled guilty as part of the deal with the State to dismiss the first-degree

⁸⁶³ *Id.*

⁸⁶⁴ *Id.*

⁸⁶⁵ See Appendix A, *infra*.

⁸⁶⁶ Netzel CRU Interview 4/19/24, *supra* note 858.

⁸⁶⁷ *Id.*

⁸⁶⁸ *Id.*

⁸⁶⁹ *Id.*

⁸⁷⁰ Aitkin Meeting 4/18/24, *supra* note 847. Deputy Superintendent Knutson also seems to endorse this theory in her preliminary response on behalf of BCA when she concludes the basement window in the basement is the likely point of access due to the theory that the front screen door was locked. See Appendix G, *infra*.

⁸⁷¹ *Id.*

⁸⁷² See Bjerga CRU Interview, *supra* note 213, 00:34:20-00:34:35 "No, they weren't going to get out through that window."

⁸⁷³ See Register of Actions, State v. Misquadace, 01-K0-99-000774, Jan. 21, 1999.

murder charge pending against him for the murder of Evelyn Malin.⁸⁷⁴ While it is clear that Keith pled guilty to burglary, the CRU does not have any information about whether that incident was similar to that which he was charged with at the Dollar Lake Store. Assuming, *arguendo*, that the other conviction for burglary tends to prove Keith's participation in the Malin murder at all, it does not prove Pippitt's participation.

The weight that Undersheriff Lenk places on the fact that Donald allegedly passed a silver certificate at the Fireside the day after the murder is unpersuasive to the CRU. As discussed in Footnote 601, the circumstances around the collection and preservation of the Silver Certificate are highly suspicious.⁸⁷⁵ Rhodes, himself said no money was taken from the Dollar Lake Store.⁸⁷⁶ Even if one assumes the fact as true that Donald passed the silver certificate, this does not implicate Pippitt in the murder. This is why the judge refused to allow Rhodes to admit the silver certificate into evidence at Pippitt's trial.⁸⁷⁷

Regarding Undersheriff Lenk's observation that Terry Peet was not a small man is well-taken. However, the CRU does not believe that Peet squeezed through the window. The CRU has no theory regarding how Peet could have entered because of the lack of investigation into him; this is precisely why further investigation into Peet was necessary at the time of the original investigation. The CRU does not conclude that either Terry Peet or M██████████ were, in fact, the murderers of Ms. Malin. Rather, they were credible alternative suspects due to their motives to kill Ms. Malin, and the defense could have used this evidence as a defense. But these suspects were never fully investigated.

In sum, neither the arguments proposed by Sheriff Guida or Undersheriff Lenk persuaded the CRU that Pippitt has not been wrongfully convicted.

B. The Bureau of Criminal Apprehension's preliminary input does not persuade the CRU to alter its recommendation.

The BCA also provided verbal and written input. Like that of the Sheriff's Office, this feedback was solicited by the CRU, without any obligation under law or policy, to ensure the

⁸⁷⁴ See generally *Keith Guilty Pleas*, *supra* note 240.

⁸⁷⁵ See FN 601, *supra*, and accompanying text.

⁸⁷⁶ Bentley, *supra* note 105, at 1 ("Aitkin County Attorney Bradley Rhodes said it appeared that no money was taken.")

⁸⁷⁷ *Pippitt Trial*, *supra* note 1, at 270-271.

CRU is making an accurate, equitable, and reasoned recommendation. For the reasons outlined below, the BCA's preliminary feedback did not change the recommendation of the CRU to vacate Pippitt's conviction.

1. The Bureau of Criminal Apprehension provided input regarding the CRU's report.

During the meeting between the CRU and BCA on April 29, 2024, Deputy Superintendent Mueller explained that there were three primary areas of concern: (1) the CRU's analysis of the crime scene, (2) the CRU's conclusion that Raymond provided a false confession given the interview techniques deployed, and (3) the way the report is written.⁸⁷⁸

Deputy Superintendent Mueller also stated that the BCA has not had enough time to digest the report, and that the BCA had hired a group of experts to review the CRU's report.⁸⁷⁹ Deputy Superintendent Muller estimated that the BCA's experts could have something in four additional weeks.⁸⁸⁰ The CRU agreed to provide three additional weeks for the BCA to submit a response.⁸⁸¹

On May 20, 2024, Drew Evans, the Superintendent of BCA, submitted written preliminary input regarding the first of BCA's general concerns pertaining to the CRU's crime scene analysis.⁸⁸² The submission, authored by Deputy Superintendent of Forensic Science Services Catherine Knutson, addressed "significant concerns immediately identified with the content, tone, and basis of the external consultants' reports."⁸⁸³ Deputy Superintendent Knutson stated that "opinions of both external consultants are based on nonexistent or insufficient experimentation needed to reach conclusive statements."⁸⁸⁴ She criticized the experts for allowing confirmation/cognitive bias to influence their conclusions.⁸⁸⁵ Deputy Superintendent Knutson highlighted that Turvey "appears to have a strong negative impression of law enforcement entities," inferring that his bias against BCA, a law enforcement entity, influenced

⁸⁷⁸ Meeting between CRU and Bureau of Criminal Apprehension (Apr 29, 2024) [hereinafter *BCA Meeting 4/29/24*].

⁸⁷⁹ *Id.*

⁸⁸⁰ *Id.*

⁸⁸¹ Carman Leone, Assistant Attorney General, to Scott Mueller, Deputy Superintendent of Investigative Services (Apr. 29, 2024).

⁸⁸² Email from Andrew Evans, Superintendent of BCA, to the CRU (May 20, 2024).

⁸⁸³ Appendix G, *infra*, at 1.

⁸⁸⁴ *Id.* at 2.

⁸⁸⁵ *Id.*

his conclusions in his report.⁸⁸⁶ She concluded on behalf of BCA technical experts who have reviewed the CRU's work that "[t]he staging theory is unlikely due to the fact that statements provided indicate the victim locked both screen doors and the deadbolts each night prior to bed, especially on this night..."⁸⁸⁷ Because there was no apparent damage to the front screen door in the crime scene photos, "the point of access is most likely from the broken window in the basement."⁸⁸⁸

Finally, Deputy Superintendent Knutson concluded by explaining that crime scene analysis protocols and documentation practices have steadily evolved since the 1990s, including evolving technology (like DNA testing) and an increasing emphasis on documentation and transparency, among others.⁸⁸⁹ Ultimately, despite "areas of improvement identified during the evaluation of the original crime scene field notes...it was determined that the actions taken by the original BCA crime scene analysts were appropriate and thorough."⁸⁹⁰

2. The CRU carefully considered the Bureau of Criminal Apprehension's input but was unpersuaded.

Although Deputy Superintendent Knutson raised "significant concerns with the "content, tone, and basis of the contracted external consultants' reports," she does not explain which particular aspects of the reports led to a flawed conclusion. Ultimately, the CRU relies on Netzel's response to Deputy Superintendent Knutson's letter which may be found at Appendix H to this report in determining that BCA's preliminary concerns, from a technical perspective, are not persuasive.

The BCA's response to the CRU report raises additional concerns. For example, the BCA seems to suggest that bias has influenced the analysis of the CRU, at least with respect to the reliance on the contracted experts. Sheriff Guida raises the specter of CRU's bias in his letter, too.

Regarding the suggestion of the bias of contracted experts, Turvey had a valuable perspective, albeit a defense perspective, because he was hired by a co-defendant's attorney

⁸⁸⁶ *Id.* at 3.

⁸⁸⁷ *Id.*

⁸⁸⁸ *Id.* at 3-4.

⁸⁸⁹ *Id.* at 4.

⁸⁹⁰ *Id.*

before trial.⁸⁹¹ He was in the basement of the Dollar Lake Store.⁸⁹² He viewed the scene.⁸⁹³ He examined the physical evidence, including the front door to the store.⁸⁹⁴ His perspective from personally viewing the scene nearer the time of the murder provided important information for the CRU to assess.

The CRU approaches each case with an unbiased eye toward determining whether there is evidence that supports case correction. As of May 1, 2024, of the 1,095 applications that the CRU has received, 851 cases were closed without offering relief to the applicant.⁸⁹⁵ The staff of the CRU comes from varied professional experiences. For example, the author of this report has served as a military prosecutor, military defense counsel, assistant professor of law at a military academy, an advisor to commanders, and a civilian defense counsel.

The CRU has no preconceived notions about how a case must resolve prior to completing a thorough investigation. No one directs the CRU how to analyze a case or what recommendation the CRU should ultimately give.

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⁸⁹¹ Interview with Dr. Brent Turvey, Forensic Scientist and Criminologist, TEAMS (Apr. 4, 2023) at 00:23:00-00:23:13; 00:24:16-00:25:14.

⁸⁹² *Id.*

⁸⁹³ *Id.*

⁸⁹⁴ *Id.*; *id.* at 00:29:00-00:29:19.

⁸⁹⁵ Carrie Sperling, Quarterly Advisory Board Meeting Director's Report, Minnesota Attorney General's Conviction Review Unit (May 1, 2024).

VII. **Conclusion**

Pippitt should be granted postconviction relief because he was denied due process of a fair trial based on the totality of the CRU's findings. A confluence of factors led to a series of problems which resulted in his wrongful conviction. The conclusions of the investigative team, upon which the conviction is based, have been directly challenged by four experts. These experts have found that the basement window was not the point of entry, that the crime scene was staged, that the deadbolt to the front door was locked when first responders arrived at the scene of the crime, and that Raymond gave a false confession. Rhodes presented evidence inapposite of these expert conclusions through the testimony of Beck, Bjerga, Merle, Raymond and Arnoldi, among others.

The concern here is not limited to simply different experts rendering different opinions. Rather, the lack evidence supporting Rhodes's theory, and the amount of evidence that challenged it, should have led Rhodes to realize that the testimony offered in support of his theory was unreliable. For example, offering Merle's testimony about rows of cigarettes and cases of beer missing from specific areas of the store which is contradicted by photographic evidence is unreasonable. Proposing that the front door was not deadbolted despite photographic evidence to the contrary was unreasonable. Calling Raymond to offer testimony to the jury after changing his story so many times was unreasonable. Offering Arnoldi's testimony, considering his character for untruthfulness, reliance on the complaint, and mental health history was unreasonable. Murtha's inability to properly react to the unreliable evidence offered by Rhodes also contributed to the outcome.

The loss of Evelyn Malin was unquestionably tragic. She was a beloved staple of the community. She served so many roles throughout her life: a storekeeper, a friend, a mother, a grandmother, a spouse, a daughter, and so much more. Her death left a void in the community that could not be filled, even with the proper identification of the true murderer. And yet, despite the desire for someone to atone for the crime, the atonement cannot be placed on just anybody. Otherwise, it is not justice that is served, it is convenience. As such, the appropriate remedy in this case is for Pippitt's conviction to be vacated.