UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

BIN WANG **Petitioner-Plaintiff,** **v.** **MICHAEL OVERMYER,** Warden **DISTRICT ATTORNEY'S OFFICE** **Defendant-Respondent.**	)	**Case No. 2:19-cv-357-ER**

Reply to the DAO's Response Regarding Bin Wang's 2254 Petition

Petitioner-Plaintiff, Bin Wang, through counsel, respectfully files his *Reply to the DAO's Response* regarding his 2254 petition, which is presented in good faith and based on the following facts and authorities.

INTRODUCTION

It's been a dozen years since the District Attorney's Office ("DAO") prosecuted Mr. Wang for Sharon's Lin's death, and it still hasn't figure out what narrative it's sticking with regarding Sharon's death. *Infra*, p. 7 (discussing the DAO's new "theory" that Mr. Wang shot Sharon at "close range" – and not more than three feet away as its key expert, Dr. Gregory McDonald, told jurors at trial). That the DAO still can't settle on a narrative in 2020 drives home Mr. Wang's trial counsel ineffectiveness claim: reasonable doubt could've easily been raised regarding the DAO's ever-evolving homicide narratives, had trial counsel simply expanded the *scope* of his forensic investigation and zeroed in on all the physical evidence that undermined and disproved each narrative – not simply Sharon's entrance wound.

Also, the DAO's *Answer* never addressed the *facts* presented below regarding how Brent Turvey systematically dismantled all three homicide narratives. Instead, it sought to destroy Brent Turvey's *character* by purposely and/or recklessly misrepresenting the facts of six cases involving Mr. Turvey.

If purposeful, the DAO's misrepresentations not only violate Rule 3.3(a) of the Pennsylvania Rules of Professional Conduct ("A lawyer shall not knowingly… make a false statement of material fact or law to a tribunal"), they show how far the DAO will go to protect a conviction, even one that's plainly unconstitutional due to trial counsel's ineffectiveness. If reckless, meaning the DAO simply didn't put in the time to review the cases it cited, this simply shows the DAO is still as lazy as it was when it tried Mr. Wang a dozen years ago.

More specifically, from day one the DAO has had tunnel vision regarding one fact: the handgun's location after the shooting.[1] The DAO believed (and still believes) the handgun's location made (and makes) this an open and shut case regarding Mr. Wang's guilt. *Infra*, pp. 45-49 (addressing the DAO's myopic "handgun location" argument).[2] However, by cementing itself into this tunnel, the DAO – like trial counsel – failed to examine all the physical evidence. There's no better proof of this than the DAO's schizophrenic and ever-evolving homicide narratives at trial. What prosecutor presents *three different homicide narratives* to a jury? Yet this is exactly what happened at Mr. Wang's trial.

Lastly, sticking with the handgun's location, the DAO wants the Court to believe Mr. Wang's guilt hinges solely on the handgun's location after the shooting. This argument is like the sleight of hand argument the DAO regularly makes when challenging *Brady* claims. The DAO is notorious for

[1] One would think Dr. McDonald's three feet or more, *i.e.*, distance-range gunshot, opinion would've been the most damaging/incriminating fact for Mr. Wang. However, every prosecutor associated with Mr. Wang's prosecution has disavowed Dr. McDonald's *distance-range* gunshot opinion and articulated or crafted a narrative where Sharon died from a *close-range* gunshot. That the DAO has disavowed its key forensic witness should tell the Court everything it needs to know about the DAO's case against Mr. Wang. At this point, the DAO is simply throwing everything up against the wall to see if anything sticks legally to sustain Mr. Wang's conviction.
[2] E.C.F. #29, p. 20 ("The only explanation any sensible person could come to is that [Mr. Wang], with a conscience of guilt, hid the gun in [the drawer].").

trying to hoodwink courts into viewing each item of suppressed evidence individually, as if the world, the suppressed evidence, and the defendant's trial existed in a vacuum. Once an item is isolated from the rest of the suppressed items, the DAO argues this one item doesn't and can't prove *Brady* prejudice. The deception and shortcoming of this approach are obvious, and they're key reasons why the Supreme Court rejected it in *Kyles v. Whitely*, 514 U.S. 419, 436-437 (1995).

The DAO is doing the same thing here; it's trying to hoodwink the Court into focusing only on one fact: the handgun's location. According to the DAO, Mr. Wang must be guilty because the only possible way the handgun could've ended up under a CD in the bottom drawer is if Mr. Wang placed it there after shooting Sharon. The DAO claims no amount of defense evidence can possibly undermine this allegedly ironclad, overwhelming, and irrefutable fact.[3]

The DAO's argument is absurd and myopic. It's also another sleight of hand tactic aimed at steering the Court away from the numerous items of evidence raising reasonable doubts regarding the DAO's ever-evolving homicide narratives. Put differently, one fact doesn't make or break a litigant's case. Proving guilt beyond a reasonable doubt or raising reasonable doubt takes a constellation of facts – and that's what Mr. Wang presented to the state courts and this Court.

There are several facts – based on the physical evidence trial counsel didn't consider, argue, or present – that raise reasonable doubts regarding the DAO's myopic "handgun location" argument.

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[3] As mentioned below and throughout his state court proceedings, the DAO's position is beyond absurd. To believe the DAO's position, one must believe the following: Mr. Wang shot his wife. Mr. Wang then hid the handgun in the bottom drawer under the CDs. After hiding the handgun, Mr. Wang immediately told responding officers his wife committed suicide by shooting herself with the very handgun he'd just hidden in the bottom drawer. The absurdity of this narrative is self-evident. Who kills someone with a handgun, then hides said handgun in a drawer, then tells responding officers the victim shot herself with said handgun now hidden in the drawer?

The DAO's "handgun location" argument, moreover, is directly contradicted by three neutral facts witnesses who said they *saw* and *heard* Mr. Wang at the second-floor bedroom window screaming for help and for people to call 911 – only *seconds* after hearing the gunshot. These witnesses, therefore, raise reasonable doubts regarding the DAO's "handgun location" argument. If Mr. Wang was at the bedroom window only seconds after the gunshot, he couldn't have carefully tiptoed over Sharon's body, placed the handgun into the bottom drawer, and then carefully tiptoed back over Sharon's body before running to the window for help.

And this is all Mr. Wang had to do at trial: raise reasonable doubt regarding the DAO's homicide narratives. By focusing on the scene characteristics and *all* the physical evidence, Brent Turvey methodically deconstructed and raised reasonable – and substantial – doubts regarding the DAO's three homicide narratives.

By raising these reasonable – and substantial – doubts regarding each homicide narrative, it's reasonably probable at least one juror would've concluded that the DAO's "handgun location" argument wasn't supported by the objective physical evidence, but that Brent Turvey's assessment (or deconstruction) of each homicide narrative was, and based on this finding the juror would've concluded what Brent Turvey concluded: the physical evidence supports the conclusion Sharon shot herself and the handgun came to rest in the bottom drawer because, after shooting herself, she immediately dropped the handgun, fell off the bed and dislodged the dresser drawers, and the handgun came to rest in the bottom drawer under the CD.

In short, by raising reasonable doubts regarding all three homicide narratives, trial counsel could've raised reasonable – and substantial – doubts regarding the DAO's "handgun location" argument. Put differently, if one juror believed the DAO didn't prove at least one of its homicide narratives beyond a reasonable doubt, it's reasonably probable he'd find the DAO's "handgun location" argument meritless because the "handgun location" argument is based on the theory Mr. Wang murdered Sharon.

Moreover, the DAO's "handgun location" argument is, effectively, an "impossibility" argument. Mr. Wang, though, presented his own "impossibility"/reasonable doubt argument based on the physical evidence referenced in Brent Turvey's affidavit – an 'impossibility"/reasonable doubt argument not presented by trial counsel: Based on the FCC's location at the head of the bed near the headboard, there are reasonable – and substantial – doubts regarding the theories presented by Dr. McDonald (*i.e.*, Mr. Wang fired the fatal shot when the handgun was three feet or more away from

Sharon), Officer Stott (*i.e.*, Mr. Wang had to be standing between the bed and the left wall when he shot Sharon), and the prosecutor (*i.e.*, Mr. Wang grabbed Sharon's hair as he stood at the left foot of the bed and shot her).

Based on these competing "impossibility"/reasonable arguments, Mr. Wang framed the fundamental issue this way in his amended 2254 petition:

> Thus, here is the key question: of the two competing "impossibility" arguments, which of the two is less likely to have happened: (1) the handgun coming to rest in the second drawer under a CD after Sharon shot herself at the head of the bed; or (2) the FCC coming to rest at the head of the bed after Mr. Wang fired the fatal shot standing three feet or more from the left foot of the bed. Based on the laws of physics, evidence dynamics, and common sense the answer is simple: the latter is far more unlikely than the former.[4]

Put differently, had trial counsel expanded the scope of his forensic investigation and methodically challenged the DAO's homicide narratives with an expert like Brent Turvey who examined *all* the physical evidence, is it reasonably probable at least one juror would've found Mr. Wang's FCC "impossibility" argument more persuasive, thus raising reasonable doubt regarding not only the DAO's homicide narratives but also its "handgun location" argument, and voted to acquit Mr. Wang based on this finding? That answer's yes, but the problem for Mr. Wang is trial counsel never gave jurors the ability to consider, compare, and weigh these two competing impossibility arguments and to create reasonable doubt.

Another impossibility/implausibility argument the DAO makes in its *Answer* is this one: it's extremely implausible Sharon shot herself and its even more implausible she did so in the back of her head with the handgun pointed at an upward angle.[5] Dr. Hoyer, however, said the exact opposite. Based on his experience, he said the entrance wound's location and trajectory tract are commonly

[4] E.C.F. #15, p. 95.

[5] E.C.F. #29, p. 26 ("Turvey, however, fails to explain the extreme implausibility that the victim would choose to, and indeed be physically able to, shoot herself in the back of the head with the gun pointed at an upward angle.").

witnessed in suicides.[6] Dr. Hoyer, however, effectively mooted this fact on cross-examination when he said the wound's characteristics, *i.e.*, shape and trajectory tract, made homicide and suicide equally plausible.[7] Again, though, because trial counsel didn't examine all the physical evidence, jurors didn't have the ability to consider, compare, and weigh Mr. Wang's FCC impossibility argument versus the DAO's implausibility argument.

In the end, Mr. Wang implores the Court not to be hoodwinked by the DAO's myopic legal arguments and false and libelous misrepresentations regarding Mr. Turvey. Mr. Wang simply asks the Court to do what Mr. Turvey did and review all the physical evidence, compare it against the DAO's still evolving homicide narratives, and ask whether trial counsel's decision to cease his forensic investigation was reasonable once Dr. Hoyer told him – *well before trial* – Sharon's entrance wound made suicide and homicide *equally plausible*. It wasn't. It was objectively unreasonable, it was prejudicial, and the PCRA court's contrary conclusions are also objectively unreasonable because the PCRA court misapplied *Strickland's* clearly-established deficient performance and prejudice prongs.

Mr. Wang, therefore, respectfully request the Court to grant him a writ of habeas corpus based on his unconstitutional first-degree murder conviction.

[6] NT, Trial, 11/5/2008, p. 57.
[7] NT, Trial, 11/5/2008, p. 73.

THE DAO'S STILL EVOLVING HOMICIDE NARRATIVES

In its *Answer*, the DAO sets forth *yet another* narrative regarding how Mr. Wang supposedly shot and killed Sharon:

> Using the gun that he kept on a clip-on holster, [Mr. Wang] fired a single *close-range* shot at an upward angle into the back of his wife's head, killing her instantly.[8]

This paragraph is deceptively and purposely vague because it conveniently – and tellingly – omits any reference to Mr. Wang's and Sharon's respective locations at the time of the shooting. By not specifying their locations, and vaguely characterizing this as a "close-range" shooting, the DAO sought to shield itself from further *logical* and *factual* criticism. Counsel emphasizes *logical* and *factual* because the DAO knows – or at least should know by now – if it places Mr. Wang anywhere in the bedroom firing at Sharon, counsel can and will be able to quickly debunk that location simply by focusing on the objective and indisputable physical evidence. Again, if the Court focuses strictly on *all* the physical evidence, like trial counsel should've done, it'll see three things hiding in plain sight: (1) trial counsel's ineffectiveness, (2) reasonable doubt, and (3) Mr. Wang's innocence.

Furthermore, the DAO mockingly argues how simple this case is based on the overwhelming evidence proving Mr. Wang shot Sharon, yet it still can't tell the Court – twelve years after Mr. Wang's prosecution – Mr. Wang's and Sharon's respective positions at the time of the shooting. If it's so obvious Mr. Wang shot Sharon and how he did it, why can't the DAO identify these positions and why has the DAO's homicide narrative changed so often?

Speaking of changing narratives, let's run down the DAO's evolving narratives once more and show how the physical evidence trial counsel failed to consider, present, and argue would've raised reasonable – and substantial – doubts regarding each narrative.

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[8] E.C.F. #29, p. 5.

A. Dr. McDonald's preliminary hearing testimony

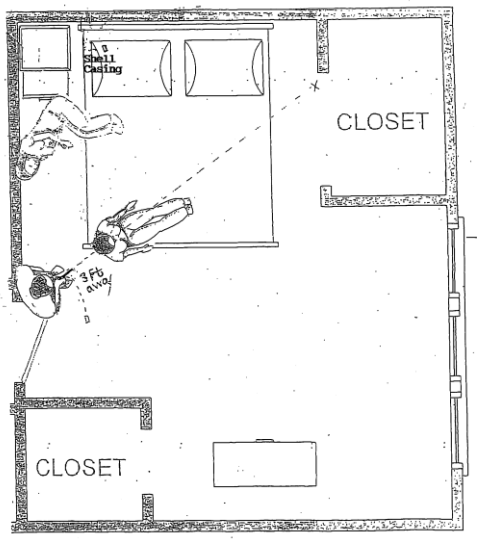
At the preliminary hearing, Dr. Gregory McDonald, characterized Sharon's death as a homicide because the handgun was three or more feet from Sharon when it was fired. Dr. McDonald characterized the fatal shot as a "distant range gunshot":

[3] **Q.** Was there any gunpowder soot or stippling
[4] found around the wound?
[5] **A.** No, there was not. I did both a gross
[6] examination with my naked eyes as well as
[7] microscopic examination looking for gunpowder and
[8] there was none.
[9] **Q.** What did that tell you?
[10] **A.** That this was a distant range gunshot wound
[11] generally beyond three feet. [9]

Keep in mind, Dr. McDonald's three feet or more testimony means: three feet or more from the handgun's muzzle to Sharon.[10] Thus, because people generally extend their shooting arm when they fire a handgun, it's more likely than not Mr. Wang had to be standing four or more feet from Sharon if he fired the fatal gunshot.

Based on Dr. McDonald's three feet or more testimony and certain indisputable facts, most notably the bedroom's dimensions and the strike mark above the bedroom's *right-side* closet, the only plausible location in the bedroom where Mr. Wang could've fired the fatal shot was if he stood at least four feet from the *left foot of the bed*, facing the bed diagonally and not head on. Likewise, based on Mr. Wang's positioning and other indisputable facts, the only plausible location for Sharon at the time of the shooting is the bed's lower left corner, near the edge. This *pro se* diagram, which Mr. Wang included in his state court pleadings, visually describes this positioning:

[9] NT, Prelim. Hrg., 7/3/2007, p. 9.
[10] NT, Prelim. Hrg., 7/3/2007, p. 15.



These locations are based on the following indisputable facts: (1) the bedroom's dimensions; (2) the strike mark above the right-side closet; and (3) the fact Sharon fell off the bed once shot, meaning she had to be seated near the left edge of the bed when shot.

1. The strike mark

The strike mark above the right-side closet eliminates the bedroom's entire right side, meaning the only way the fatal bullet could strike this *right-side* location is if it was fired from the bedroom's *left side*.

2. Sharon's fell off the bed

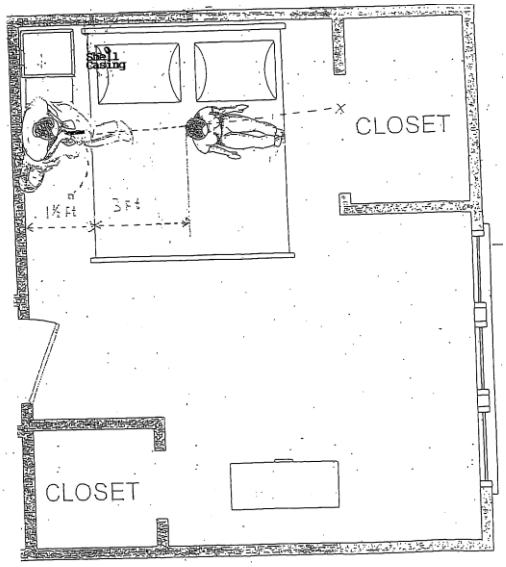
As the DAO conceded, Sharon was seated on the bed's *left* side when shot.[11] We know this because when first responders arrived they found part of her legs and both feet on the bed near the head of the bed, while her body was to the *left* of the bed between the left wall and bed.[12] Moreover, Sharon had to be on the *left edge* of the bed because she fell off. Had she been seated in the middle of the bed she would've never fallen off the bed.

[11] E.C.F. #29, p. 20.
[12] NT, Trial, 11/4/08, p. 30; NT, Trial, 11/5/08, p. 142.

3. Bedroom's dimensions

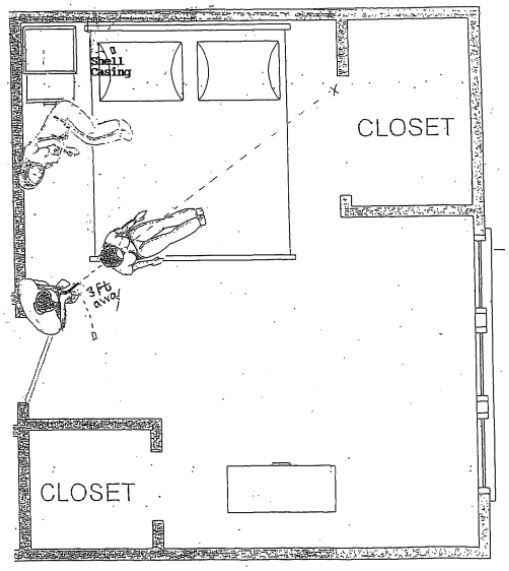
Having only the bedroom's *lefts side* to consider based on the *right-sided* strike mark, the next question is this: What areas on the bedroom's *left side* are spacious enough where (1) Mr. Wang can stand at least four feet away to shoot Sharon and (2) where Sharon is seated on the left edge of the bed?

The area between the left wall and bed measured at 1.5 feet.[13] Mr. Wang couldn't have fired the fatal shot from this area because – to be at least three to four feet from Sharon – Sharon would've been in the middle of the bed and not fallen off once shot. This *pro se* diagram visually describes why, based on Dr. McDonald's three feet or more opinion, Mr. Wang couldn't have fired the fatal shot while standing in the area to the left of the bed:



Consequently, if the fatal shot was a "distance range gunshot," fired three or more feet away from Sharon, Mr. Wang had to be positioned at least three (and most likely four) feet diagonally from the foot of the bed and Sharon had to be at seated near the edge of the left foot of the bed:

[13] NT, Trial, 11/4/2008, p. 65.



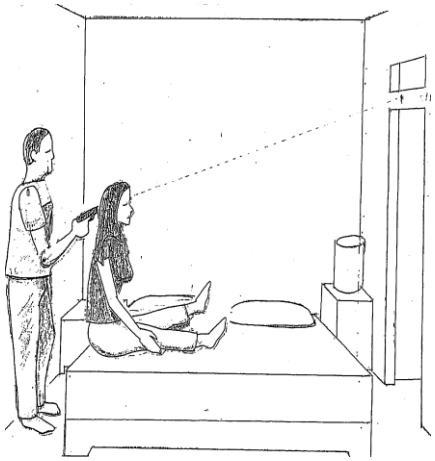
As explained *infra*, there are several facts which raise reasonable doubts regarding Dr. McDonald's homicide narrative. Had trial counsel expanded the scope of his forensic investigation, he would've identified, presented, and argued these facts throughout trial and his closing argument.

B. Officer Robert Stott's trial testimony

The DAO qualified Stott as firearms examiner with an expertise in firearms. The DAO presented him to discuss the handgun that fired the fatal shot: the Taurus 9mm semi-automatic handgun. The prosecutor, though, went well beyond Stott's limited firearms expertise and had him offer reconstruction testimony. Stott told jurors Sharon had to have been seated near the left edge of the bed, near the bed's midline, facing the right-side closet, when Mr. Wang fired the fatal shot while standing in the 1.5 foot area between the left wall and bed.[14] Stott said this positioning was "more plausible" than Sharon being seated near the head board left of center.[15]

[14] NT, Trial, 11/4/2008, pp. 158, 163.
[15] NT, Trial, 11/4/2008, p. 158.

Stott based his opinion on the strike mark's location, the location where Sharon's body came to rest, the blood spatter on the left wall, and the blood spatter on the head board.[16] Based on these same considerations, Stott also opined Sharon couldn't have been seated with her back near or against the head board facing forward when the fatal shot was inflicted. Based on where Sharon was seated when shot, *i.e.*, the left edge of the bed near its midline, and the strike mark's location, Stott opined that Mr. Wang had to have fired the fatal shot while standing directly behind Sharon in the 1.5 foot space between the bed and the left wall.[17] Stott reiterated his opinions on cross-examination.[18] Thus, this is how Stott envisioned the shooting:



As explained *infra*, there are several facts which raise reasonable doubts regarding Stott's homicide narrative. Had trial counsel expanded the scope of his forensic investigation, he would've identified, presented, and argued these facts throughout trial and his closing argument

C. Dr. McDonald's trial testimony

After Stott had placed Mr. Wang between the left wall and bed at the time of the shooting, the prosecutor presented Dr. McDonald, who told jurors about his three feet or more opinion:

[16] NT, Trial, 11/4/2008, pp. 162-163.
[17] NT, Trial, 11/4/2008, pp. 153-155, 157.
[18] NT, Trial, 11/4/2008, pp. 170-171, 172-173, 174.

[4] **Q.** So are you telling this jury that this
[5] gun was fired from more than 3 feet or the
[6] muzzle of the gun was at least 3 feet from
[7] the victim's head?
[8] **A.** Yes.
[9] **Q.** Three feet, that is 36 inches? [19]

In fact, the prosecutor asked if this was a *close-range* shooting and he said no:

[4] **Q.** Doctor, you saw nothing to indicate to
[5] you in your expertise that this gun was at
[6] the victim's head, it was close or against
[7] her head at the time of the shooting?
[8] **A.** No, I saw nothing of that nature. [20]

Dr. McDonald's three feet or more opinion, as mentioned, not only has Mr. Wang standing diagonally from the left foot of the bed – at least four feet away from the bed – it completely contradicted Stott's homicide narrative.

D. The prosecutor's closing argument

During closing arguments, the prosecutor presented a third homicide narrative – one that contradicted McDonald's *distance-range* theory and Stott's *close-range* theory. According to the prosecutor, Sharon had to be seated at the corner of the left foot of the bed when Mr. Wang grabbed her hair and shot her at *very close-range*:

She was sitting on the bed at the end. She was on that laptop computer. What do you think she was doing? What do you think she was looking up? That is the Sony laptop where all the e-mails came from. That is what they were arguing about. You know that's what that main argument was about.

…

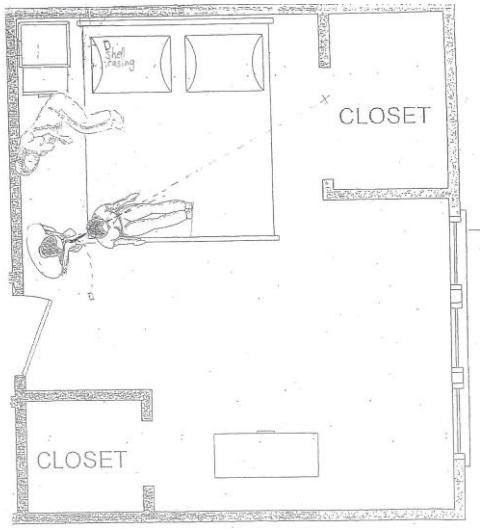
[19] NT, Trial, 11/5/2008, p. 17.
[20] NT, Trial, 11/5/2008, p. 24. The DAO's *Answer*, tellingly and conveniently, fails to explain how it's new homicide narrative, *i.e.*, Mr. Wang shot Sharon at *close-range*, comports with this testimony from one of its key forensic experts. Again, the DAO's hot-potato approach to Sharon's death should tell the Court there were enough facts available to trial counsel to raise reasonable doubt – or at least convince one juror to vote for acquittal.

You are in that room. You are arguing. She is on that laptop. He knows she is on the laptop. He doesn't know what she is doing on the laptop, so they fight some more.

Her hair is pulled out. You see her hair on that beer box. Her hair is pulled out of her head. What do you think happened? Don't you think he grabs her by the head of the hair and shoots her in the back of the head? You saw the strike mark. You can put it all together. You can see --

[21]

This diagram approximates the prosecutor's homicide narrative:



As explained *infra*, there are several facts which raise reasonable doubts regarding the prosecutor's homicide narrative. Had trial counsel expanded the scope of his forensic investigation, he would've identified, presented, and argued these facts throughout trial and his closing argument

[21] NT, Trial, 11/5/2008, pp. 209, 212-213.

THERE ARE REASONABLE DOUBTS REGARDING EACH DAO HOMICIDE NARRATIVE

Brent Turvey's objective and comprehensive review of the physical evidence produced his 35-page affidavit which identified multiple scene characteristics and items of evidence that raised reasonable – and substantial – doubts regarding each homicide narrative. Trial counsel never identified, considered, presented, or argued these facts because he didn't expand the scope of his forensic investigation and defense.[22]

A. The reasonable doubt-raising facts regarding Dr. McDonald's homicide narrative

Under Dr. McDonald's homicide narrative, Mr. Wang must be standing diagonally four or more feet from the bed's lower left corner, while Sharon must be seated on the bed's lower left corner.

This positioning presents with at least four reasonable doubt-raising objective facts. Had trial counsel expanded his forensic investigation, he would've identified, presented, and argued these reasonable doubt-raising facts throughout trial and his closing arguments.

1. FCC's location

This positioning, particularly Mr. Wang's, is quite doubtful, if not impossible, for a very simple reason: the ejected FCC's location. As Stott testified, the handgun's ejection mechanism ejected its FCCs to the right.[23] Consequently, if Mr. Wang fired the fatal shot from this position, the FCC would've landed several feet below the foot of the bed. This didn't happen. The FCC landed at the head of the bed near the headboard as the below scene photographs depicts:

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[22] The DAO claims Mr. Turvey's "affidavit was insufficient to overcome any of the evidence, least of all the most compelling evidence of homicide: the hidden gun." E.C.F. #29, p. 19. That the DAO can say this with a straight face is remarkable on many levels. Mr. Turvey's affidavit addressed each homicide narrative and identified several *objective* scene characteristics and items of evidence that raise reasonable – and substantial – doubts regarding each homicide narrative. These objective scene characteristics and items of evidence are discussed in this section.

[23] NT, Trial, 11/4/2008, p. 149.

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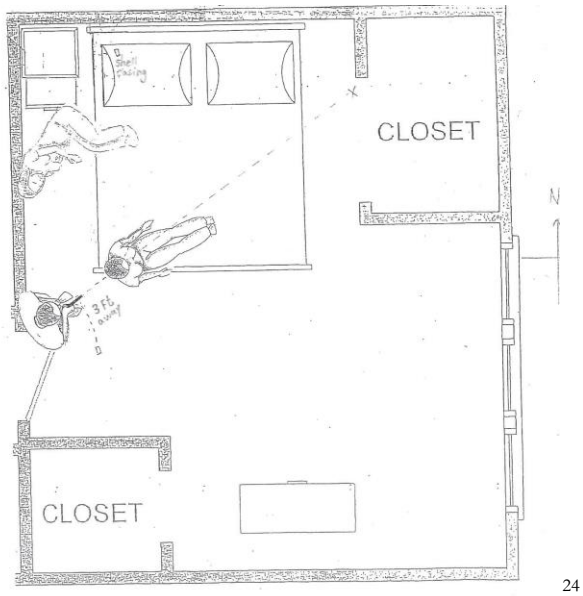
Mr. Wang's diagram shows where the FCC would've landed had he shot Sharon from the position predicated on Dr. McDonald's distance-range gunshot testimony:



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2. The upward trajectory

This positioning, particularly Mr. Wang's, is also quite doubtful, if not impossible, based on the fatal bullet's upward trajectory. As the DAO conceded, Sharon was seated on the bed when shot.[25] EMTs found part of her legs and both her feet still on the bed midway between the head board and the middle of the bed, while her body was to the left of the bed between the left wall and the bed.[26] Thus, if Sharon was seated on the bed, and Mr. Wang was standing at least three or more feet from the bed when he fired the fatal shot, he wouldn't have fired at an upward trajectory, which had to have happened based on the wound tract and the strike mark above the right-side closest. If Sharon was

[24] As discussed in greater detail *infra*, pp. 45-49, the DAO chastised Mr. Turvey for placing so much weight on the FCC's location because he didn't "consider that the [FCC] may have been moved, intentionally or accidentally, by [Mr. Wang]." E.C.F. #29, p. 26. Yes, the DAO is now remarkably claiming Mr. Wang not only hid the handgun in the bottom drawer, he also scoured the scene for the FCC, collected it, and then placed it near the headboard to stage the shooting like a suicide. As discussed *infra*, this is *just plain garbage* that has no grounding in fact, the record, or reality. Again, the lengths the DAO goes to create new fact-less and absurd narratives is astonishing and disgusting.

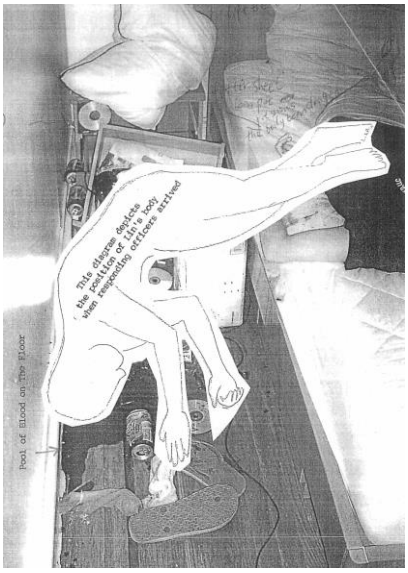
[25] E.C.F. #29, p. 20.

[26] NT, Trial, 11/4/08, p. 30; NT, Trial, 11/5/08, p. 142.

seated on the bed, and Mr. Wang was standing, he would've fired straight-on or at a downward trajectory, not an upward trajectory.[27]

3. Sharon's position

Sharon's positioning, as mentioned, would have to be at the left corner of the bed. This position, however, is quite doubtful, if not impossible, for one simple reason. When EMTs found Sharon, her feet were on the bed, midway between the headboard and middle of the bed, and her feet were facing inward toward the middle of the bed. Mr. Wang's *pro se* diagram shows the positioning of Sharon's body after the shooting:



Consequently, based on her post-shooting positioning, Sharon had to be seated on the bed, near the head of the bed, in the left corner near the dresser.

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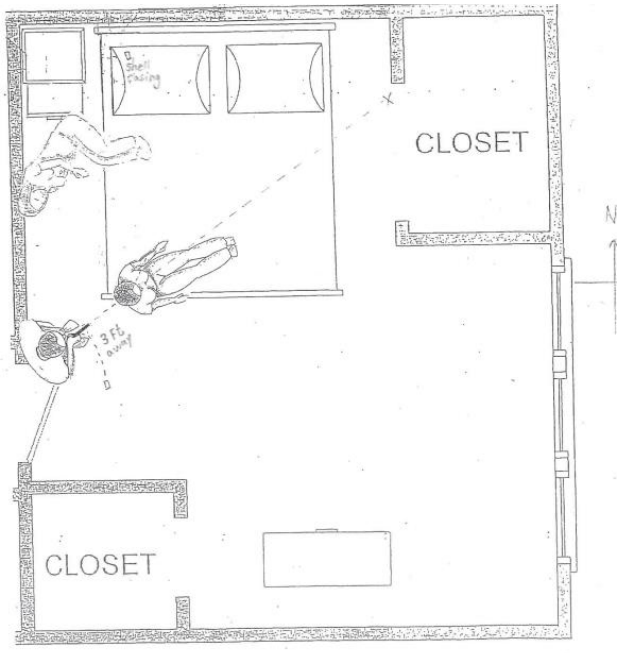
[27] Another possibility is Mr. Wang fired the handgun while holding it near his waistline like a cowboy in a quick-draw shootout. This is possible, but if the DAO sticks with this possibility, it must then deal with the FFC's location. If Mr. Wang fired the handgun while holding it near his waistline, this positioning *only strengthens* Mr. Wang's FCC location argument because the handgun is closer to the floor based on this positioning, meaning once the FCC is ejected to the right it will land on the floor several feet from the foot of the bed.

Yet another possibility is Mr. Wang knelt on one or two knees and fired – with an upward trajectory – at Sharon. The kneeling position, like the quick-draw shootout position, only strengthens Mr. Wang's FCC location argument. This positioning, though, makes the FCC location argument even stronger than the quick-draw shootout positioning because – by kneeling – Mr. Wang and the handgun are now even closer to the floor, meaning once the FCC is ejected to the right it will land several feet from the foot of the bed.

However, if Mr. Wang fired the fatal shot from at least four feet, while facing the bed's lower left corner *diagonally*, and Sharon was seated at the *left head of the bed* near the dresser, how could Mr. Wang shoot her at angle capable of producing the *right-sided* strike mark? He couldn't. It would've been impossible.

Consequently, for Dr. McDonald's three feet or more homicide narrative to work, Sharon must be seated at the bed's lower left corner, but this presents with its own reasonable doubt-raising facts. If Sharon was seated at the bed's lower left corner, her final resting position would've been much different, particularly the location of her feet on the bed.

Mr. Wang's *pro se* diagram demonstrates this reasonable doubt-raising fact:



4. Conflicting narratives

Another reasonable doubt-raising fact is that Dr. McDonald's homicide narrative conflicts with and contradicts Stott's and the prosecutor's homicide narratives.

B. The reasonable doubt-raising facts regarding Stott's homicide narrative

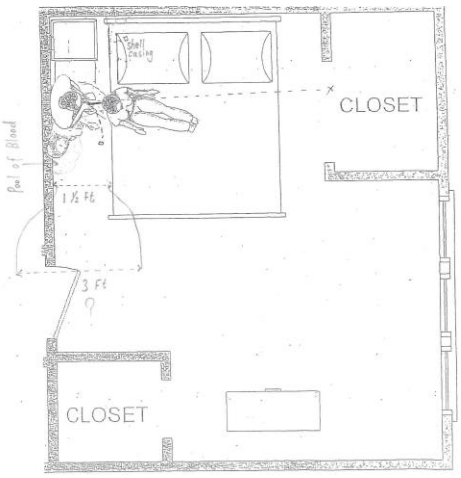
Under Stott's homicide narrative, Mr. Wang is standing between the left wall and bed, while Sharon is seated near the left edge facing the right-sided closet. This positioning presents with at least three reasonable doubt-raising objective facts. Had trial counsel expanded his forensic investigation, he would've identified, presented, and argued these reasonable doubt-raising facts throughout trial and his closing arguments.

1. Conflicting opinions

Stott's homicide narrative contradicts Dr. McDonald's homicide narrative. The only way Stott's and Dr. McDonald's opinions can co-exist, *i.e.*, Mr. Wang fired the fatal shot from three feet or more and he fired it while standing between the left wall and bed, is if Sharon was seated in the middle of the bed, not on the edge. This, however, contradicts Stott's opinion because he puts Sharon on the edge of the bed. Also, if Sharon was seated in the middle of the bed, she wouldn't have fallen off the bed.

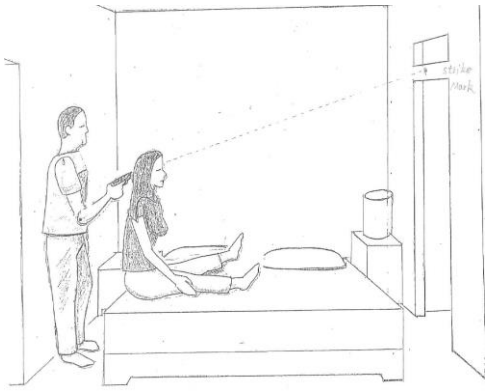
2. The FCC's location

If Mr. Wang stood between the bed and left wall, the FCC would've ejected to the right and landed either at the foot of the bed or on the floor near the left foot of the bed, not at the head of the bed near the dresser. The diagram below depicts this reasonable-doubt raising fact:



3. Lack of back spatter on Mr. Wang and void pattern on left wall

The diagram below depicts Stott's homicide narrative:



Thus, according to Stott, this is a close- to very close-range shooting. Moreover, Stott told trial counsel that close- to very close-range shootings produced back spatter. For instance, one of the reasons Stott didn't find Mr. Wang's suicide narrative credible is what he believed to be the lack of back spatter in the bedroom's left corner.[28] Stott's back spatter testimony is significant because it *defeats his own homicide narrative* for an obvious reason: if Mr. Wang shot Sharon, as diagramed above, the close- to very close-range shooting would've produced back spatter, and this back spatter would've been all over Mr. Wang's clothing and person. Mr. Wang, though, had no back spatter – or blood in general – on his person or clothing.

Furthermore, the back spatter that would've struck Mr. Wang's clothing and person would've created a void pattern on the left wall:

> A void occurs when a person or object blocks the path of the blood. They are important because voids can show investigators if objects are missing from the scene, where a person or persons were at the time of the incident, and if a body was moved… Void patterns are most useful for establishing the position of the victim(s) and assailant(s) within the scene.[29]

There are no void patterns on the left wall.

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[28] NT, Trial, 11/4/2008, pp. 171-172.

[29] www.forensicsciencesimplified.org/blood/principles.html (last visited April 5, 2020).

C. The doubt-raising facts with the prosecutor's homicide narrative

Based on the prosecutor's homicide narrative, Mr. Wang is standing beside the bed's lower left corner grabbing Sharon's hair and shooting her at very-close range. This positioning presents with at least four reasonable doubt-raising objective facts. Had trial counsel expanded his forensic investigation, he would've identified, presented, and argued these reasonable doubt-raising facts throughout trial and his closing arguments.

1. Conflicts with Dr. McDonald's and Stott's homicide narratives

The prosecutor's homicide narrative contradicts Stott's homicide narrative because Stott placed Sharon on the left edge of the bed near the bed's midline. It contradicts Dr. McDonald's homicide narrative because he described the fatal shot as a "distance-range" gunshot and categorically said it wasn't a "close-range" gunshot:

[4] **Q.** Doctor, you saw nothing to indicate to
[5] you in your expertise that this gun was at
[6] the victim's head, it was close or against
[7] her head at the time of the shooting?
[8] **A.** No, I saw nothing of that nature. [30]

2. FCC's location

Based on the prosecutor's homicide narrative, the FCC's rightward ejection trajectory would've resulted in it landing on the floor feet from the foot of the bed. The FCC, as mentioned, landed very near the headboard at the head of the bed.

3. Lack of back spatter on Mr. Wang

As Stott himself testified,[31] f Mr. Wang shot Sharon at very close-range, this very-close range shooting would've produced back spatter, which would've landed on his clothing and person. Mr. Wang's person and clothing presented with no back spatter or blood in general.

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[30] NT, Trial, 11/5/2008, p. 24.
[31] NT, Trial, 11//4/2008, pp. 171-172.

4. The knocked over dresser and dislodged drawers

If Mr. Wang shot Sharon at the left foot of the bed, it would've been impossible for Sharon to have knocked over the dresser next to the left head of the bed.

These facts prove trial counsel could've and would've raised reasonable doubts regarding the DAO's homicide narratives had he expanded the scope of his forensic investigation and defense once Dr. Hoyer told him – well before trial – that the characteristics of Sharon's entrance wound, *i.e.*, formation, location, and trajectory path, made suicide and homicide *equally plausible.* Each fact referenced above was staring trial counsel right in the eyes for the eighteen months he represented Mr. Wang before trial. And each fact, either individual or cumulatively, made it reasonably probable at least one juror would've had reasonable doubts about the DAO's homicide narratives, particularly it's myopic "handgun location" argument, and used these reasonable doubts to acquit Mr. Wang of first-degree murder.

Furthermore, trial counsel's reason for stopping his forensic investigation after receiving Dr. Hoyer's "equally plausible" opinion, was because trial counsel *assumed* Mr. Wang's trial testimony now represented the best and strongest evidence to raise reasonable doubt. Trial counsel's decision – or better yet, assumption – was objectively unreasonable for one simple reason: to *conclude* as trial counsel did, *i.e.*, Mr. Wang's trial testimony represented the best and strongest evidence to raise reasonable doubt – trial counsel had examine all the physical evidence first. In other word, before trial counsel could reasonably conclude Mr. Wang's trial testimony, in fact, represented his best and strongest reasonable doubt evidence, he first had to consider all the other objective scene characteristics and items of physical evidence and determine whether these characteristics and items had the potential to raise reasonable doubt either individually, cumulatively, or in combination with Mr. Wang's trial testimony.

As *Wiggins* makes plain, the issue isn't whether trial counsel should've expanded his forensic investigation, but whether the *investigation* supporting trial counsel's decision not to expand his forensic investigation was itself reasons. *Wiggins v. Smith*, 539 U.S. 510, 522-523 (2003). Here, after trial counsel received Dr. Hoyer's "equally plausible" opinion, he immediately stopped his forensic investigation, wrote Mr. Wang, and told him in no uncertain terms: "As I have said from the start, your testimony, clear and concise, is the key to your case."[32] In other words, the jump from Sharon's entrance wound to Mr. Wang's testimony included no investigation whatsoever regarding the other scene characteristics and items of physical evidence.

Consequently, because the investigation preceding trial counsel's decision to abandon his forensic investigation, and use Mr. Wang's trial testimony as the primary reasonable doubt evidence, was itself unreasonable – *because there was no investigation* – trial counsel's decision to abandon his forensic investigation, without expanding its scope, was objectively unreasonable under *Strickland*.

[32] E.C.F. #1, p. 303.

ATTACKING BRENT TURVEY: KILLING THE MESSENGER INSTEAD OF THE MESSAGE

Brent Turvey's 35-page affidavit identified several facts and items of physical evidence that raised reasonable doubts regarding the DAO's homicide narratives. The DAO never addressed the physical evidence, outside of the handgun's location, and explained how the physical evidence supported any of its ever-changing homicide narratives. Rather, it tried killing the messenger instead of the message. It attempted to assassinate Brent Turvey's character by grossly – if not purposely – misrepresenting the facts regarding a few cases Mr. Turvey worked on as a defense expert.

Cases are won on the facts. They're not won by making ad hominem attacks against the defendant's expert who simply did what the DAO should've done from the beginning: examine the scene and all the physical evidence and determining whether any of its *ever-changing* homicide narratives are plausible based on the scene's dimensions and the positioning of all the physical evidence.

A. The DAO's ad hominem attacks against Brent Turvey

It's funny and sad at the same time, but the DAO spent more time attacking Brent Turvey's character than it did trying to figure out if the physical evidence supports its ever-evolving homicide narratives. Anyway, here are some of the DAO's more colorful character attacks against Mr. Turvey and counsel for that matter:

- The DAO claimed counsel had to "scour[] the country" to locate a "self claimed expert" who lives in Alaska.[33]
- The DAO claimed "various courts had discredited" Mr. Turvey.[34]

[33] E.C.F. #29, p. 2. Counsel has known Brent Turvey since 1996 and he and Mr. Turvey co-authored a book about wrongful convictions in 2014. CRAIG M. COOLEY & BRENT TURVEY, MISCARRIAGES OF JUSTICE: ACTUAL INNOCENCE, FORENSIC EVIDENCE, AND THE LAW (2014). Thus, counsel didn't "scour" the country in search of an expert. Once counsel agreed to represent Mr. Wang, he asked Mr. Turvey to review Mr. Wang's case because, based on counsel's forensic science background (counsel has a University of New Haven graduate degree in forensic science), counsel had serious concerns about the scene characteristics and the location of certain items of physical evidence. Moreover, Mr. Turvey, from counsel's experience, is the most ethical, methodical, and evidence-based forensic expert he's worked with over the last twenty years, and his 35-page, single-spaced affidavit plainly proves this point.

[34] E.C.F. #29, p. 2.

- The DAO called Mr. Turvey a "so-called expert" and a "frequently discredited" expert.[35]
- The DAO claimed Mr. Turvey had been "regularly discredited."[36]
- The DAO claimed that courts had "time and again… found [Mr.] Turvey's opinion were inadmissible, ignored key evidence, and constituted overreaching."[37]

When Mr. Turvey submitted his affidavit, he enclosed his CV, which listed over forty cases where state and federal courts had qualified him as an expert and permitted him to testify as an expert in crime scene investigation, crime reconstruction, crime scene analysis, and criminal profiling.[38] Based on the DAO's ad hominem attacks, though, these state and federal courts made egregious errors by qualifying Mr. Turvey as an expert. Mr. Turvey also listed another twenty plus cases where he consulted on major criminal and civil case.[39] Based on the DAO's hysterical complaints, however, the civil and criminal attorneys who retained Mr. Turvey were either foolish or hoodwinked by Mr. Turvey's false representations.

Of the sixty plus cases listed on Mr. Turvey's CV, the DAO cherry-picked appellate *quotes* from six of these cases and then used said quotes in a malicious, libelous, and purposefully deceptive way to make it appear as if these courts had "discredited" Mr. Turvey as a forensic expert. Moreover, it's obvious the DAO did no investigation regarding these cases because, had it done so, it would've:

1. obtained the documents counsel obtained that plainly show the quotes from at least two of these cases are knowingly and demonstrably false;

2. known that the trial courts in those cases where Mr. Turvey served as a *trial* expert all *qualified* him as an expert in crime scene investigation or analysis; and

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[35] E.C.F. #29, p. 17.
[36] E.C.F. #29, p. 17.
[37] E.C.F. #29, p. 18.
[38] E.C.F. #1, p. 185.
[39] E.C.F. #1, pp. 186-188.

3. known that the post-conviction courts in those cases where Mr. Turvey served as a *post-conviction* expert never discredited him as a crime scene investigation or analysis expert.

B. The cases

1. *Southworth v. Commonwealth*, 435 S.W.3d 32 (Ky. 2014) and *People v. Culton*, 2013 WL 3242234 (Cal. Ct. App. June 27, 2013)

The DAO cites *Southworth* and *Culton* for the proposition Mr. Turvey falsely claimed he worked with the Sitka Police Department ("SPD") in Alaska.[40] Had the DAO conducted a proper investigation, it would've easily obtained the documents counsel obtained from the SPD. The SPD documents prove SPD Chief of Police, Bill McLendon, *recruited* Mr. Turvey to assist the SPD with the Jessica Baggen's murder investigation,[41] and to do this Chief McLendon issued Mr. Turvey a "special police commission" that gave him "unlimited access" to the SPD.

For instance, the DAO could've easily obtained the following *Memorandum* Chief McLendon sent to all police personnel regarding Mr. Turvey's recruitment, his special police commission, and the fact he had unlimited access to the SPD office and it case files.

[40] E.C.F. #29, p. 18.

[41] Jessica Baggen's father had retained Mr. Turvey in 1999 to help solve his daughter's 1996 rape-murder. Once Chief McLendon recruited Mr. Turvey to the SPD, Jessica Baggen's father agreed to pay Mr. Turvey's salary in lieu of the SPD having to pay him.

MEMORANDUM

NUMBER: A00-17

TO: All Police Personnel

FROM: Bill McLendon, Chief of Police

DATE: May 23, 2000

SUBJECT: Jessica Baggen Murder Investigation

The following is proprietary information and not for release!

Beginning on or about Tuesday, May 30, 2000, two Investigators will be working out of the police department on the Baggen murder case. Their names are Brent Turvey and John Baeza. They are working directly for my office and will be housed in the interrogation/interview room of the police department. As you may know, Jessica Baggen was murdered on May 4, 1996. The case remains unsolved.

Both will be issued special police commissions and will be allowed unlimited access into the police department. They are to be given our fullest cooperation and support!

From this point forward, any and all inquiries into the Baggen investigation will be referred directly to my office. *Personnel will not make any public comment on this matter*. This includes, but is not limited to, inquiries from and talking with the public, the media, friends, family, and other law enforcement officers and/or agencies.

Similarly, the DAO could've easily obtained this SPD *Employee Data Sheet*:

SITKA POLICE DEPARTMENT

EMPLOYEE DATA SHEET

FULL NAME: BRENT E. TURVEY

DATE OF BIRTH: 6/3/70 HAIR: Brown EYES: Brown/Green

PHOTO

RACE: C SEX: M HEIGHT: 6' WEIGHT: 215

BLOOD TYPE: AB- HEPATITIS B VACCINE: _____

DATE EMPLOYED: 5/31/00 POSITION: Investigator

RANK: _____ DATE PROMOTED: _____

DL#: CA B8592208 SSN: 547-92-4892

ADDRESS: 32 Rose Wood Dr. PHONE#: 831 786-9256

SPOUSE: Barbara Turvey WORK#: 831-786-9238

CHILDREN/AGES: —

IN CASE OF EMERGENCY CONTACT: Barbara Turvey

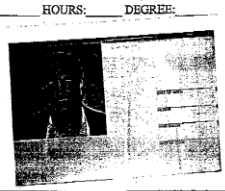
ADDRESS: Above C/S: _____ PHONE#: Above

DOCTOR/PHYSICIAN: _____ PHONE#: Above

HIGH SCHOOL ATTENDED: _____ C/S: _____

COLLEGE ATTENDED: _____ HOURS: _____ DEGREE: _____

PERSONAL INTERESTS, HOBBIES: _____



CAREER GOALS AND OBJECTIVES: _____

DATE FORM COMPLETED: 5/31/00

More importantly, had the DAO done its job, it would've learned Mr. Turvey sued the SPD and several of its officers, after Chief McLendon left the SPD, because the new SPD Police Chief and

several of his SPD officers were falsely and maliciously telling prosecutors, including the Kentucky and California prosecutors in *Southworth* and *Culton*, that Mr. Turvey never worked with the SPD. Mr. Turvey didn't want money from the civil suit, he simply wanted the SPD to acknowledge the truth and to issue a formal letter acknowledging the truth and to stop falsely telling prosecutors he never worked with the SPD on the Jessica Baggen's murder investigation. On April 6, 2013, the SPD acquiesced and issued a formal letter confirming what Mr. Turvey has always represented in his CV and trial testimony:

City and Borough of Sitka

POLICE DEPARTMENT

304 Lake Street, Room 102 • Sitka, Alaska 99835

Sheldon Schmitt, Chief of Police — Business 747-3245, Fax 747-1075

Date: April 6th, 2013

Official Statement regarding Brent E. Turvey's Association with Sitka Police Department

In 1999, Brent E. Turvey was hired by the Baggen family to investigate the 1996 homicide of Jessica Baggen. In 2000, after discussion with the Sitka Police Department (SPD), it was agreed that Brent E. Turvey would be allowed to work out of the SPD as an investigator, under the direction of the Chief of Police. He was given a special police commission, credentials, and was housed in the interrogation/interview room of the Department from May 2000 to April 2001. The purpose of the assignment was investigation of the Jessica Baggen homicide. Though hired and paid by the Baggen family to work the Jessica Baggen homicide, he also provided some assistance on other matters within SPD as requested by the Chief. During his association with the SPD, Mr. Turvey was sometimes referred to internally as "Detective", as were other investigators within the SPD. This was not in reference to an official rank but merely a descriptive internal designation. Mr. Turvey was not an employee of the Sitka Police Department or the City & Borough of Sitka and was not compensated by SPD or the City. Mr. Turvey was not a sworn police officer or detective with the SPD.

To the extent any prior memorandum, statement or document from the City of Sitka or its employees regarding Mr. Turvey's affiliation with the Sitka Police Department, including any prior memorandum or statement from Lt. Barry Allen, conflicts with this official statement, this official statement governs. See also, civil court case Turvey v. City & Borough of Sitka, Case No. 1SI-02-216CI.

Sheldon Schmitt, Chief of Police

2. *State v. Cobb*, 43 P.3d 855 (Kan. App. 2002)

The DAO cited *Cobb,* but *Cobb* doesn't stand for what the DAO thinks it stands for. *Cobb* is a false confession case where the defendant, Artis Cobb, falsely confessed to an unsolved rape-murder.

Cobb's defense team retained Mr. Turvey to review the scene characteristics and physical evidence and determine whether his confession was consistent with the physical evidence.

As the Kansas Court of Appeals said:

> Cobb's jury also heard from Brent Turvey, a private forensic scientist and *recognized expert in crime scene analysis* hired by the defense. Turvey said he received and reviewed over a hundred reports and documents relevant to the case. He also had visited the exterior of the crime scene the night before he took the stand, walking around the apartment complex. Turvey explained that he had been retained to compare the physical evidence at the crime scene to the content of the statements Cobb made to investigators.

Id. at 862 (emphasis added).

Thus, the trial court qualified Mr. Turvey as an expert in crime scene analysis, and the Kansas appellate court described him as a "recognized expert" in crime scene analysis – two facts the DAO conveniently omitted from its *Answer*.

More importantly, the trial court didn't limit Mr. Turvey's conclusions because it believed they were inaccurate or unreliable. Instead, the prosecutor objected when defense counsel asked Mr. Turvey to discuss the twelve crime scene and evidentiary discrepancies that didn't correspond with Cobb's confession that Mr. Turvey had listed in his pre-trial report. The prosecutor argued such testimony would "invade" the jury's province. *Id.*

The trial court, furthermore, effectively agreed with Mr. Turvey because it said all twelve of his findings had been introduced into evidence via other witnesses. The trial court, though, concluded that having an *expert*, like Mr. Turvey, point these discrepancies out to the jury wouldn't "materially aid" the jury's guilt-innocence determination:

> Every one of these findings has already been in evidence through other witnesses, as far as the Court can find or recalls. And the --these are arguments to the jury, and the Court doesn't believe that any of these would materially aid the jury in their determination of guilt or innocence in this case.

Id.

The Kansas appellate court summarized the trial court's decision by saying: "'The testimony Turvey was prepared to give was cumulative of other evidence and within the realm of lay understanding." *Id.* at 866.

Consequently, the trial court qualified Mr. Turvey as an expert in crime scene analysis, Mr. Turvey testified as an expert, and the trial court limited his testimony regarding the inconsistencies between the scene and confession because such testimony, the trial court believed, invaded the jury's province. The trial court, therefore, didn't discredit Mr. Turvey as the DAO falsely and misleadingly claimed.

3. *Grant v. State*, 8 So.3d 213 (Miss. App. Ct. 2008)

Grant is a murder case where Robert Grant claimed he didn't kill his co-defendant after a drug robbery. Grant claimed one of the robbery victims shot and killed his co-defendant. Grant's defense team retained Mr. Turvey before trial to review the crime scene investigation and evidence collection. Based on Mr. Turvey's pre-trial report, defense counsel presented Mr. Turvey as a forensic and crime scene expert.

The trial court qualified Mr. Turvey as a forensic and crime scene expert after a pre-trial hearing where Mr. Turvey testified. However, the trial court limited Mr. Turvey's testimony by not allowing him "to testify as to the first two conclusions related to his investigation of the crime scene." *Grant v. State*, 2008 Miss. App. LEXIS 495, at *8-9 (Aug. 19, 2008)

Specifically, the trial court refused to allow Mr. Turvey "to testify regarding the methods the investigators used in collecting evidence and investigating the crime scene" and "prevented [him] from testifying about the investigators' failure to collect evidence Grant saw as potentially exculpatory." *Id.* at *10.[42] The trial court *didn't* exclude these conclusions because it found Mr. Turvey's methods

[42] Mr. Turvey and the lead detective visited the shooting scene together so Mr. Turvey could asses the scene himself. As they both reviewed the scene, Mr. Turvey located a discharged bullet in the scene that CSI

unreliable or his conclusions inaccurate; it excluded them because it "felt… this testimony would not assist the jury[.]" *Id.* Despite excluding these two conclusions, the trial court permitted Mr. Turvey "to testify regarding his other conclusions." *Id.* *10-11.

Consequently, the trial court qualified Mr. Turvey as an expert in crime scene analysis and investigation, Mr. Turvey testified as an expert, and the trial court barred two conclusions because these conclusions, the trial court believed, wouldn't have assisted the jury. The trial court, therefore, didn't discredit Mr. Turvey as the DAO falsely and misleadingly claimed.

4. *People v. Lewis*, 2010 Cal. App. Unpub. LEXIS 2442 (Apr. 6, 2010)

Lewis is a murder case prosecutors charged capitally, claiming the defendant, John Henry Lewis, tortured the victim before strangling her. Before trial, the medical examiner, Dr. Glenn Wagner, met with defense counsel and his investigator. Dr. Wagner told both he saw no injuries on the victim's body consistent with torture.

Dr. Wagner testified for the prosecution, but on cross-examination defense counsel asked Dr. Wagner about his pre-trial comments to him and his investigator: "You told me and my investigator that there are no injuries on [the victim's] body that are consistent with her being tortured; correct?" The prosecutor objected, stating "Absolutely improper." The trial court sustained the objection. Defense counsel then asked, "Doctor, would you agree that there are no injuries on [the victim] consistent with the infliction of torture?" The prosecutor again objected, arguing, "It's a legal conclusion." The trial court sustained the objection. *Id.* at *26.

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personnel had overlooked during their initial crime scene investigation a year earlier. The bullet's discovery and its location within the scene proved what Grant had said from the beginning: one of the robbery victims fired the fatal shot. This discovery, moreover, forced the prosecutor to abruptly change his first-degree murder theory from premediated murder (*i.e.*, Grant killed his co-defendant for the money) to felony-murder (*i.e.*, the victim was killed by one of the robbery victims during the commission of a robbery).

To address the torture issue, defense counsel also presented Mr. Turvey. Defense counsel wanted Mr. Turvey to discuss whether the victim's injuries and the crime scene were consistent with torture. For instance, defense counsel said:

> [T]here are no injuries of binding, gagging, muffling to suppress sound coming from [the victim]. I think that [Turvey] should be able to talk about how in cases involving sadism or torture oftentimes a victim is gagged to prevent sound. They're restrained physically with some type of binding to keep them from moving. The fact that none of those things are present is significant.

Id. at *27-28.

The trial court denied defense counsel's request, not because it challenged Mr. Turvey's qualifications, methodology, or conclusions, but for the same reason it prohibited Dr. Wagner from telling jurors he found no evidence of torture.[43] As the California appellate court explained, the trial court prohibited Dr. Wagner's and Mr. Turvey's testimony because "(1) the jury could easily draw its own inferences and conclusions with respect to the issue of Lewis's intent and (2) such testimony would have been tantamount to an impermissible opinion on the statutory definition of torture[.]" *Id.* at *31. Consequently, the trial court didn't discredit Mr. Turvey as the DAO falsely and misleadingly claimed.

5. *State v. Thorne*, 2004 Ohio App. LEXIS 6575

In *Thorne*, the prosecutor charged David Thorne with hiring Joseph Wilkes to kill his son's mother. Thorne, though, only became a suspect after Wilkes had confessed to murdering the victim. In his confession, Wilkes described how he murdered the victim. A jury convicted Thorne of hiring Wilkes to murder the victim based on Wilkes's testimony.

Thorne sought post-conviction relief. Wilkes, by this point however, had recanted his confession and said he had nothing to do with the murder, and that Thorne had never paid or hired

[43] According to the trial court, it wasn't sure if California law even permitted a "torture expert" because the torture issue was a jury issue, meaning such testimony would presumably invade the jury's province. *Id.*

him to kill the victim. Wilkes reiterated his recantation at a post-conviction hearing. Wilkes claimed he crafted his confession based on facts officers fed to him during his interrogation. Wilkes said he implicated Thorne because "he was afraid and felt that he had no choice." *Id.* at *15.

To corroborate Wilkes's recantation, Thorne retained Mr. Turvey to evaluate whether the crime scene and physical evidence corroborated or undermined Wilkes's confession. At the same post-conviction hearing, Thorne presented Mr. Turvey – who the Ohio appellate court described as "a crime scene expert." In other words, the post-conviction court *qualified* Mr. Turvey as a "crime scene expert" and permitted him to testify regarding his findings and conclusions.

Based on his review of the crime scene photographs, the physical evidence, the crime scene reports, and Wilkes's confession, Mr. Turvey concluded the victim's murder couldn't "have happened the way… Wilkes described" in his confession. *Id.* at *7. More specifically,

> Mr. Turvey testified that upon his review of the forensic documentation available, including photographs of the crime scene, the crime could not have occurred as described by Mr. Wilkes. Mr. Wilkes claimed that the victim was first attacked while on the couch and then moved to a sliding glass door, before she collapsed. Mr. Turvey claimed that the photographs showed that the victim was attacked while she stood at the sliding glass doors and then was partially dragged to where she was found. Mr. Turvey claimed that any blood found on the couch was transferred to the couch by the attacker.

Id. at *15.

Without making findings or conclusions regarding Mr. Turvey's qualifications, methodology, testimony, findings, or conclusions the post-conviction court denied Thorne's post-conviction petition. This can be gleaned from the Ohio appellate court that reviewed the denial of Thorne's post-conviction petition. In his appeal, Thorne argued the post-conviction court had erred by not granting him a new trial, in part, because Mr. Turvey's testimony corroborated Wilkes's recantation. When the Ohio appellate court reviewed this claim, it said this: "It *appears* that the trial court also found Mr.

Turvey's testimony *either* incredible *or* unpersuasive in light of the evidence that supports a finding that Mr. Wilkes committed the murder." *Id.* at *17.

The Ohio appellate court's ruling debunks the DAO's false and misleadingly claim that the post-conviction court discredited Mr. Turvey. If Mr. Turvey was such an incredible/unreliable crime scene expert, as the DAO argues, it's a wonder why the post-conviction court ever qualified him as a crime scene expert in the first place and permitted him to offer extensive testimony regarding the crime scene and how it compared to Wilkes's confession. Likewise, if Mr. Turvey's testimony was so incredible/unreliable, it's a wonder why the post-conviction court simply didn't make these findings and conclusions.

In the end, the post-conviction court qualified Mr. Turvey as a crime scene expert, Mr. Turvey gave extensive testimony regarding the crime scene and physical evidence, and the post-conviction court ultimately denied Thorne's post-conviction petition without entering findings or conclusions regarding Mr. Turvey's qualifications, findings, conclusions, and testimony.

In the end, not one court discredited Mr. Turvey. In fact, trial courts in those cases where Mr. Turvey served as a trial expert all qualified him as a crime scene investigation or analysis expert. Not one court found Mr. Turvey's findings and conclusions so unreliable as to make them inadmissible. Ditto regarding the cases where Mr. Turvey served as a post-conviction expert.

Moreover, in those cases where the trial court *limited* Mr. Turvey's conclusions, it wasn't because his conclusions, or the methods he used to generate them, were unreliable. It was because his conclusions were so *obvious* based on the already admitted trial evidence. Put differently, because his conclusions were so obvious, these trial courts didn't think his conclusions would assist the jurors. Likewise, in the *Lewis* torture case, the trial court limited Mr. Turvey's testimony not because his

conclusions or methods were unreliable, but because Mr. Turvey's (and Dr. Wagner's) proposed testimony invaded the jury's province regarding the torture issue.

Also, Mr. Turvey has never falsely presented himself or his credentials. As shown, because a small group of SPD officers didn't take kindly to Mr. Turvey's involvement in the Jessica Baggen murder investigation, these SPD officers began peddling falsehoods about Mr. Turvey, which forced him to sue the SPD to protect his reputation. His suit produced what he'd always wanted from the SPD: a simple letter confirming what he'd always conveyed in his CV, reports, and trial testimony.

Lastly, three points must be discussed briefly:

First, the DAO's false claim that Mr. Turvey routinely "ignores key evidence" is priceless, comical, and apropos considering Mr. Wang's conviction is a by-product of the DAO and its experts "ignore[ing] key evidence," *e.g.*, the FCC's location, the strike mark's location, the bedroom's dimensions, and the location of Sharon's body.

Second, the DAO repeatedly claims Mr. Turvey is unqualified to identify key items of physical evidence and explain why these items and their respective locations raise reasonable doubts – or out-out disprove – the DAO's ever-changing homicide narratives. The DAO also criticizes Mr. Turvey for not visiting the scene (eight years after Mr. Wang's trial) and taking measurements to ensure the accuracy of his findings and conclusions.[44]

The DAO's complaints are – again – priceless, comical, and apropos. One of its many homicide narratives is based on its firearms examiner – Officer Stott. Stott, though, never visited the

[44] When counsel ran Mr. Wang's 2007 address in 2016, another couple, in appeared, lived there. Counsel didn't think it was appropriate for him to approach the couple, tell them a suicide had occurred inside their second-floor bedroom, and then ask if it'd be okay if he and Mr. Turvey took measurements inside the second-floor bedroom. At least counsel and Mr. Turvey have a legitimate reason for not taking measurements. The DAO, on the other hand, still hasn't explained why Stott never took measurements of the bedroom, especially when he and the DAO had access to the bedroom, and when the prosecutor knew she'd use him to peddle another homicide narrative to the jury that required Stott to discuss crime reconstruction principles.

scene even though he was a trial expert and had access to the scene.[45] Also, all Stott did before trial was examine the handgun, the discharged bullet, and the FCC to determine if the handgun fired the bullet and FCC.[46] The DAO didn't ask Stott to visit the scene to take measurements and/or photographs, nor did it ask him to write a pre-trial reconstruction report explaining why Sharon's death was a homicide and why the physical evidence didn't support Mr. Wang's suicide narrative.

Lastly, Stott's expertise was limited to: (1) examining firearms to identify their make, model, country of origin, and serial number; (2) doing microscopic comparisons of FCCs and bullets to determine if they were discharged from a particular firearm; and (3) doing distance determinations to determine how far a bullet traveled before it struck the relevant object.[47] Stott's expertise didn't include reconstructing a scene to determine what version of events the physical evidence supported more.

However, despite having limited to no experience reconstructing homicide scenes (unlike Mr. Turvey), despite not visiting the scene (like Mr. Turvey), only viewing the photographs (like Mr. Turvey), and not writing a reconstruction report (unlike Mr. Turvey),[48] this didn't stop the DAO from asking Stott several questions regarding reconstruction concepts and opinions, and it didn't prevent Stott from offering an (easily disprovable) opinion (had trial counsel expanded the scope of his forensic evidence) that completely contradicted Dr. McDonald's homicide narrative. Consequently, from the DAO's perspective, Mr. Turvey's alleged shortcomings can't possibly overturn Mr. Wang's conviction but Stott's glaring shortcomings are enough to sustain his conviction. The duplicity speaks for itself.

[45] NT, Trial, 11/4/2008, p. 164.
[46] NT, Trial, 11/4/2008, pp. 140-148.
[47] NT, Trial, 11/4/2008, pp. 139-140.
[48] NT, Trial, 11/4/2008, p. 152.

Third, despite the DAO's disparaging comments about Mr. Turvey's character, qualifications, and findings, the PCRA court made no such findings. Indeed, if the DAO's arguments were correct, one must wonder why the PCRA court didn't find Mr. Turvey unqualified and his conclusions incredible, unreliable, and inadmissible.

ADDITIONAL COUNTER-ARGUMENTS

A. Footnote 11

When Sharon shot herself, she fell off the bed, knocked over the dresser, and landed between the left wall and bed. EMTs and first responders, though, moved Sharon's body before CSI personnel photographed the scene. Thus, to help the courts (state and federal) visualize the position of Sharon's body once she came to rest between the left wall and bed, Mr. Wang: (1) hand drew (on white paper) the position of Sharon's body when she landed on the floor; (2) placed his drawing into the scene photograph that showed the area between the left wall and bed; and (3) photocopied the whitepaper layover and scene photograph.

Here's the actual scene photograph:

Here's the photocopy Mr. Wang made that counsel inserted on page 10 of Mr. Wang's 2254 petition:

Again, Mr. Wang created this diagram/exhibit simply to show Sharon's positioning after the shooting. Mr. Wang didn't try to hoodwink anyone with this diagram/exhibit, and the accuracy of his positioning is corroborated by the large pool of blood where Mr. Wang positioned Sharon's head. Sharon's entrance wound is on the lower right part of her head. This corresponds with this diagram/exhibit because the lower right part of her head is touching or nearly touching the floor near the left wall. The entrance wound, obviously, would've been bleeding out, and the pool of blood seen on the floor near here head corresponds with this fact.

Mr. Wang made a similar diagram/exhibit for another *pro se* pleading:

There's nothing nefarious or deceptive about Mr. Wang's *pro se* diagrams/exhibits. Their purpose is to show Sharon's positioning after the shooting, and to show that her feet were still on the bed between the headboard and middle of the bed after the shooting. The positioning of Sharon's feet, importantly, has always been an indisputable fact supporting Mr. Wang's statement and testimony that Sharon was seated near the head of the bed, left of center, when she shot herself, that she dropped the handgun once she shot herself, that she fell off the bed and dislodged the dresser drawers as she fell, and that the handgun came to rest in the bottom drawer.

Well – the DAO was having none of this in its *Answer*.

First, the DAO confusingly claimed Mr. Wang's narrative can't be true because Sharon's "hands…. would have been out of reach of the dresser."[49] The DAO's statement is confusing, if not plainly ignorant, because Mr. Wang's statement isn't that Sharon placed the handgun in the dresser herself; it's that the handgun immediately fell from her hand once she shot herself and ultimately came to rest in the dislodged bottom drawer.

Second, the DAO's confusing, if not ignorant, understanding brings us to footnote 11 – where the DAO accused Mr. Wang or counsel of modifying the above scene photograph to "obscure the distance between the pool of blood and the dresser." Here's footnote 11:

> It is strangely telling that [Mr. Wang] has chosen to edit the photos attached to his petition to obfuscate this fact. The picture on ECF Doc 15 at 10 has been modified by pasting what looks like a paper cutout on top of the photo to obscure the distance between the pool of blood and the dresser. The photograph on ECF Doc 15 at 11 is *carefully cropped* to leave out the pool of blood, once again obfuscating between the blood and the dresser.[50]

This is yet another bold-faced lie and example of the DAO's willingness to do whatever it takes to sustain Mr. Wang's unconstitutional conviction. The Court need only examine the actual scene photograph with Mr. Wang's diagram/exhibit. Mr. Wang didn't "carefully crop" anything. He simply placed his white-paper cutout of Sharon's body and placed it where her body came to rest after the shooting.

Moreover, look at the actual scene photograph and look how close the *pool of blood* is to the dislodged dresser drawers. As Mr. Wang's diagram/exhibit demonstrates, Sharon's butt and lower back were (and had to be) on top or touching the dislodged drawers:

[49] E.C.F. #29, p. 20.
[50] E.C.F. #29, p. 20 n.11.

In short, the DAO's claim in footnote 11 is absurd and just plain garbage.

B. Other false facts/claims

1. Mr. Wang told detectives about the drawers being dislodged

The DAO claimed Mr. Wang never told detectives Sharon knocked over the dresser.[51] This is false. When detectives asked about the dresser, Mr. Wang immediately said the top drawer was open when Sharon shot herself and "when she fell off the bed, it knocked everything over."[52]

2. Mr. Wang never told detectives the handgun was in the bottom drawer

Next, the DAO claimed Mr. Wang quickly told first responders the handgun was in the bottom drawer. The DAO then used this false fact to argue Mr. Wang's knowledge of the handgun's location

[51] E.C.F. #29, p. 20 n.10.
[52] This is from Mr. Wang's statement – which is attached as Exhibit B.

conclusively proves (1) he shot Sharon and (2) he placed the handgun in the bottom drawer after shooting her.[53] This is false.

At trial, Officer Anthony Magsam testified. Magsam was one of the first responding officers. When he arrived, Magsam knew it was a shooting because of the radio calls. Thus, when he arrived, the first thing he asked Mr. Wang was the handgun's location. Mr. Wang never told him: "The handgun is in the bottom drawer, under a CD." Mr. Wang simply *pointed* to the corner of the bedroom where Sharon had shot herself. Here's Magsam's testimony:

[13] **Q.** Now you told us that when you arrived,
[14] you kept asking the Defendant. Did you know
[15] it was a gunshot?
[16] **A.** When they lifted her and I saw it, with
[17] the radio call, yes.
[18] **Q.** You asked the Defendant where the gun
[19] was?
[20] **A.** The first thing I asked, for my safety.
[21] **Q.** Could you see the gun anywhere on the
[22] bed, the floor, anyplace?
[23] **A.** No.
[24] **Q.** Did you look around for it?
[25] **A.** I looked but I didn't move anything
[2] around.
[3] **Q.** But you couldn't see it?
[4] **A.** No.
[5] **Q.** When the Defendant pointed, what
[6] direction did he point to?
[7] **A.** As I walked in, I am in the doorway.
[8] The Defendant is there. He pointed into the
[9] corner. (Indicating).
[10] **Q.** What was in the corner that he pointed
[11] to?
[12] **A.** There was a little nightstand that had
[13] drawers, the top nightstand. I remember I
[14] made a note on my notes. The top drawer was
[15] all broken up and there was a lampshade. It
[16] was actually on the floor.
[17] **Q.** Is that the direction he pointed?
[18] **A.** Yes.[54]

[53] E.C.F. #29, p. 20 n. 12.
[54] NT, Trial, 11/4/2008, pp. 37-38.

At trial, moreover, Mr. Wang made clear that when he pointed in the left corner's direction, *i.e.*, the corner with the dresser, he did so only because he "assumed" that was where the handgun ultimately came to rest based on Sharon's positioning on the bed when she shot herself, *i.e.*, the left corner near the headboard and dresser. Mr. Wang said he didn't see where the handgun ultimately came to rest because he ran to the bedroom window and screamed for help immediately after Sharon shot herself.[55]

Thus, pointing to the corner of the bedroom where Sharon was seated on the bed when she shot herself isn't incriminating; it's a commonsense deduction: Sharon was seated on the left corner of the bed, near the dresser and headboard, when she shot herself, so the handgun is most likely somewhere in that corner of the bedroom.

3. The DAO now claims Mr. Wang not only hid the handgun in the bottom drawer, he scoured the bedroom for the FCC and moved it to the head of the bed where EMTs located it

The most impactful and reasonable doubt-raising piece of evidence Mr. Turvey identified was the FCC. CSI personnel located the FCC near the headboard, in the same area of the bed Sharon shot herself.

[55] NT, Trial, 11/5/2009, p. 137.

As explained *supra*, pp. 15-24, the FCC's location not only raises reasonable – and substantial – doubts regarding Dr. McDonald's, Stott's, and the prosecutor's homicide narratives. This is especially true because there's no evidence in the record or trial testimony proving or even suggesting EMTs or responding officers moved or touched the FCC when they arrived on scene.

Realizing how damaging the FCC's location is to its umpteen homicide narratives – or whichever one the DAO is now sticking with – the DAO chastised Mr. Turvey for placing so much weight on the FCC's location because he didn't "consider that the [FCC] may have been moved, intentionally or accidentally, by [Mr. Wang]."[56]

Undersigned counsel – at this point – is at a loss for words for all the outlandish garbage the DAO spews in its *Answer*. This one, however, may take the cake. So, just to be clear, the DAO now believes or strongly suspects the following happened:

- Mr. Wang shot Sharon while she sat on the bed.[57]
- Sharon fell off the bed, landing between the left wall and bed.
- The right side of Sharon's head is bleeding profusely when her body comes to rest on the floor, as evidenced by the large pool of blood on the floor near the left wall.
- Sharon's butt and lower back are on the dislodged dresser drawers and her feet are on the bed.
- Looking at this scene, Mr. Wang said to himself, "*Hmm…. I'll make it look like a suicide and hide the handgun in one of the dislodged drawers. The police will never suspect it was me if I hide the handgun. They'll immediately suspect suicide.*"
- With his "hide the handgun" idea in motion, Mr. Wang somehow walked around Sharon and placed the handgun in the bottom drawer under the CD. Or he somehow reached far enough over Sharon and placed the handgun in the bottom drawer under the CD. Or he threw the handgun in the dresser's direction, hoping it would land in one of the dislodged drawers.

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[56] E.C.F. #29, p. 26.

[57] Where on the bed you might ask? Great question, but because the DAO's homicide narrative changes daily, counsel isn't quite sure where to place Sharon on the bed in this hypothetical. We'll just place Sharon on the bed and leave it at that because the hypothetical's purpose is to drive home the absurdity of the DAO's newest narrative involving Mr. Wang planting the FCC near the headboard.

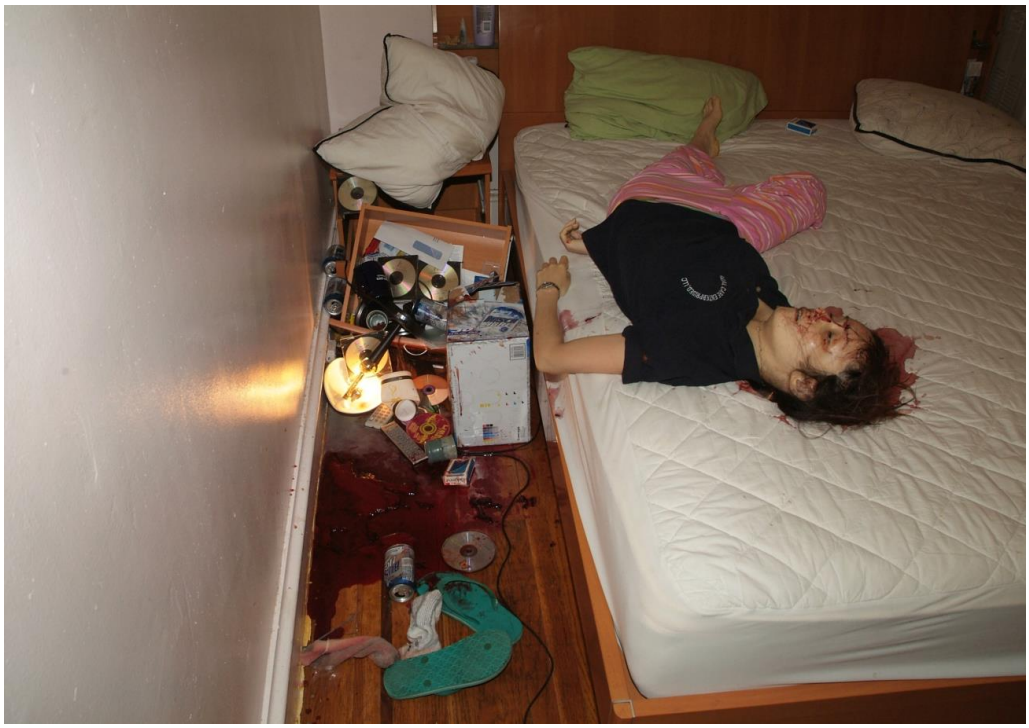
- Once he hid the handgun, Mr. Wang said to himself, "*Dammit… I've got find the FCC and move it to the corner of the bed to make it look like a suicide*." Mr. Wang then scoured the bedroom for the FCC, located it somewhere, and placed it near the headboard – left of center – where CSI personal ultimately found it.

- Then, after he hid the handgun, found the FCC, and placed the FCC near the head of the bed, Mr. Wang ran to the second-floor window and screamed for help.

If the Court thinks this scenario is absurd – it's right. It's beyond absurd and it's debunked by objective fact witnesses: Troy Davis, Timothy Flemings, and Rick Kern. Immediately after all three heard a gunshot, they saw and heard Mr. Wang at the second-floor window frantically screaming for help and asking for someone to call an ambulance because his wife had just shot herself.[58] Moreover, after screaming for help out the window, Mr. Wang ran downstairs and met Timothy Flemings at the front door. Both then ran upstairs to check on Sharon. Based on Troy Davis's, Timothy Flemings's, and Rick Kern's statements, there's no way Mr. Wang had time to look for, collect, and plant the FCC, let alone time to hide the handgun in the bottom drawer.

Moreover, there's no physical evidence proving Mr. Wang walked over or around Sharon's body to hide the handgun in the bottom drawer. Based on the scene photograph below, Mr. Wang would've had to somehow walk around Sharon's body to place the handgun in the bottom drawer, but how could he walk around her body? Look at the scene photograph: if Mr. Wang walked around her body to the left, he presumably would've got blood on his shoes because of the large pool of blood annexing the left wall; if he tried to walk around her body to the right, he couldn't because her legs and feet were on the bed blocking him from getting to the dresser, particularly the bottom drawer.

[58] E.C.F. #1, pp. 130-132.



This leaves Mr. Wang either reaching over Sharon's body while she's bleeding out or simply throwing the handgun in the dresser's direction hoping it lands in one of the drawers. The DAO's own statements, however, disavow the former because it repeatedly claims Mr. Wang *hid* the handgun in the bottom drawer under the CD.[59] Thus, throwing the handgun with a wish and prayer in the dresser's direction, hoping it landed not only in a drawer but underneath something, isn't remotely close to "hiding" the gun. It's more of a "disposal" type action than a "hiding" type action.

Consequently, this leaves Mr. Wang reaching over Sharon's body – while she's bleeding out – trying to hide the handgun in the bottom dresser. Could Mr. Wang have physically reached over Sharon's body to place the handgun in the bottom drawer underneath a CD? It's possible Mr. Wang could've somehow reached over Sharon's body and done this – but this physical possibility must square with the facts described by three neutral fact witnesses who all said Mr. Wang was at the window within seconds of the firearm discharging.

[59] E.C.F. #29, pp. 3, 5, 17, 19, 20, 35, 38.

Lastly, as Mr. Wang argued throughout his state court litigation, why on God's green Earth would he try to hide the handgun and then claim Sharon shot herself? Or better yet: why on God's green Earth would Mr. Wang collect the FCC and plant it near the headboard *to stage Sharon's homicide like a suicide* but – at the same time – hide the handgun in the bottom drawer – which *effectively destroyed the suicide narrative* he staged with the FCC?

Look at both sequences: according to the DAO, after hiding the handgun in the bottom draw, which immediately *destroyed his suicide narrative*, Mr. Wang scoured the scene for the FCC because he knew that – *for his (already destroyed) suicide narrative to work* – he needed to have the FCC near the area where Sharon was sitting. The absurdity and stupidity of this scenario speaks for itself.

Or – let's try this sequence. After shooting Sharon, Mr. Wang scoured the scene for the FCC because he knew that – *for his suicide narrative to work* – he needed to have the FCC near the area where Sharon was sitting. After successfully planting the FCC near the headboard *to stage Sharon's murder like a suicide*, Mr. Wang then hid the handgun in the bottom draw *effectively destroying the very suicide narrative he'd just staged by planting the FCC*. The absurdity and stupidity of this narrative is also obvious.

In the end, the DAO's absurd claims regarding Mr. Wang hiding the handgun and staging the homicide to make it look like a suicide by planting the FCC merely represent a microcosm of the DAO's ongoing litigation tactics: (1) the DAO simply ignores objective fact witnesses and physical evidence that raise reasonable doubts regarding its ever-changing homicide narratives; and (2) when it can't ignore these objective facts, it makes post hoc, outlandish claims like this one in an attempt to preserve Mr. Wang's unconstitutional conviction at all costs.

C. The DAO's evidentiary challenges regarding Mr. Turvey's qualifications and methodology are waived because it didn't present these to the only fact-finding state court – the PCRA court

The DAO, as mentioned, attacked Mr. Turvey ad nauseum in its *Answer*. Its character attacks, as demonstrated, are provably false. The DAO, however, also made several evidentiary arguments, claiming Mr. Turvey wouldn't have been qualified as an expert under Pennsylvania state law.[60] These evidentiary challenges are waived because the DAO never presented them to the lone fact-finding court in Pennsylvania: the PCRA court. *Commonwealth v. Young*, 748 A.2d 166, 194 (Pa. 2000).

After Mr. Wang filed his supplemental amended PCRA petition based on Mr. Turvey's affidavit, the DAO filed a motion to dismiss ("MTD"). In its MTD, the DAO never challenged Mr. Turvey's qualifications or methodology. The DAO simply called Mr. Turvey's *opinions* "preposterous" because – *drum roll please* – the handgun's location. Here's the extent of the DAO's terse argument against Mr. Turvey's *opinions*:

> Moreover, [Mr. Wang] does not demonstrate prejudice – *i.e.* that the preposterous opinions of his new expert, Brent Turvey, Ph.D. could have convinced the jury that his wife committed suicide. Indeed, Dr. Tuvey's [sic] assertions, *inter alia*, that the victim somehow shot herself in the back of the head and that the gun could have found its way into a drawer and under CDs, contravene both the evidence and common sense.
>
> [Mr. Wang] fails to demonstrate that counsel's representation fell below professional standards by hiring the expert he did rather than seeking out Brent Turvey, Ph.D. No relief is due.[61]

The DAO raised its evidentiary arguments before the Pennsylvania Superior Court when Mr. Wang appealed the dismissal of his PCRA petition, but it based its arguments on facts and material *not in the PCRA court record*, meaning the Pennsylvania Superior Court didn't have the legal authority to consider these arguments and facts. *Commonwealth v. McBride*, 957 A.2d 752, 757-758 (Pa. Super. 2008).

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[60] E.C.F. #29, pp. 20-21.
[61] Ex. A, p. 11. The DAO's MTD is attached to this pleading as Exhibit A.

This point is important because review under § 2254 is limited to the record before the state court that adjudicated the claim on the merits:

> Review under § 2254(d)(1) is limited to the record that was before the *state court that adjudicated the claim* on the merits. Section 2254(d)(1) refers, in the past tense, to a state-court adjudication that "resulted in" a decision that was contrary to, or "involved" an unreasonable application of, established law. This backward-looking language requires an examination of the state-court decision at the time it was made. It follows that the record under review is limited to the record in existence at that same time--*i.e.*, the record before *the state court*.

Cullen v. Pinholster, 563 U.S. 170, 181-182 (2011).

Thus, while all the DAO's evidentiary challenges regarding Mr. Turvey are factually and legally meritless, they're also *procedurally* defaulted. Point being, *Pinholster* cuts both ways, meaning both litigants – Mr. Wang and DAO – had to present their facts and claims to the lone court in Pennsylvania with fact-finding capabilities to adjudicate Mr. Wang's *Strickland* claim: the PCRA court. Mr. Wang did his part, but the DAO didn't do its part because it failed to raise all potential evidentiary claims regarding Mr. Turvey's qualifications and/or conclusions. Lastly, if these evidentiary arguments were so meritorious as the DAO now claims, one wonders why the DAO didn't raise them before the PCRA court? Thus, these evidentiary challenges were either frivolous and the ADA litigating the case knew it or the ADA litigating the case simply failed to timely preserve these frivolous evidentiary challenges. Each way, it's too late to make these evidentiary challenges – even though they're frivolous.

MR. WANG'S *STRICKLAND* CLAIM IN A NUTSHELL

The DAO's *Answer* contains too many factual and legal misrepresentations to address individually in a coherent manner. More importantly, to address and debunk each factual and legal misrepresentation distracts this Court's attention away from Mr. Wang's straightforward *Strickland* claim. Thus, to conclude Mr. Wang's lengthy response, counsel concisely summarizes Mr. Wang's *Strickland* claim in a nutshell. He also concisely explains why the PCRA court's adjudication of his *Strickland* claim was objectively unreasonable.

A. Trial counsel's investigation and decision-making

At trial, the DAO had to prove beyond a reasonable doubt Mr. Wang shot and killed Sharon. Trial counsel, therefore, simply had to convince the jury the DAO didn't meet its burden. Consequently, Mr. Wang didn't have the burden of proving Sharon's death was a suicide; he merely had to raise reasonable doubts about the DAO's homicide narrative. Before trial, the DAO based its homicide narrative on Dr. McDonald's three feet or more preliminary hearing testimony.

Before trial, trial counsel identified the primary way he intended to raise reasonable doubt. Trial counsel believed Sharon's entrance wound represented a contact wound and based on his experience contact wounds were indicative of suicide. Thus, trial counsel's strategy was to use the physical evidence to raise doubts regarding the DAO's homicide narrative. More specifically, trial counsel's strategy was to present the entrance wound and explain why it either *definitively proved* Sharon's death was a suicide or supported Mr. Wang's suicide narrative *more than* the DAO's homicide narrative.

Consequently, trial counsel retained Dr. Hoyer with the hopes of having Dr. Hoyer tell him what he (trial counsel) believed, *i.e.*, the entrance wound's characteristics made suicide far more likely than homicide. Dr. Hoyer thoroughly reviewed the autopsy photographs, including those of the entrance wound, and the autopsy report. Dr. Hoyer, unfortunately, couldn't give trial counsel what he wanted. For instance, on January 29, 2008, Dr. Hoyer wrote his second report for trial counsel

and said Dr. McDonald's autopsy findings regarding the entrance wound made distance-range, intermediate-range, and close-range firing all plausible, meaning the entrance wound's characteristics made homicide and suicide *equally* plausible.[62]

Accordingly, by January 2008 trial counsel knew Sharon's entrance wound made homicide and suicide equally plausible. Sure – trial counsel knew Dr. Hoyer would testify that Sharon could easily shoot herself in the back of the head at an upward trajectory based on Dr. Hoyer's January 28, 2008 report.[63] However, based on the entrance wound's characteristics, Dr. Hoyer also knew the DAO could easily argue Mr. Wang inflicted the fatal wound while standing three or more feet away from Sharon.

Thus, if the prosecutor asked Dr. Hoyer at trial whether the entrance wound equally supported homicide and suicide,[64] trial counsel and Mr. Wang had a significant problem. If Dr. Hoyer agreed with the prosecutor, and said homicide was equally plausible, Dr. Hoyer would represent the second forensic pathologist to tell jurors the entrance wound supported the DAO's homicide narrative. Dr. McDonald, of course, would've been the first.[65] Consequently, if trial counsel intended to call Dr. Hoyer, he had to identify, present, and argue other evidence to raise reasonable doubt about Dr. McDonald's homicide narrative because, Dr. Hoyer's testimony alone, made proving reasonable doubt a steep uphill battle.

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[62] E.C.F. #1, p. 297.
[63] E.C.F. #1, p. 297.
[64] Any veteran trial attorney would've and should've prepared for this type of question, especially because trial counsel disclosed Dr. Hoyer's January 28, 2008 report to the DAO. After reading the report, the prosecutor would've immediately realized the report made homicide and suicide equally plausible and would've emphasized this point while preparing to cross-examine Dr. Hoyer.
[65] Before trial, trial counsel didn't know about Officer's Stott's homicide narrative because Officer Stott isn't a qualified reconstructionist – he's a firearms examiner – and the DAO didn't ask him to reconstruct the shooting and to prepare a pre-trial report. Stott's reconstructive expert opinions at trial, therefore, came out-of-the-blue. Thus, heading into trial, the primary homicide narrative trial counsel had to undermine was Dr. McDonald's three feet or more narrative. It must be emphasized, though, had trial counsel familiarized himself with the scene characteristics and all the physical evidence, he would've easily been able to raise reasonable – and substantial – doubts regarding Stott's homicide narrative.

Based on trial counsel's initial strategy of focusing on the physical evidence, you'd have thought trial counsel would've continued doing this once Dr. Hoyer told him about his (Hoyer's) "equally plausible" opinion. Remarkably and unreasonably, however, trial counsel immediately abandoned his initial strategy – and didn't expand his forensic investigation by consulting with a crime scene expert or reconstructionist – once he received Dr. Hoyer's disappointing opinion.

Moreover, trial counsel was acutely aware of how difficult it would be to raise reasonable doubt based on Dr. Hoyer's likely testimony regarding the entrance wound. For instance, on February 18, 2008, after reviewing Dr. Hoyer's second report, trial counsel wrote Mr. Wang and said, "Unfortunately, [Dr. Hoyer's] findings are not as strong as I had hoped. *In fact, the conclusions will make the suicide argument a very difficult one for a jury to understand.*"[66] Accordingly, by February 2008, trial counsel knew he needed something more – besides Dr. Hoyer and the entrance wound – to help jurors understand why there were reasonable and substantial doubts regarding the DAO's homicide narrative.

But wait – there's more. On April 2, 2008, trial counsel wrote Mr. Wang and said he'd asked Dr. Hoyer "for additional clarification" regarding the entrance wound.[67] On April 3, 2008, trial counsel had a "very long conversation" with Dr. Hoyer.[68] On April 4, 2008, trial counsel wrote Mr. Wang regarding Dr. Hoyer's conclusions. Trial counsel said while the entrance wound was "large," this "*by itself does not indicate close-range firing"* according to Dr. Hoyer.[69] In other words, Dr. Hoyer told trial counsel – yet again – the entrance wound made homicide and suicide equally plausible.

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[66] E.C.F. #1, p. 300.
[67] E.C.F. #1, p. 301.
[68] E.C.F. #1, p. 301.
[69] E.C.F. #1, p. 301.

By early April 2008, then, trial counsel knew for certain his reliance on the entrance wound represented a two-headed sword that inflicted more damage to Mr. Wang's suicide narrative than it did to the DAO's homicide narrative. Again, however, trial counsel didn't consult with or retain a forensic expert to help him review the entire scene and all the physical evidence – even though Mr. Wang and his family gave trial counsel an extra $3,000 to hire *another* forensic expert. Instead, trial counsel abandoned his forensic investigation and somehow concluded – immediately thereafter and with no review of the other physical evidence – that the strongest/best evidence to raise reasonable doubt wasn't the remaining physical evidence or scene characteristics, it was none other than Mr. Wang himself, namely his trial testimony.

On May 19, 2008, for instance, in response to Mr. Wang's questions regarding Dr. Hoyer's expected trial testimony, trial counsel wrote Mr. Wang and told him it was *his trial testimony*, and not Dr. Hoyer's testimony or the physical evidence, that represented his best chance for acquittal:

> In response to your recent letter, let me make this perfectly clear that Dr. Hoyer is not saying that Sharon's death was absolutely, positively a suicide. He agrees with the physical findings of the medical examiner but comes to a different conclusion as to cause of death. *It is your testimony that will persuade the jury that this was a suicide. Dr. Hoyer cannot supply… more information.*[70]

Furthermore, on August 9, 2008, after Mr. Wang's family sent trial counsel the additional $3,000 to hire another forensic expert, trial counsel wrote Mr. Wang and said, "I'm not going to hire a second doctor until we have wrapped up Dr. Hoyer as a witness."[71] Trial counsel didn't explain what he meant by "wrapping up Dr. Hoyer as a witness." Trial counsel, more importantly, also stressed, again, that the "key" to his case was his testimony: "*As I have said from the start, your testimony, clear and concise, is the key to your case.*"[72]

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[70] E.C.F. #1, p. 302.
[71] E.C.F. #1, p. 303.
[72] E.C.F. #1, p. 303.

Well, as the saying goes, the rest is history. Trial counsel went to trial without consulting with or retaining a crime scene expert or reconstructionist to help him review and understand the scene characteristics and all the physical evidence. Thus, when Dr. McDonald testified, trial counsel didn't confront him with the reasonable-doubt raising facts identified in Mr. Turvey's affidavit. Similarly, when Stott testified, trial counsel didn't confront him with the reasonable-doubt raising facts identified in Mr. Turvey's affidavit. Sure, Stott's homicide narrative wasn't disclosed before trial. This, however, doesn't absolve trial counsel for not reviewing and knowing the scene characteristics and physical evidence well enough to quickly and effectively destroy Stott's (easily discredited) homicide narrative. In short, trial counsel's cross-examination of Dr. McDonald and Stott did more harm than good.[73]

When it came to Mr. Wang's case-in-chief, Dr. Hoyer's testimony was predictably underwhelming and damaging for the reasons mentioned above. All Dr. Hoyer told jurors was that it was possible Sharon committed suicide:

> I will start at the beginning. Do I agree that Mrs. Wang died of a gunshot wound to the head? Yes. You have to start at the beginning. We have two wounds connected by a track. So she died of a single gunshot wound to the head. The issues, as I see them, and the questions I was asked was which was the entrance wound, which was the exit wound and what can we say about range of fire and is it possible with this weapon to have inflicted the observed wound. Could [Sharon] have held the weapon? I can never say for sure she did or did not. *All I can say is it is possible.*[74]
>
> ….
>
> This then relates to the second question which is it possible for [Sharon] to have shot herself? *If it is a close gunshot wound, it is.* It is a small weapon. She can turn it around and hold it in two hands and fire it, *so it is possible for her to have shot herself. I wasn't there. I don't know who did what. All I can say is it is possible.*[75]

[73] Counsel documented trial counsel's cross-examination shortcomings in Mr. Wang's amended 2254 petition. E.C.F. #15, pp. 82-92.
[74] NT, Trial, 11/5/2008, p. 54.
[75] NT, Trial, 11/5/2008, p. 56.

Dr. Hoyer also said the entrance wound's location is one "frequently" seen in suicidal shootings.[76]

On cross-examination, though, when the prosecutor pressed Dr. Hoyer for his manner of death opinion, he said, "My opinion is she is shot in the back of the head. We can't determine the range of fire and it could be a suicide[.]"[77] More importantly, the prosecutor got Dr. Hoyer to concede that the entrance wound's characteristics made it equally plausible Sharon's death was a homicide:

> Prosecutor: You can't determine the range of firing?
>
> Dr. Hoyer: I don't believe there is any scientific information that would support going beyond this is not a contact wound.
>
> Prosecutor: So what would be the difference of [Mr. Wang] coming up behind her and shooting her at close range in the back of the head?
>
> Dr. Hoyer: The different between what?
>
> Prosecutor: Between what you are saying and what I am saying?
>
> Dr. Hoyer: None, because I agree that that's possible.
>
> Prosecutor: So you are saying it is possible this is a homicide?
>
> Dr. Hoyer: Yes.[78]

After Mr. Wang testified in own defense, trial counsel didn't present another forensic expert to present and discuss all the reasonable-doubt raising facts identified in Mr. Turvey's affidavit that would've raised reasonable – and substantial – doubts regarding the DAO's homicide narratives and "handgun location" argument. Additionally, trial counsel's closing argument wasn't only incoherent and disjointed,[79] he couldn't hammer home the reasonable doubt-raising facts identified in Mr.

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[76] NT, Trial, 11/5/2008, p. 57.
[77] NT, Trial, 11/5/2008, pp. 72-73.
[78] NT, Trial, 11/5/2008, p. 73.
[79] Trial counsel's disjointed closing argument is summarized in Mr. Wang's amended 2254 petition. E.C.F. #15, pp. 92-93. The Supreme Court emphasized the importance of a persuasive closing argument:

> It can hardly be questioned that closing argument serves to sharpen and clarify the issues for resolution by the trier of fact in a criminal case. For it is

Turvey's affidavit because he never expanded the scope of his forensic investigation to review, understand, and master the scene characteristics and physical evidence.

The jury convicted Mr. Wang of first-degree murder.

B. Why trial counsel's decision-making was objectively unreasonable

After receiving Dr. Hoyer's opinion that homicide and suicide were equally plausible based on the entrance wound, trial counsel abandoned – and didn't expand – his forensic investigation and immediately assumed and conclude Mr. Wang's trial testimony represented the strongest/best evidence to raise reasonable doubt. This *uninvestigated* assumption/conclusion is objectively unreasonable and *unsubstantiated* for the very fact that trial counsel did no research or investigation before making this assumption/conclusion.

To conclude Mr. Wang's trial testimony represented the strongest/best evidence to raise reasonable doubt required – at the very least – a comparative assessment between the impact of Mr. Wang's trial testimony with no physical evidence corroborating it versus the objective scene characteristics and physical evidence. A comparative assessment, more importantly, required trial counsel to review the physical evidence and scene characteristics and determine not only (1) the strength and impact of this evidence, but (2) whether its strength and impact outweighed the (alleged) strength and impact of Mr. Wang's trial testimony. Trial counsel didn't perform a comparative

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> only after all the evidence is in that counsel for the parties are in a position to present their respective versions of the case as a whole. Only then can they argue the inferences to be drawn from all the testimony, *and point out the weaknesses of their adversaries' positions*. And for the defense, closing argument is the *last clear chance to persuade the trier of fact that there may be reasonable doubt of the defendant's guilt*.
>
> ….
>
> In a criminal trial, which is in the end basically a factfinding process, *no aspect of such advocacy could be more important* than the opportunity finally to marshal the evidence for each side before submission of the case to judgment.

Herring v. New York, 422 U.S. 853, 862 (1975) (emphasis added).

assessment. He simply assumed/concluded, for unknown reasons, that Mr. Wang's uncorroborated trial testimony represented his best shot at raising reasonable doubt.

Trial counsel's initial strategy to examine the entrance wound was reasonable because trial counsel had to determine whether it possessed real potential to raise reasonable doubt. It didn't, unfortunately, but welcome to a criminal defense attorney's life. Many roads traveled by a defense attorney lead to nothing or very little,[80] but the Sixth Amendment mandates that these roads be traveled to vindicate the defendant's constitutional right to effective counsel. Without traveling these lonely roads, we can't say – with sufficient confidence – that the defendant's trial represented the fairest proceeding for determining the ultimate criminal justice question: guilty or innocent? *Martinez v. Ryan*, 566 U.S. 1, 12 (2012).[81]

Consequently, because trial counsel abandoned – and didn't expand – his forensic investigation, after only examining the entrance wound, his forensic investigation can – at best – be

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[80] The duty to investigate, of course, doesn't "force defense lawyers to scour the globe on the off chance something will turn up[.]" *Rompilla v. Beard*, 545 U.S. 374, 383 (2005). Mr. Wang's, however, isn't advocating a "scour the Earth" approach. He's advocating a commonsensical approach, one based on the reality that trial counsel's initial defense strategy was to use the physical evidence to undermine the DAO's homicide narrative. For trial counsel to stop his forensic investigation after considering only one item of physical evidence was objectively unreasonable because of everything mentioned above.

[81] "The very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free" *Herring v. New York*, 422 U.S. at 862. *See also* ABA Standards for Criminal Justice 4–4.1(c) reads:

> Defense counsel's investigative efforts should commence promptly and should explore appropriate avenues that *reasonably might lead to information relevant to the merits of the matter, consequences of the criminal proceedings*, and potential dispositions and penalties. Although investigation will vary depending on the circumstances, it should always be shaped by what is in the client's best interests, after consultation with the client. Defense counsel's investigation of the merits of the criminal charges should include efforts to secure relevant information in the possession of the prosecution, law enforcement authorities, and others, *as well as independent investigation*. Counsel's investigation should also include *evaluation of the prosecution's evidence (including possible re-testing or re-evaluation of physical, forensic, and expert evidence) and consideration of inconsistencies, potential avenues of impeachment of prosecution witnesses*, and other possible suspects and alternative theories that the evidence may raise.

The Supreme Court has "long… referred" to the ABA Guidelines as "guides to determining what is reasonable." *Wiggins v. Smith*, 539 U.S. at 524.

described as *cursory*. As *Wiggins* clearly established, however, "a cursory investigation" doesn't "automatically justif[y] a tactical decision with respect to [trial] strategy." *Wiggins v. Smith*, 539 U.S. 510, 527 (2003). Likewise, the information trial counsel developed from the entrance wound merely gave him a *rudimentary* perspective of the scene characteristics and all the physical evidence. *Id.* at 524 (finding trial counsel ineffective for abandoning his mitigation investigation "after having acquired only rudimentary knowledge of [the defendant's social] history from a narrow set of sources.").

Furthermore, there were only two people in the bedroom – Mr. Wang and Sharon. Sharon, unfortunately and tragically, died, leaving Mr. Wang as the only witness. Thus, besides interviewing post-shooting fact witnesses like Troy Davis, Timothy Flemings, and Rick Kern, the only things in the scene that could possibly provide trial counsel with information regarding the shooting were Mr. Wang, the scene characteristics, and the physical evidence. Thus, the universe of items/people that could potentially lead to reasonable doubt-raising facts was quite limited, meaning trial counsel didn't have to perform an O.J. Simpson level investigation to identify such facts.

Additionally, Mr. Wang's family gave trial counsel an additional $3,000 to hire another forensic expert after Dr. Hoyer told trial counsel about his "equally plausible" opinion. Trial counsel, though, didn't utilize the $3,000 to investigate and review all the scene characteristics and physical evidence. Trial counsel simply pocketed the money and did nothing. Yes, that's right, trial counsel never returned the $3,000 to Mr. Wang or his family even though he did nothing with it to advance Mr. Wang's defense.

In the end, trial counsel's decision not to expand the scope of his forensic investigation was objectively unreasonable because the *investigation preceding that decision* was itself unreasonable because it was nonexistent. Likewise, trial counsel's assumption/conclusion regarding Mr. Wang's trial testimony is unreasonable and unsubstantiated for the same reason: it was preceded by no

investigation, meaning trial counsel had no legitimate evidence that Mr. Wang's trial testimony, in fact, represented the strongest/best evidence to raise reasonable doubt.

And this is the fundamental issue the PCRA court had to address based on *Strickland's* clearly-established principles. The issue wasn't whether trial counsel should've expanded his forensic investigation by consulting with and/or retaining a forensic expert like Mr. Turvey. The issue was whether "the investigation supporting counsel's decision" to abandon – and not expand – his forensic investigation "*was itself reasonable*." *Wiggins v. Smith*, 539 U.S. at 522-523 (emphasis in original).

There was no investigation preceding trial counsel's decision to abandon – and not expand – his forensic investigation. Likewise, there was no investigation supporting trial counsel's assumption/conclusion that Mr. Wang's uncorroborated trial testimony represented the strongest/best evidence to raise reasonable doubt. The absence of any investigation, moreover, must be coupled with what trial counsel knew when he received Dr. Hoyer's "equally plausible" opinion.

Trial counsel knew the following:

First, if he presented Dr. Hoyer, his testimony would represent a two-headed sword that would likely do more damage to Mr. Wang's suicide narrative than the DAO's homicide narrative because the DAO would inevitably and foreseeably get Dr. Hoyer to admit that homicide and suicide were equally plausible based on the entrance wound.

Second, if he only presented Dr. Hoyer, his "*conclusions [would] make the suicide argument a very difficult one for a jury to understand.*"[82] Yes, trial counsel told this to Mr. Wang on February 18, 2008 – nine months before Mr. Wang's trial.

Third, he knew Dr. McDonald's three feet or more opinion made suicide impossible, meaning he knew he had to raise reasonable doubt about this opinion to garner an acquittal.

[82] E.C.F. #1, p. 300.

Fourth, he knew – or had to know – that by not examining all the scene characteristics and physical evidence, once he put Mr. Wang on the stand to testify, Mr. Wang's testimony would have to stand on its own, absence any support or corroboration from the scene characteristics or physical evidence.

Fifth, he knew the DAO had at least one forensic expert, Dr. McDonald, who intended to testify that Sharon's death was – without question – a homicide, yet his own forensic expert, Dr. Hoyer, only intended to testify that Sharon's death *could* be a suicide *or* a homicide.

Sixth, he knew Mr. Wang had the money to retain another forensic expert.[83]

When these facts are coupled with trial counsel's nonexistent investigation, it's clear trial counsel's decision to abandon – *and not expand* – his forensic investigation was objectively unreasonable. *Wiggins v. Smith*, 539 U.S. at 524 ("Counsel's decision not to *expand their investigation* beyond the PSI and the DSS records fell short of the professional standards that prevailed in Maryland in 1989.") (emphasis added).[84]

C. Why trial counsel's deficient performance prejudiced Mr. Wang

The prejudice analysis is straightforward: whether it's reasonably probable that, had trial counsel expanded the scope of his forensic investigation and developed, presented, and argued the facts identified in Mr. Turvey's affidavit, at least one juror would've harbored a reasonable doubt

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[83] The point being made with these six facts is the following: "In assessing the reasonableness of an attorney's investigation… a court must consider… whether the known evidence would lead a reasonable attorney to investigate further…. [because] *Strickland* does not establish that a cursory investigation automatically justifies a tactical decision[.]" *Wiggins v. Smith*, 539 U.S. at 527.

[84] *See also Abdul-Salaam v. Sec'y of Pa. Dep't of Corr.*, 895 F.3d 254, 268 (3d Cir. 2018) ("Counsel can make a strategic decision to halt an avenue of investigation if he has completed a foundation of investigation to reach that decision, but decisions not to investigate certain types of evidence cannot be called 'strategic' when counsel fails to seek rudimentary background information."); *Showers v. Beard*, 635 F.3d 625, 632-633 (3d Cir. 2011) ("This court and others have overturned a state court on habeas review based on deficient performance even where experts had been consulted but defense counsel failed to seek a second opinion when the facts so warranted."); *Hummel v. Rosemeyer*, 564 F.3d 290, 302 (3d Cir. 2009) (defense counsel's failure to obtain additional psychiatric evaluation of defendant's mental capacity to stand trial deficient because previous evaluations were equivocal and client's behavior would've put competent counsel on notice).

regarding the DAO's homicide narratives, including its "handgun location" argument, and voted to acquit Mr. Wang of first-degree murder. *Buck v. Davis*, 137 S. Ct. 759, 776 (2017).

The answer is yes. Had trial counsel expanded the scope of his forensic investigation and developed and presented the facts identified in Mr. Turvey's affidavit, it's reasonably probable at least one juror would've had reasonable doubts about the DAO's homicide narratives, including its myopic "handgun location" argument. Counsel spent considerable time identifying the reasonable doubt-raising facts already, *supra*, pp. 15-24, so he won't rehash them here.

The reality created by these facts speaks for itself. No matter where the DAO attempts to place Mr. Wang in the bedroom at the time of the shooting, undersigned counsel and Mr. Wang can thoroughly and quickly debunk or raise reasonable doubts about this positioning because counsel did what trial counsel should've before trial: he mastered the scene characteristics and physical evidence and is able to easily weaponize them at the drop of dime to dismantle the DAO's ever-evolving homicide narratives.

Counsel can't stress this enough to the Court: the bedroom's dimensions and location of certain items of physical evidence make the riddle presented by Sharon's death easily solvable with simple geometry, math, a limited understanding of FCC trajectories, and commonsense. Again, though, to solve the riddle, one must master and understand the facts presented in the riddle. Trial counsel, unfortunately, didn't take the time to master the facts of this tragic yet easily solvable riddle.

D. The PCRA court's objectively unreasonable application of *Strickland*

1. The PCRA court's findings and conclusions

The PCRA court rejected Mr. Wang's *Strickland* claim. The PCRA court characterized trial counsel's strategy and Dr. Hoyer's testimony this way:

> In [Mr. Wang's] case, trial counsel's strategy was to show that the [Sharon's] gunshot wound was self-inflicted. Trial counsel engaged an expert, pathologist Dr. Paul Hoyer, who testified that, based upon his review of the autopsy report, the [autopsy] photographs, the discovery

> and digital images of the gun, it was his expert opinion that it was possible that Sharon Lin committed suicide; the weapon would be upside down, held in either hand and fired with the thumb of the other hand. Dr. Hoyer testified that, for a suicidal gunshot wound to the head, this was the most common way of holding the weapon. It was his opinion that the evidence showed only that the wound was not a contact wound, not that the gun muzzle was three feet away when it was fired as Dr. McDonald opined.[85]

The PCRA court said trial counsel's decision to abandon – and not expand – his forensic investigation was reasonable because trial counsel retained and presented a forensic expert who testified Sharon's death could be a suicide:

> When assessing whether counsel had a reasonable basis for his act or omission, the question is not whether there were other courses of action that counsel could have taken, but whether counsel's decision had any basis reasonably designed to effectuate his client's interest. The record establishes that the strategy chosen by trial counsel had a reasonable basis designed to effectuate [Mr. Wang's] interests, namely that Sharon Lin's death was a suicide.[86]

The PCRA court also concluded that, even had trial counsel expanded his forensic investigation and developed and presented the facts identified in Mr. Turvey's affidavit, it wasn't reasonably probable that these facts would've changed the outcome of Mr. Wang's trial:

> Moreover, [Mr. Wang] has failed to demonstrate that the suggested alternative strategy identified by his hindsight approach (presenting an expert who would refute Dr. McDonald's opinion that the shot was fired from 2-3 feet away, and Robert Stott's opinion that [Mr. Wang] fired the shot while standing to the left of the bed), offered a reasonable probability of a different outcome at trial.[87]

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[85] E.C.F. #1, pp. 63-64. The last sentence in this paragraph represents an objectively unreasonable factual finding. Dr. Hoyer didn't testify in the way described by the PCRA court. The PCRA court found that Dr. Hoyer told jurors he believed the handgun was less than three feet away from Sharon. This is factually and objectively wrong and the record clearly and convincingly proves it. Dr. Hoyer told jurors he couldn't *determine* whether the entrance wound was a close, intermediate, or distant wound, NT, Trial, 11/5/2008, p. 63, meaning he didn't opine that the fatal shot was fired at a distance less than three feet. The PCRA court's objectively unreasonable finding is significant because it presents Dr. Hoyer's testimony in a more impactful way.

[86] E.C.F. #1, p. 64.

[87] E.C.F. #1, p. 64. On appeal, the Pennsylvania Superior Court affirmed the PCRA court's decision, by simply making the following global statement regarding the PCRA court's adjudication of all of Mr. Wang's PCRA claims: "[The PCRA court] has authored a comprehensive, thorough, and well-reasoned Opinion, citing to the record and relevant case law in addressing [Mr. Wang's] claims. The record supports the PCRA court's findings and the Order is otherwise free of legal error." E.C.F. #1, p. 417. Because the Superior Court's opinion didn't

2. The PCRA court's misapplied *Strickland's* clearly-established deficient performance case law

The critical decision Mr. Wang is challenging is trial counsel's decision to abandon – and not expand – his forensic investigation once Dr. Hoyer told him homicide and suicide were equally plausible based on the entrance wound's characteristics. With this being the starting point, *Wiggins* clearly established and identified the proper analysis to determine whether trial counsel's decision to abandon – and not expand – his forensic investigation was objectively reasonable.

The diagram below is (hopefully) helpful to understand what Mr. Wang is challenging, where trial counsel was ineffective, and how the PCRA court misapplied *Strickland* and *Wiggins*. Under *Wiggins*, the PCRA court had to examine Part B in the diagram and ask: What did trial counsel do between Part A (learning about Dr. Hoyer's "equally plausible" opinion) and Part C (assuming/concluding Mr. Wang's trial testimony represented the strongest/best evidence to raise reasonable doubt)? Put differently, what information or investigation did trial counsel review, develop, or perform in Part B to make the conclusion he made in Part C regarding Mr. Wang's trial testimony?

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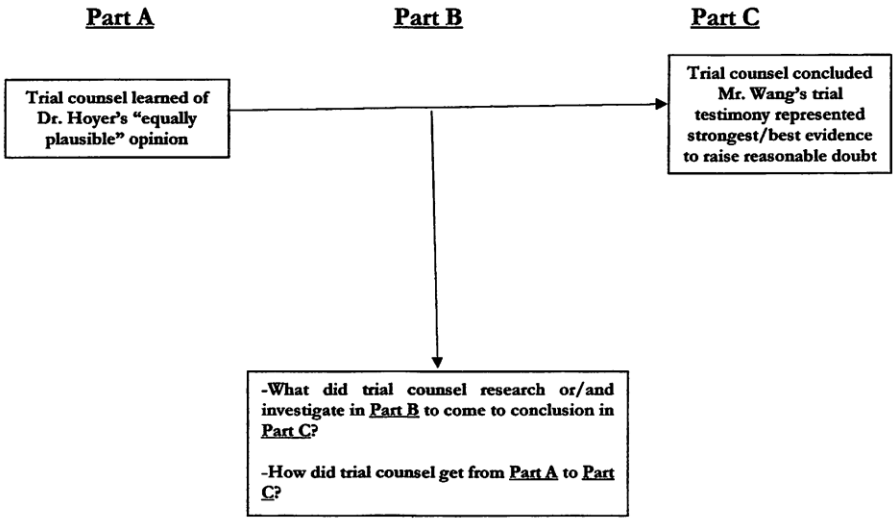
come accompanied with its own reasons, and it simply mentioned the PCRA court's "well-reasoned" opinion, the relevant state court decision under AEDPA is the "last related state-court decision that does provide a relevant rationale," *Wilson v. Sellers*, 138 S. Ct. 1188, 1192 (2018), which is the PCRA court's decision. The Court must "then presume that the [Superior Court's] unexplained decision adopted the same reasoning [as the PCRA court]." *Id.*



[88]

Put differently, the PCRA court had to assess the investigation in Part B, assuming there was one, and determine whether the investigation "*was itself reasonable*," *Wiggins v. Smith*, 539 U.S. at 522-523 (emphasis in original), to make the conclusion in Part C. The PCRA court didn't examine Part B. The PCRA court only examined Part A and said trial counsel's decision-making *up to and including* Part A was reasonable because retaining Dr. Hoyer and developing his opinion that Sharon's death *could be* a suicide "had a reasonable basis designed to effectuate [Mr. Wang's] interests, namely that Sharon Lin's death was a suicide."[89]

The PCRA court unreasonably applied *Strickland* and *Wiggins*. Mr. Wang concedes trial counsel's decision-making up to and including Part A was reasonable,[90] but Mr. Wang isn't challenging trial counsel's decision-making up to and including Part A. Mr. Wang is challenging trial counsel's

[88] Counsel is a visual learner so he thought the Court might find his deficient performance argument more understandable with a diagram.
[89] E.C.F. #1, p. 64.
[90] Indeed, the primary argument behind Mr. Wang's *Strickland* claim is trial counsel should've continued the forensic investigation he started in Part A. Thus, Mr. Wang concedes trial counsel's retention of and consultation with Dr. Hoyer was objectively reasonable and the right thing to do in Part A. Trial counsel, though, shouldn't have stopped his forensic investigation after receiving Dr. Hoyer's disappointing "equally plausible" opinion. In other words, Part B should've had trial counsel expanding his forensic investigation because to concluded what he did in Part C, *i.e.*, Mr. Wang's trial testimony represented the strongest/best evidence to raise reasonable doubt, required him to make a comparative assessment between the physical evidence and Mr. Wang's uncorroborated trial testimony. *Supra*, pp. 58-59.

decision-making *after* Part A (*i.e.*, after Dr. Hoyer gave him his "equally plausible" opinion), that ultimately led to his conclusion in Part C (*i.e.*, Mr. Wang's trial testimony represented the strongest/best evidence to raise reasonable doubt). Consequently, under *Strickland*, *Wiggins*, and *Rompilla*, the PCRA court had to focus on Part B and determine whether the investigation in Part B was itself reasonable, *i.e.*, developed adequate facts, to make the conclusion trial counsel made in Part C.

The PCRA court didn't examine Part B. Thus, the PCRA court didn't determine whether trial counsel's investigation in Part B provided him with the necessary facts to accurately and reasonably conclude what he concluded in Part C, *i.e.*, Mr. Wang's trial testimony represented the strongest/best evidence to raise reasonable doubt.

Consequently, the PCRA court didn't correctly apply *Strickland's* clearly-established deficient performance prong and there isn't – and can't be – any fair-minded disagreement about its incorrectness. *Harrington v. Richter*, 562 U.S. 86, 103 (2011) (a state court's adjudication of a federal claim is objectively unreasonable when there's no fair-minded disagreement about the incorrectness of the state court's adjudication).

Had the PCRA court examined trial counsel's investigation in Part B, it would've quickly realized there *was no investigation* in Part B. Trial counsel, literally, went from Part A to Part C with no investigation in between, meaning once Dr. Hoyer gave him his "equally plausible" opinion, trial counsel immediately assumed/concluded Mr. Wang's trial testimony represented the strongest/best evidence to raise reasonable doubt. Based on the *rudimentary* facts/forensic evidence trial counsel developed in Part A, he didn't have the necessary facts/evidence/understanding to accurately and reasonably conclude what he concluded in Part C. As mentioned, to make the conclusion he made in Part C, trial counsel had to examine the remaining items of physical evidence and scene characteristics

and determine the strength and impact of this evidence. Only then could trial counsel accurately and reasonably assess and compare this evidence with Mr. Wang's trial testimony.

Had trial counsel performed Part B's investigation, he would've identified the reasonable doubt-raising facts undersigned counsel and Mr. Turvey identified during Mr. Wang's PCRA proceedings. Had trial counsel developed these facts before trial, there's no question these facts would've changed Part C's conclusion, meaning trial counsel would've quickly concluded that the physical evidence and scene characteristics represented Mr. Wang's strongest/best evidence to raise reasonable doubt – not Mr. Wang's trial testimony.

In short, the PCRA court's adjudication of *Strickland's* deficient performance prong was objectively unreasonable, meaning no fair-minded jurists could find it correct.

In his amended 2254 petition, Mr. Wang identified other reasons why the PCRA court's deficient performance adjudication was objectively unreasonable. Mr. Wong briefly summarizes these reasons.

First, making one reasonable decision doesn't make all of trial counsel's subsequent decisions reasonable. Trial counsel's decision-making up to and including Part A was reasonable. His decision-making thereafter, however, wasn't because it wasn't grounded in a reasonable investigation.

Second, simply because trial counsel identified a "reasonably designed strategy" doesn't mean trial counsel "reasonably executed" said "strategy." Trial counsel was hot off the start, so to speak, when he retained Dr. Hoyer, but he simply didn't follow through with his "reasonably design strategy" of using the physical evidence to undermine the DAO's homicide narrative and support Mr. Wang's suicide narrative.[91]

[91] Counsel is reminded of the famous *Seinfeld* scene where Jerry Seinfeld believed he'd rented a car from a rental car company. However, when Jerry arrived at the rental car company, he learned the company didn't have a car for him to rent. As Jerry put it, the rental car company "took" his reservation, but it didn't "hold" the

3. The PCRA court's misapplied *Strickland's* clearly-established prejudice case law

The PCRA court's prejudice adjudication is even more dumbfounding and unreasonable than its truncated deficient performance adjudication. Here's the PCRA court's lone paragraph adjudicating *Strickland's* prejudice prong:

> Moreover, [Mr. Wang] has failed to demonstrate that the suggested alternative strategy identified by his hindsight approach (presenting an expert who would refute Dr. McDonald's opinion that the shot was fired from 2-3 feet away, and Robert Stott's opinion that [Mr. Wang] fired the shot while standing to the left of the bed), offered a reasonable probability of a different outcome at trial.[92]

A quick point must be made before discussing the PCRA court's prejudice assessment. Based on the paragraph's wording, the PCRA court appears to have found that expanding the scope of trial counsel's forensic investigation represented an "alternative" and "hindsight" strategy Mr. Wang crafted after his conviction. This is an objectively unreasonable finding considering the evidence presented during the state court proceedings. 28 U.S.C. § 2254(d)(2).

First, trial counsel's strategy from the get-go was to examine the physical evidence with the hope of developing facts to undermine the DAO's homicide narrative and to support Mr. Wang's suicide narrative. Why else retain Dr. Hoyer to examine the entrance wound? Thus, examining the other physical evidence isn't an "alternative" strategy, it's the logical "extension" of trial counsel's strategy.

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reservation, and "holding" the reservation, as Jerry said, was "the most important part of the reservation." As Jerry explained, "Anyone can just take a reservation." https://www.youtube.com/watch?v=4T2GmGSNvaM (last visited April 9, 2020). Here, trial counsel "identified" a reasonable trial strategy, *i.e.*, examine the physical evidence to (hopefully) undermine the DAO's homicide narrative, but he simply didn't "execute" said strategy, and "executing" said strategy was the more important part of said strategy. Anyone can identify a "reasonably designed" trial strategy but executing said strategy requires continued investigation and fact-development.

[92] E.C.F. #1, p. 64.

Second, before trial Mr. Wang and his family paid trial counsel an additional $3,000 to hire another forensic expert, meaning Mr. Wang didn't think of retaining someone like Mr. Turvey in "hindsight." Rather, Mr. Wang had advocated the hiring of another forensic expert before trial.

Likewise, two points must be made regarding the PCRA court's paragraph long prejudice analysis:

First, the PCRA court made no findings regarding the physical evidence and scene characteristics identified in Mr. Turvey's affidavit. In other words, the PCRA court didn't find these scene characteristics non-existent or the physical evidence incredible, unreliable, or inadmissible.

Second, the PCRA court made no findings regarding Mr. Turvey's qualifications, methodology, findings, or conclusions. For instance, the PCRA court didn't find Mr. Turvey unqualified or his conclusions incredible, unreliable, or inadmissible.

Based on the absence of such findings, the PCRA court: (1) considered the scene characteristics and physical evidence identified in Mr. Turvey's affidavit; (2) compared these scence characteristics and this physical evidence to Dr. McDonald's and Stott's homicide narratives; and (3) concluded it wasn't reasonably probable that the scene characteristics and physical evidence identified in Mr. Turvey's affidavit would've altered at least one jurors assessment of the DAO's homicide narratives to a point where this juror would've voted to acquit Mr. Wang of first-degree murder.

The PCRA court's prejudice assessment is objectively unreasonable and there's no fair-minded disagreement about it.

The starting point regarding the PCRA court's prejudice adjudication is *Strickland*'s clearly-established prejudice standard. Based on the decision Mr. Wang is challenging, *i.e.*, trial counsel's decision to abandon – and not expand – his forensic investigation by consulting with and retaining another forensic expert, the PCRA court had to address this issue: whether it's reasonably probable

that, had trial counsel expanded the scope of his forensic investigation and developed, presented, and argued the scene characteristics and physical evidence identified in Mr. Turvey's affidavit, at least one juror would've harbored a reasonable doubt regarding the DAO's homicide narratives, including its "handgun location" argument, and voted to acquit Mr. Wang of first-degree murder. *Buck v. Davis*, 137 S. Ct. at 776.

Mr. Wang thoroughly documented the scene characteristics and physical evidence that raised reasonable – and substantial – doubts regarding Dr. McDonald's and Stott's homicide narratives. *Supra*, pp. 145. Both are, literally, impossible based on the bedroom's dimensions, the scene characteristics, and the location of certain items of physical evidence, *e.g.*, the FCC's and strike mark's locations, the lack of back spatter on Mr. Wang's person and clothing, and the position of Sharon's body after the shooting. Consequently, it's reasonably probable at least one juror would've had reasonable doubts about the DAO's homicide narratives had trial counsel developed, presented, and argued these facts during trial and throughout his closing argument.

Furthermore, it's reasonably probable that, based on the reasonable doubts this juror had regarding the DAO's homicide narratives, this juror would've also had reasonable doubts about the DAO's "handgun location" argument. Again, as Mr. Wang framed it in his amended 2254 petition, this is the critical question jurors would've had to address had trial counsel performed effectively and presented the reasonable doubt-raising facts identified in Mr. Turvey's affidavit:

> Thus, here is the key question: of the two competing "impossibility" arguments, which of the two is less likely to have happened: (1) the handgun coming to rest in the second drawer under a CD after Sharon shot herself at the head of the bed; or (2) the FCC coming to rest at the head of the bed after Mr. Wang fired the fatal shot standing three feet or more from the left foot of the bed. Based on the laws of physics, evidence dynamics, and common sense the answer is simple: the latter is far more unlikely than the former.[93]

[93] E.C.F. #15, p. 95.

The jury, unfortunately, wasn't able to compare these competing "impossibility" arguments because trial counsel failed to consider and examine (1) the FCC's location, (2) the strike mark's location, (3) the fact the dresser drawers had been dislodged, (4) the lack of a void pattern on the left wall, (5) the lack of back spatter on Mr. Wang's person and clothing, (6) the positioning of Sharon's body after the shooting, and (7) the bedroom's dimensions. Had trial counsel examined, developed, and presented this evidence, he could've methodically and persuasively explained to jurors why there were reasonable – and substantial – doubts regarding the DAO's homicide narratives and "handgun location" argument, while at the same time convincingly explaining why the scene characteristics and physical evidence made Mr. Wang's suicide narrative far more likely.

In the end, undersigned counsel has no doubt Mr. Wang is innocent and that Sharon Lin's death represents a tragic suicide. Mr. Wang's unconstitutional conviction, however, represents a different type of tragedy that's inevitably linked to trial counsel's prejudicial ineffectiveness. While *Strickland's* primary focus is on protecting and vindicating the Sixth Amendment's right to effective trial counsel, this right is inexorably connected to a person's fight to prove their innocence. As Justice Breyer explained, the right is the "great engine by which an innocent man can make the truth of his innocence visible[.]" *Luis v. United States*, 136 S. Ct. 1083, 1089 (2016) (citation omitted).

Here, while trial counsel's "engine" ran smoothly at the beginning, once he hit a speed bump with Dr. Hoyer's "equally plausible" opinion, trial counsel effectively turned off his "engine" and walked the rest of the way. Along the way, he didn't examine numerous scene characteristics and items of physical evidence because he didn't have the proper "vehicle," *i.e.*, another forensic expert, to effectively do so. By bypassing these scene characteristics and items of physical evidence on his way to trial, trial counsel walked right passed the facts that "mad[e] the truth" of Mr. Wang's "innocence visible" to the jurors.

The PCRA court only made matters worse by performing a truncated and objectively unreasonable *Strickland* analysis regarding trial counsel's decision-making. Similarly, the PCRA court's comparative assessment between the facts identified in Mr. Turvey's affidavit versus Dr. McDonald's and Stott's conflicting homicide narratives was also objectively unreasonable. It's reasonably probable that, had trial counsel developed, presented, and argued the facts identified in Mr. Turvey's affidavit, at least one juror would've had reasonable doubts regarding the DAO's homicide narratives, including its "handgun location" argument, and voted to acquit Mr. Wang of first-degree murder.

Mr. Wang, consequently, respectfully requests that the Court to grant him a writ of habeas corpus because his first-degree murder conviction is unconstitutional under the Federal Constitution based on trial counsel's prejudicially ineffective representation.

TROY DAVIS, TIMOTHY FLEMINGS, AND RICK KERN CLAIM

Counsel will keep the Troy Davis, Timothy Flemings, and Rick Kern *Strickland* claim discussion short because the claim speaks for itself. Besides undermining the DAO's homicide narratives with the facts identified in Mr. Turvey's affidavit, the next best way trial counsel could've raised reasonable doubt regarding the DAO's claim Mr. Wang "hid" the handgun in the bottom drawer was to present three *neutral* post-shooting fact-witnesses: Troy Davis, Timothy Flemings, and Rick Kern. All three heard the gunshot and all three said they *immediately* saw Mr. Wang at the second-floor window frantically screaming for help and asking for someone to call an ambulance because his wife had just shot herself.[94]

The PCRA court, remarkably, said trial counsel wasn't ineffective for presenting these three witnesses because the trial record already contained similar evidence, meaning Troy Davis's, Timothy Flemings's, and Rick Kern's testimony would've been *similar to* and therefor *cumulative* of other evidence in the trial record. According to the PCRA court, this *similar* evidence was Mr. Wang's statement to (responding) Officers Magsam and Johnson that Sharon had shot herself, as well as Mr. Wang's custodial statement to detectives where he, again, said Sharon had shot herself.[95]

The PCRA court's cumulativeness finding is a factual finding that's objectively unreasonable considering the state court record. The problem with the PCRA court's cumulativeness finding is the PCRA court focused on the *wrong fact* with respect to Troy Davis's, Timothy Flemings's, and Rick Kern's statements and testimony. The reasonable-doubt raising purpose of presenting these three *neutral* fact witnesses wouldn't have been to introduce Mr. Wang's frantic statements about Sharon shooting herself; it would've been to introduce the *immediacy* of Mr. Wang's appearance at the second-floor bedroom window after the gunshot.

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[94] E.C.F. #1, pp. 130-132.
[95] E.C.F. #1, pp. 65-66.

The *immediacy* of Mr. Wang's appearance at the second-floor bedroom window, raised reasonable – and substantial – doubts about the DAO's claim Mr. Wang secreted the handgun in the bottom drawer after shooting Sharon. As explained *supra*, pp. 45-49, based on this immediacy, there's no way Mr. Wang could've stepped or reached over Sharon's body, secreted the handgun in the bottom drawer, and been in front of the second-floor bedroom window in the amount of time identified by Troy Davis, Timothy Flemings, and Rick Kern.

More importantly, at least with respect to the PCRA court's cumulativeness finding, no other evidence in the trial record – outside of Mr. Wang's trial testimony – spoke to the *immediacy* of Mr. Wang's appearance at the second-floor bedroom window after the gunshot. Consequently, the PCRA court's cumulativeness finding is objectively unreasonable and there isn't – and can't be – any fair-minded disagreement about its incorrectness.

Moreover, because the PCRA court used its objectively unreasonable cumulativeness finding to adjudicate the deficient performance prong, *i.e.*, trial counsel couldn't be ineffective for not presenting cumulative evidence, the PCRA court's deficient performance adjudication is objectively unreasonable and there isn't – and can't be – any fair-minded disagreement about its incorrectness.

Furthermore, because the PCRA court used its objectively unreasonable cumulativeness finding to adjudicate the prejudice prong, *i.e.*, there was no prejudice because the record already contained facts similar to those which these witnesses would've presented, the PCRA court's prejudice adjudication is objectively unreasonable and there isn't – and can't be – any fair-minded disagreement about its incorrectness.

It's reasonably probable that, had trial counsel called these neutral fact witnesses and had them discuss the immediacy of Mr. Wang's appearance at the second-floor bedroom window after the gunshot, at least one juror would've had reasonable doubt about the DAO's "handgun location"

argument, which in turn would've created reasonable doubt regarding the DAO's homicide narratives convincing this juror to acquit Mr. Wang of first-degree murder.

Mr. Wang, consequently, respectfully requests that the Court to grant him a writ of habeas corpus because his first-degree murder conviction is unconstitutional under the Federal Constitution based on trial counsel's prejudicially ineffective representation.

CUMULATIVE PREJUDICE

While individual trial counsel errors can provide relief, so too can the cumulative impact of multiple trial counsel errors. *Albrecht v. Horn*, 485 F.3d 103, 139 (3d Cir. 2007); *Marshall v. Hendricks*, 307 F.3d 36, 94 (3d Cir. 2002); *Berryman v. Morton*, 100 F.3d 1089, 1101-1102 (3d Cir. 1996). If the failure to expand the forensic investigation claim (Claim #1) and the failure to present neutral, post-shooting fact witnesses claim (Claim #2) are separately insufficient to warrant relief under *Strickland*, collectively they warrant relief.

The cumulative impact of the evidence and facts not presented in both claims is truly astonishing. Mr. Wang's jurors didn't see or hear substantial objective evidence – be it the objective physical evidence or scene characteristics or the objective testimony from three neutral post-shooting fact witnesses – that would've put the DAO's "whole case" against Mr. Wang "in such a different light" that this Court can't have "confidence" in the jury's first-degree murder "verdict." *Kyles v. Whitley*, 514 U.S. at 435.[96]

The PCRA court's adjudication of this claim is objectively unreasonable because it based its rejection of this claim, in part, on its adjudications of Claim #1 and Claim #2. The PCRA court's adjudications of Claim #1 and Claim #2, however, are objectively unreasonable and there aren't – and can't be – any fair-minded disagreements about the incorrectness of the PCRA court's adjudications. Consequently, because the PCRA court's adjudication of this claim is based on its objectively unreasonable adjudications of Claim #1 and Claim #2, the PCRA court's adjudication of this claim

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[96] Yes, *Kyles* is a *Brady* case, but *Brady* and *Strickland* use the same reasonable probability of a different outcome prejudice standard. As the Supreme Court explained in *Kyles*:

> One does not show a *Brady* violation by demonstrating that some of the inculpatory evidence should have been excluded, but by showing that the favorable evidence could reasonably be *taken to put the whole case in such a different light as to undermine confidence in the verdict.*

Kyles v. Whitley, 514 U.S. at 435 (emphasis added).

must also be objectively unreasonable and there isn't – and can't be – any fair-minded disagreement about its incorrectness.

Mr. Wang, consequently, respectfully requests that the Court to grant him a writ of habeas corpus because his first-degree murder conviction is unconstitutional under the Federal Constitution based on trial counsel's prejudicially ineffective representation.

CONCLUSION

WHEREFORE, Mr. Wang respectfully requests the following relief:

1. That the Court grant him a writ of habeas corpus by declaring his first-degree murder conviction unconstitutional due to trial counsel's prejudicial ineffectiveness.

2. That the Court schedule oral argument where undersigned counsel can visually explain to the Court why the scene characteristics and physical evidence raise reasonable – and substantial – doubts regarding the DAO's homicide narratives.[97]

3. Any other procedural or substantive relief the Court deems necessary to ensure Mr. Wang's federal habeas proceedings are fair and just.

Respectfully submitted this the 10th day of April, 2020.

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CERTIFICATE OF SERVICE

On April 10, 2020, e-filed this pleading with the District Court's ECF e-filing system and the Philadelphia County District Attorney's Office received a PDF copy of this pleading via email.

[97] Considering the COVID-19 pandemic, if the Court grants oral argument, the argument will obviously have to be sometime after the federal courts have opened back up once we've flattened the curve.