

**THE PENNSYLVANIA INNOCENCE PROJECT
BY:**

**Charlotte Haldeman Whitmore
Staff Attorney
Attorney No. 208724
Temple University Beasley School of Law
1719 N. Broad Street
Philadelphia, PA 19122**

RECEIVED

FEB 03 2012

APPEALS/POST TRIAL

**Frank DeSimone
Volunteer Attorney
Attorney No. 12359
Suite 600
1880 JKF Boulevard
Philadelphia, PA 19103**

COMMONWEALTH OF PENNSYLVANIA	:	PHILADELPHIA COURT OF
Respondent	:	COMMON PLEAS
	:	CRIMINAL TRIAL DIVISION
	:	
v.	:	CP-51-CR-0408371-1998
	:	
EUGENE GILYARD	:	
Petitioner	:	

**EXHIBITS TO FOURTH AMENDED PETITION FOR POST-CONVICTION
RELIEF PURSUANT TO 42 Pa. C.S. § 9543**

EXHIBIT A

INVESTIGATION INTERVIEW RECORD

PHILADELPHIA
POLICE DEPARTMENT
HOMICIDE DIVISION

CASE NUMBER
H 95-277

INTERVIEWER
Det. Paul McKelvie

NAME
Tonya Keal

AGE
23

RACE
B

DOB
102166

ADDRESS
3622 N. 17th St.

APARTMENT NUMBER
2nd Fl

TELEPHONE NUMBER

NAME OF EMPLOYMENT/SCHOOL
Lab. Corp of America

ADDRESS OF EMPLOYMENT/SCHOOL
Audobon N.J.

DEPARTMENT
Dist.

DATES OF PLANNED VACATIONS

DATES OF PLANNED BUSINESS TRIPS

NAME OF CLOSE RELATIVE
Geraldine Lawrence (Mother)

ADDRESS
2365 N. Cleveland St.

TELEPHONE NUMBER

PLACE OF INTERVIEW
PAB Rm 104

BROUGHT IN BY
SELF

DATE	TIME	AM/PM
090295	11:20A	AM
090295	11:15AM	PM

WE ARE QUESTIONING YOU CONCERNING
The shooting death of Thomas Keal on 8-31-95 at 3621 N. 17th St.

WARNINGS GIVEN BY

DATE	TIME	AM/PM
------	------	-------

ANSWERS

(1) (2) (3) (4) (5) (6) (7)

Q. Ms. Keal how far did you go inschool and do you read and write english?

a. 12yrs, Yes I do.

Q. Are you presently under the influence of any drugs or alcohol?

a. None.

Q. Do you go by any other name or nickname?

a. No.

Q. What is your relationship with the deceased Thomas Keal?

a. He was my father.

Q. Were you present when your father was killed?

a. Yes. I had looked out my window and saw what happened.

Tonya Keal

RECORD
 Yes No

CHECKED BY

REVIEWED BY

INVESTIGATION INTERVIEW RECORD
CONTINUATION SHEET

CITY OF PHILADELPHIA
POLICE DEPARTMENT

NAME

Tonya Keal 28B/F

PAGE

2

CASE NO.

H 95-277

Q. In your own words tell me what you saw the night of or early morning of 8-31-95?

a. That night I had got up to take my son to the bathroom. I looked out my bedroom window and I saw a B/M passing up and down 17th St across the street from my fathers store which I live over. The male had on dark clothing and he was pulling a bandana up and down on his face. I then heard the screen door and keys like some one was locking the door. I did not see my father at this point. As I was moving from the window on the right side of my room to the window on the left I heard some muffled voice, it sounded like my father and that he was scuffling. Then I heard two shots. I looked out the window and saw my father on the sidewalk on his stomach. The guy was standing over my father and point blank and fired two more times into my father. I then ran for the phone and called 911. I never saw which way the male ran.

Q. Can you describe the male that shot you father?

a. B/M, 5'6" to 5'8", light brown compl. thin build, baseball hat turned around backwards.

Q. Did your father have money on him that you knew of?

a. He always had a wad of money on him.

Q Did your father have a gun?

a. Yes he did and he always carried it with him.

Q. Do you know what kind of gun it was or the serial number?

a. It was a silver gun with a black handle, it was a revolver. I don't know the serial number but I try to find his papers.

Tonya Keal

INVESTIGATION INTERVIEW RECORD
CONTINUATION SHEET

CITY OF PHILADELPHIA
POLICE DEPARTMENT

NAME Tonya Keal 28B/F PAGE 3 CASE NO. H 95-277

Q. What was the lighting conditions out side of your window on the night your father was shot?

a. The street lights were on and it was pretty lit.

Q. I am now showing you a photo display marked H 95-277, spread #1 do you see the male that you saw shot your father in this spread?

a. No, I not sure.

Q. Did any thing happen prior to this incident in or around the store?

a. About a week before two males came into the store and spoke with my cousin Debra Mitchell who was working in the store. They were asking questions about does the store make a lot of money and if a lot of people come to the store on the 1st of the month and who carry's the money and about the security if there was an alarm.

Q. Do you know how to get in touch with Debra Mitchell?

a. Yes she lives around 5100 Viola St, her phone number is

Q. After your father was shot did you speak with Debra about what the male looked like?

a. Yes and she said it sounded like the same guys that came into the store and was asking the questions.

Q. When your father was shot did you see one or two males outside?.

a. I saw two, one was standing on the pavement in front of the gate and the other was standing over my father.

Completed

**INVESTIGATION INTERVIEW RECORD
CONTINUATION SHEET**

CITY OF PHILADELPHIA
POLICE DEPARTMENT

NAME

Tonya Keal 28B/F

PAGE

4

CASE NO.

H 95-277

Q. What was the guy by the gate doing?

a. He was standing there real figgity.

Q. Did this male have a gun that you saw?

a. Yes he had a sawoff shotgun.

Q. Describe this male for me if you can?

a. B/M, dark complx. that's all I can remember.

Q. Did you see either of the males in the neighborhood before?

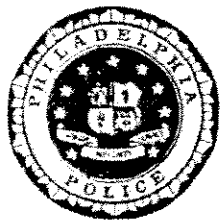
a. Not that can recall.

Q. Did you notice any car's in the area at this time?

a. There was a new model silver Lincoln parked at the corner of 17th and Pacific with the lights but I never heard any car's pull off. I don't know if this car was involved or not or if they saw anything.

Tonya Keal

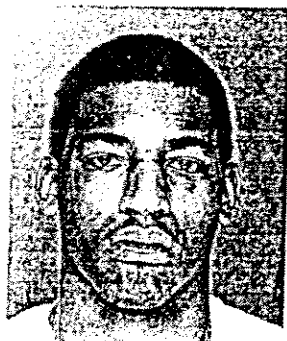
EXHIBIT B



Philadelphia Police Department



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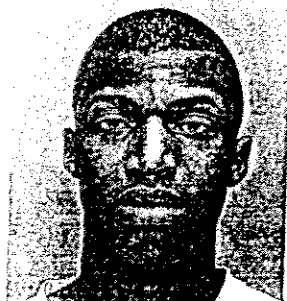
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1495-277, Photo array # 4



Philadelphia Police Department

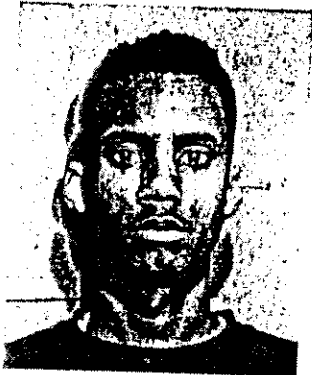


EXHIBIT C

COMMONWEALTH OF PENNSYLVANIA, PHILADELPHIA

CERTIFICATION OF RICKY WELBORN

I, Ricky Welborn, being of full legal age, and being duly sworn according to law do hereby state the following is true and correct to the best of my knowledge, information and belief:


In August of 1995 I robbed and shot a man on 17th street in between Erie^{R.W} and Venango. I was living in west Philly at the time. Around 2 or 3 p.m. the day of the shooting I shot a man named Anthony Stokes around 58th + Christian with the same gun I used to shoot the man on 17th St. After I shot Mr. Stokes I went to N. Philly with a friend. My friend knew a man named "Rob" who lived in N. Philly. ~~Rob is R.W's brother~~ Rob told us that a man who owned the bar on 17th and Venango (in between Erie and Venango) had \$50,000 in his house. We were hanging out with Rob and his friends at the Chinese store on 17th in between Venango and Tioga. Some time between midnight and 2 a.m. my friend and I approached the man as he left a bar and was crossing the street. I approached the man from the front (he was on the sidewalk)

I verify that the facts set forth in this statement are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of Section 4904 of the Pennsylvania Crimes Code (18 Pa. C.S. §4904) relating to unsworn falsification to authorities.

Ricky Welborn
Name

6/20/11
Date

Date of Birth: 9/22/78
Address: SCI - FRACKVILLE


Shama Sewers
PIP Investigator

6/20/11
Date

and my friend approached him from the back. I had a double-barrel sawed-off shotgun. My friend had a .22 revolver, silver with tape around the handle. My friend held the .22 to the back of the man's head. The man had a chrome revolver with a black grip - it was a Chrome .357. The man pulled out his gun and ~~said~~^{R.W} said "I ain't giving you shit." I shot the man in the leg and he fell. My friend stood over him and shot him in the head. I think my friend fired 3-4 shots. I checked the man's pockets, but then a woman started screaming from across the street. I took the man's gun - I had to pry it out of his hands. My car was parked up the street near Venango and 16th. It was a light blue Audi 5000. My friend threw the .22 in the wall of an abandoned house near 16th and Venango. Then we got in my car and drove to West Philly. I drove. I kept the shotgun and used it in a robbery in November of 1995 - I robbed some people on 46th and Walnut and was arrested for that. I gave the .357 revolver to a friend named "Chink" whose grandmother lived on 57th + Catherine. "Chink" is locked up now. "Chink" used the .357 for a robbery some time in 1995 (about a month after the murder) but "Chink" was never arrested for that robbery. I was arrested for that robbery but not charged.

After ~~the~~ my friend shot the man on 17th street I said "What the fuck did you do that for?" He said, "Man, you shoot everybody, I want to shoot somebody too." My friend got the .22 that he used to shoot the man from Rob and Rob was ~~supposed~~^{supposed R.W} to get some of the money from the robbery, but we didn't get any money.

COMMONWEALTH OF PENNSYLVANIA, PHILADELPHIA

CERTIFICATION OF RICKY WELBORN

I, Ricky Welborn, being of full legal age, and being duly sworn according to law do hereby state the following is true and correct to the best of my knowledge, information and belief:

(continued)

I go by the name "Roxex." I told my lawyer Daniel Greene in June of 2006 that I participated in a murder that 2 other people were convicted of. At that time I was on trial for another murder. I told Mr. Greene that if I got life for the other murder, that I wanted to confess to this murder. I told Mr. Greene that I had committed this murder on 2 different ~~occasions~~ ^{occasions}. R.u. I would waive my attorney-client privilege as to those conversations. No one has promised me or given me anything to get me to make this statement. No one has threatened me. Eugene Filyard had nothing to do with the murder of the man on 17th Street.

I verify that the facts set forth in this statement are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of Section 4904 of the Pennsylvania Crimes Code (18 Pa. C.S. §4904) relating to unsworn falsification to authorities.

Ricky Welborn
Name

6/20/11
Date

Date of Birth: 9/22/78
Address: 305 Frackville

[Signature]
Witness
Shaina Sewers,
PIP Investigator

6/20/11
Date

3 R w

IN THE PHILADELPHIA COURT OF COMMON PLEAS
CRIMINAL TRIAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :
Respondent :

v. :

CP-51-CR-0408371-1998

EUGENE GILYARD :
Petitioner :

**CERTIFICATION OF WITNESS IN SUPPORT OF PETITION FOR POST-
CONVICTION RELIEF UNDER 42 Pa. C.S. § 9543**

PRELIMINARY STATEMENT

Petitioner, Eugene Gilyard, through counsel, respectfully submits this *Certificate of Witness In Support of Petition for Post-Conviction Relief Under 42 Pa. C.S. § 9543*.

Petitioner adopts and incorporates herein as if fully stated the factual and legal averments contained in the *Petition* (filed on February 3, 2012).

Petitioner reserves the right to amend this *Certification* upon further investigation.

IN THE PHILADELPHIA COURT OF COMMON PLEAS
CRIMINAL TRIAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :
Respondent :
 :
 :
 :
 v. : CP-51-CR-0408371-1998
 :
 :
 EUGENE GILYARD :
Petitioner :

CERTIFICATION OF WITNESS PURSUANT TO 42 Pa. C.S. § 9545(d)(1)

Pursuant to 42 Pa. C.S. § 9545(d)(1), Petitioner herein submits the following certification of witness in support of his *Petition for Post-Conviction Relief*.

1. I am an investigator employed by the Pennsylvania Innocence Project.
2. On June 20, 2011, staff attorney Charlotte Whitmore and I interviewed Ricky Welborn at SCI Frackville located at 1111 Altamont Boulevard, Frackville, PA.
3. Welborn told us he was from the West Philadelphia area. His residence was 810 South Allison Street, Philadelphia, PA. His street nickname is "Rolex." Welborn committed numerous robberies in the past. He committed some of them with his friend who also participated in the murder of which Eugene Gilyard and Lance Felder were convicted ("the murder"). Welborn did not want to disclose the name of his friend.
4. A few days prior to the murder, Welborn was robbed by a man named Anthony Stokes, who was approximately 38 years old at the time. Stokes' street nickname was "Browneyes." Stokes stole Welborn's gun from him. Additionally, Stokes had hit Welborn's friend in the face with a gun and cut it open a few days earlier. Welborn told his friend that he would, "take care of it." Since Welborn did not have a gun anymore, he

borrowed a shotgun from his friend "Rob." Welborn described this as a double-barrel sawed-off shotgun with a serial number. The serial number was not scratched off.

5. Around 1400 or 1500 hours on the day of the murder, Welborn got into an altercation with Stokes on 58th Street and Christian Street. Welborn shot Stokes once in the face with the sawed-off shotgun. Stokes fired six shots at Welborn but Welborn was able to dodge the bullets. Welborn jumped into the back of Stokes' truck, and shot him once more with the shotgun. Stokes survived but went to the hospital. Welborn was arrested for possession of the gun at a later date. Stokes did not give up Welborn's name as his attacker.
6. After Welborn shot Stokes, he went to play a basketball game in the neighborhood. Word got back to Welborn's parents that he shot Stokes. Welborn's dad approached Welborn and asked him what he was going to do and if he was going to head down South. Welborn told him that everything was okay, and he was not going anywhere.
7. Later that same day, Welborn and his friend drove to North Philadelphia around 2400 or 0200 hours. He believed he wore a black sweat suit that night but cannot be sure. His friend has lighter colored skin and is currently not incarcerated. Welborn drove a 1991 or 1992 light blue Audi 5000 that had silver stripes. Welborn wanted to get out of the West Philadelphia area and was also looking for drugs to buy. They stopped at 17th Street and Jefferson Street to get marijuana, Xanax, and "syrup." Then, they parked the car approximately at 16th Street and Venango Street.
8. After parking the car, they went to hang out with a different "Rob" and his friends at the Chinese Store located on 17th Street between Venango Street and Tioga Street. This "Rob" was Lance Felder's brother. Welborn did not know "Rob" well, but his friend did.

His friend was in and out of jail, and that's how he knew the people in North Philadelphia. Welborn's friend was better friends with Rob than he was. His friend did not work for Rob. Additionally, Welborn did recall that Lance Felder was not with the group of people in front of the Chinese Store.

9. Rob told Welborn and his friend that if they need more money, they could rob the male who owned a bar up the street. Welborn believed the victim's first name was "Kneal;" he was unsure of his last name. Rob told them that the victim had \$50,000 in his house which was located across the street from his bar. The bar was located on 17th Street between Erie Street and Venango Street. The victim lived at 17th Street and Venango Street. Rob was supposed to get some of the money after the robbery.
10. Welborn and his friend waited for the victim to come out of the bar. They did not have to wait too long. When he walked out, Welborn approached the victim from the front (on the sidewalk), and his friend approached him from behind and held his gun to the back of his head. His friend had a .22 revolver which he got that night from someone in North Philadelphia. It was an "over and under" revolver which took seven bullets and had electrical tape on the handle. Welborn pointed the same (previously described) sawed-off shotgun at the victim. The victim pulled out his gun which was a .357 Smith and Wesson, chrome revolver with a black pistol grip. Welborn told the victim to put his gun down. The victim said, "I ain't giving you shit."
11. Welborn shot the victim in the leg with the shotgun because the victim had a gun. The victim fell down to the ground. His friend shot him in the head with the .22 revolver more than once. Welborn believed he fired three to four shots. Welborn asked his friend, "What the fuck did you do that for?" His friend said, "Man, you shoot everybody. I

want to shoot somebody too.” Welborn checked the victim’s pockets but heard a lady screaming from across the street. He did not take any money from the victim. He did not see the lady who was screaming. Welborn took the gun from the victim’s hand. The gun had a lock on it, and he had to pry it out of his hands.

12. Welborn and his friend ran up Venango Street towards Welborn’s car. His friend threw the .22 revolver in a hole in the side wall of an abandoned house on the corner of 16th Street and Venango Street. Welborn believes the house may still be there today. Welborn kept the shotgun because it was not traceable. Welborn and his friend got into his car and drove away. It was only the two of them in the car. A police car happened to follow them for a little while, and then they merged onto the expressway via Wissahickon Avenue. Welborn drove back to the West Philadelphia area.
13. About a month after the murder, Welborn gave the .357 (victim’s gun) to his friend “Chink” whose grandmother lived on 57th Street and Catherine Street. “Chink” used the .357 for a robbery but was never arrested for it. Welborn was arrested for that robbery but never charged. He was released the same night. “Chink’s” first name may be “Cleophus.” Welborn did not know his last name. Welborn believed “Chink” is currently incarcerated.
14. In November 1995, Welborn used the same shotgun in a robbery. He robbed a group of about 15 people who were gambling on 46th Street and Walnut Street. Welborn was arrested for this robbery with the same shotgun.
15. Approximately nine to ten months after the murder, Welborn shot Stokes again. He shot Stokes thirteen times with a 10mm gun, and he survived.
16. Since the murder, Welborn has not heard from Rob at all. He did see Lance Felder once

in a holding cell. Lance told Welborn that he was going to court for what had happened. Welborn told Lance to "do what you need to do." Gilyard has never contacted Welborn. Lance has sent Welborn letters.

17. The only people Welborn has discussed the murder with were his friend who was present for the murder, his brother who is deceased, and his public defender for another unrelated murder, Daniel Green. He told Green in June 2006 that he participated in a murder that two other people were convicted of. Welborn told Green that if he got a life sentence, he wanted Green to tell the DA. He told Green this on two separate occasions. The first time was when he was first visited by Green in jail, and the second time was during his murder trial. When he told Green the second time, Green patted him on the knee and said, "Don't worry about that right now."

Respectfully submitted,



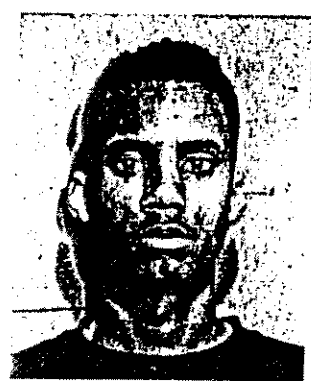
Shaina A. Tyler, Staff Investigator
The Pennsylvania Innocence Project
at Temple University Beasley School of Law
1719 N. Broad Street
Philadelphia, PA 19122
215-204-4255

EXHIBIT D

1495-277, Photo array # 4



Philadelphia Police Department

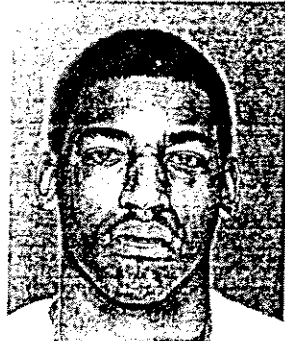




Philadelphia Police Department



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121568606
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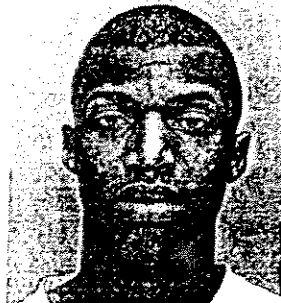
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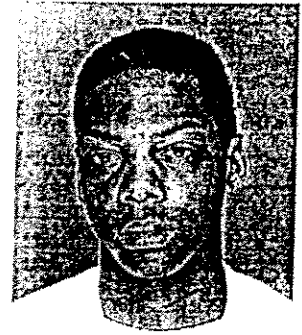
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121568601
110136359
852667



121568603
130059941
782271



121568606
160271337
833816



Name: Kelly Weiborne
DOB: 9/22/1978
Arrest Date: 10/20/1995

EXHIBIT E

COMMONWEALTH OF PENNSYLVANIA, PHILADELPHIA

CERTIFICATION OF MICHAEL GRIDDLE

I, Michael Griddle, being of full legal age, and being duly sworn according to law do hereby state the following is true and correct to the best of my knowledge, information and belief:

On the night Mr. Thomas Keal was shot I was with Eugene Gilyard on the corner of 17th and Atlantic in front of the Chinese store. We were also with Phil Pratt and Lance Felder. We heard the shots and went over and saw Mr. Keal lying on the ground. I know that Eugene Gilyard did not participate in the shooting of Mr. Keal because I was with him. I told the police all of this at the time. I did not tell the police the following information. I hung out with two males known as "Rolex" and "Tizz" previously. I knew them through Lance Felder's older brother, Rob Felder. I had seen Rolex and Tizz with guns previously: a double barrel shotgun and a .22. Rolex and Tizz talked people often. On the night of Mr. Keal's murder, Rolex and Tizz said that they were going to rob ^{a bar} collect the Beehive Bar on 17th and Atlantic. I told them not to rob that bar because that is where we hung out. They (Rolex and Tizz) went

I verify that the facts set forth in this statement are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of Section 4904 of the Pennsylvania Crimes Code (18 Pa. C.S. §4904) relating to unsworn falsification to authorities.

Michael Griddle
Name

6-14-11
Date

Date of Birth: 7-6-78
Address: 2524 N. Myrtlewood St. 19132

[Signature]
Witness

5/14/11
Date

Sharon Jones
INVESTIGATOR

down the street and robed and shot Mr. Keal. The shooting was about ten minutes after Rolex and Tizz and us that they would go on the Bette Lee. Rolex and Tizz were also with a third person who was driving the car they are the scene in. I know who this third person is, but I do not want to say unless that is the only way to get Eugene out of jail, because Eugene is innocent, I do not know Rolex and Tizz's real names. They lived in Southwest Philadelphia near 36th and Catherine or Christian. I did not tell ~~the police~~ ^{M.G.} the police that I know who shot Mr. Keal. I told ^{Mr. Lance Felder's} ~~Eugene's~~ lawyer everything I know at the time of ~~the trial~~ ^{Lance's} ~~trial~~ ^{M.G.} trial, including that I know that Rolex and Tizz shot Mr. Keal. About a month ago, Kenjatta Felder (Lance's brother) showed me an affidavit from Ricky Welborn, who goes by "Rolex" in which Mr. Welborn admitted to committing this crime. On June 14, 2011, I met with staff from the Pennsylvania Innocence Project to tell them what I know about Mr. Keal's shooting. No one threatened me or promised me anything to get me to make this statement.

EXHIBIT F

INVESTIGATION INTERVIEW RECORD

PHILADELPHIA
POLICE DEPARTMENT
HOMICIDE DIVISION

CASE NUMBER
835-033

INTERVIEWER
DET. DOMINIC #610

DOB
7-23-71

TELEPHONE NUMBER

SOCIAL SECURITY NUMBER
193-34-5076

TELEPHONE NUMBER

NAME
Donita S. MICKEALS

AGE
21

RACE
B

ADDRESS
1533 W. Venango St.

APARTMENT NUMBER

NAME OF EMPLOYMENT/SCHOOL
Unemployed

ADDRESS OF EMPLOYMENT/SCHOOL

DEPARTMENT

DATES OF PLANNED VACATIONS

DATES OF PLANNED BUSINESS TRIPS

NAME OF CLOSE RELATIVE
Edna MICKEALS - Mother

ADDRESS
Same as above

TELEPHONE NUMBER
Same

PLACE OF INTERVIEW
Homicide Div. Room 104 P.A.B. Interview Room "B"

DATE
9-2-95

TIME
8:25

AM
PM

BROUGHT IN BY
Self

DATE
9-2-95

TIME
8:25

AM
PM

WE ARE QUESTIONING YOU CONCERNING
The shooting death of Thomas KEAL 54/B/M, on 8/31/95 outside 3621 N. 17th St.

REASONS GIVEN BY

ANSWERS

(1)	(2)	(3)	(4)	(5)	(6)	(7)
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Q. Donita are you known by any other names?

A. No.

Q. How far did you go in school?

A. To the ninth grade.

Q. Can you read, write, and understand the English language?

A. Yes.

Q. Are you currently under the influence of drugs or alcohol?

A. No.

Q. Did you know Thomas KEAL the man who was shot and killed on 8/31/95?

A. No.

Q. Would you go on in your own words and tell me what you know about the shooting outside 3621 N. 17th St.

RECORDED
 Yes No

REVIEWED BY

CHECKED BY
[Signature]

INVESTIGATION INTERVIEW RECORD
CONTINUATION SHEET

CITY OF PHILADELPHIA
POLICE DEPARTMENT

NAME

Donita S. MICKEALS

PAGE

#2

CASE NO.

H95-277

A. Well actually it started on Wednesday afternoon around 2:00PM. I drove to the Chinese Resteraunt at 17th & Venango Sts., and as I was going in there were three guys standing outside. One of the guys approached me, and he started talking to me. He told me that his name was "TIS~~2~~", and he asked me for my phone number, and I gave it to him, and he told me that because I drive, I could come by where he hangs out at, in front of the Chinese Resteraunt at 54th & Baltimore Ave. Then I started to go inside in the store, and I heard this guy "TIS~~2~~" call out to one of his friends, he called him "Rolex", and they were talking about who was going to go in the Chinese Resteraunt. When I came out of the Chinese Resteraunt they were still outside, but they started walking away in the opposite direction from me.

Then it was about 2:30AM, that would be Thursday morning. I was sitting on my front steps when I heard a loud blast come from 17th St. followed by two or three smaller pops. Then I saw three guys running east on Venango St. in the 1600 block. As these males got closer to 16th St. I could see that they were the same three guys I had talked to earlier outside the Chinese Resteraunt. And I could see that one of them, the one that told me his name was "TIS~~2~~" had either a rifle or shotgun in his hands, and I heard one of them yell, "Hurry the fuck up". Then all three of the males turned north on 16th St. from Venango St.

Q. Do you think that you would recognize these males again if you saw them in a photo display?

A. Yes.

Donita Mickels

INVESTIGATION INTERVIEW RECORD
CONTINUATION SHEET

CITY OF PHILADELPHIA
POLICE DEPARTMENT

NAME

Donita S. MICKEALS

PAGE

43

CASE NO.

H95-277

Q. Could you tell which of the three males yelled out to the others?

A. No, it was just one of them.

Q. Could you tell if there was anything around the rifle or shotgun?

A. No, actually I could only see the barrel part that was sticking down from "TIZZ"'s right side, and you could see the barrel went down like below his knee or right to his knee, and you could tell that it wasn't a handgun.

Q. About how old are these guys?

A. From my point of view, none of them looked older than 18.

Q. Did you ever see any of the three before you met them outside the Chinese Resteraunt?

A. No.

Q. Would you be available at a latter time for Det. CENTENO to show you a photo display?


A. Yes. *Donita Mickeals*

EXHIBIT G

To whom it may concern, I
Donita Micheals am writting a
letter in regard of a statement
that I did on Sept 2, 1995 at 8:45am.
I also wanted to say that I never
recieved a suppesna, but I am willing
to testify.

Thank you,

Donita Micheals


COMMONWEALTH OF PENNSYLVANIA
NOTARY PUBLIC
MEENA BANIBANI, Notary Public
City of Philadelphia, Philadelphia County
My Commission Expires June 22, 2003

8/17/06

EXHIBIT H

COMMONWEALTH OF PENNSYLVANIA, PHILADELPHIA

CERTIFICATION OF DONITA MICKEALS

I, Donita Mckeals, being of full legal age, and being duly sworn according to law do hereby state the following is true and correct to the best of my knowledge, information and belief:

The night Thomas Keal was shot I saw two men I know as "Rolex" and "Tizz" hanging out at the Chinese store at 17th and Erie. When I heard the gunshots I was sitting on my steps at 16th and Venango. ^{A few seconds after the shots DB} I saw "Tizz," "Rolex" and one or two other males whom I knew running from where Mr. Keal was shot. They ran down 17th to Venango and made a right on Venango. Neither Eugene Gilyard nor Lance Felder were with "Tizz" and "Rolex." I know that Eugene and Lance were not involved with shooting Mr. Keal. "Tizz" and "Rolex" were not from our neighborhood but I had seen them around from time to time. I gave a statement to the police at the time of the murder. No one promised me anything or threatened me to get me to make this statement.

I verify that the facts set forth in this statement are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of Section 4904 of the Pennsylvania Crimes Code (18 Pa. C.S. §4904) relating to unsworn falsification to authorities.

Donita Mckeals 6-21-11
Name Date

Date of Birth: 7-28-74
Address: 6138 Gillespie St
Phila. Pa

[Signature] 6/21/11
Witness Date

Shanna Sewers
PIP Investigator

EXHIBIT I

COMMONWEALTH OF PENNSYLVANIA, PHILADELPHIA

CERTIFICATION OF KENYATTA FELDER

I, Kenyatta Felder, being of full legal age, and being duly sworn according to law do hereby state the following is true and correct to the best of my knowledge, information and belief:

In the day of Thomas Kail's murder - I was staying in
out at the Chrome Store at 7th Street and Atlantic
I was with Lamee Felder, Eugene Gilyard, Phillip Potts and
Michael Gaudin, "Rox" and "Tee" came by and told us
that they were planning on robbing the bar across the street.
I knew "Rox" and "Tee" through my brother (Rox), but
I was not friends with them. We told "Rox" and "Tee"
not to do that bar because that is where we hang out.
"Rox" and "Tee" walked towards Mr. Kail's bar and I
heard gunshots, but I did not actually see the
murder. I saw "Rox" and "Tee" run away from the

I verify that the facts set forth in this statement are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of Section 4904 of the Pennsylvania Crimes Code (18 Pa. C.S. §4904) relating to unsworn falsification to authorities.

Kenyatta Felder
Name

7/7/11
Date

Date of Birth: 11/11/80
Address: 2141 Locust St
Philly PA 19103

[Signature]
Witness
Sharon Stevens
KIP Investigator

7/7/11
Date

murder scene. My brother Ross told me that "Relex"
threw a gun into the nearest window or door located
near on Chicago Street near Futz Street. I never
spoke to the police about Mr. Keill's murder. No one
promised me anything or threatened me to get me to
make this statement. "Relex" real name is Rocky Walker. I
do not know "Tizz" real name.

EXHIBIT J

COMMONWEALTH OF PENNSYLVANIA, PHILADELPHIA

CERTIFICATION OF Christine Gilyard

I, Christine Gilyard, being of full legal age, and being duly sworn according to law do hereby state the following is true and correct to the best of my knowledge, information and belief:

On the night Mr. Keal was killed, I was at home with my sister. I heard gunshots and grabbed my bike. I rode toward the Chinese store on 17th Street because that is where my son Eugene hung out. I saw Eugene and Kenyatta ("Yatta") Felder walking up 17th street towards Victoria Street. Eugene and Yatta were walking toward Mr. Keal's body, where a crowd had gathered. Eugene and Yatta may have been with other people, but I can't remember. Eugene and I stayed around the scene for about 45 minutes being nosy before going home together. Eugene was questioned by the police a few weeks later.

I verify that the facts set forth in this statement are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of Section 4904 of the Pennsylvania Crimes Code (18 Pa. C.S. §4904) relating to unsworn falsification to authorities.

Christine Gilyard
Name

July 25, 2011
Date

Date of Birth: May 30, 1962
Address: 7347 LIMEKIN PIKE
PHILA. PA. 19138

APT A-1

[Signature]
Witness

7/25/11
Date

Shaina Seivers,
PIP Investigator

EXHIBIT K

COMMONWEALTH OF PENNSYLVANIA, PHILADELPHIA

CERTIFICATION OF Donnell Wiggins

I, Donnell Wiggins, being of full legal age, and being duly sworn according to law do hereby state the following is true and correct to the best of my knowledge, information and belief:

I knew "Tizz" and "Roxel" because they sometimes hung out in our neighborhood around 1996. I didn't know them well because they didn't live in our neighborhood - they lived in South West Philly. I met "Tizz" about a month before Mr. Karl was killed because ~~he~~^{on "Tizz"} was going with Gene to buy Xanax and Syrup. I met "Roxel" a few days later because he came down to our neighborhood with "Tizz". I was not present when Mr. Karl was killed, but I heard about it a few days or a week later. I got locked up shortly after Mr. Karl was killed. In 1998 or 1999 I was in Graterford and I was talking with "Tizz" about old times. I said it was messed up that Lance and Gene were locked up for his work. He said "it is what it is man, that's what happens when you play the game." I asked how the whole situation happened. ~~He~~^{on "Tizz"} said that the "old head" came out of the bar

I verify that the facts set forth in this statement are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of Section 4904 of the Pennsylvania Crimes Code (18 Pa. C.S. §4904) relating to unsworn falsification to authorities.

Donnell Wiggins
Name

10-5-11
Date

Date of Birth: 8-19-78
Address: 3750 D. street
Phila, PA 19127

Shaina A. Tefler
Witness

10/5/11
Date

Shaina A. Tefler,
Investigator

COMMONWEALTH OF PENNSYLVANIA, PHILADELPHIA

CERTIFICATION OF Dannell Wiggins

I, Dannell Wiggins, being of full legal age, and being duly sworn according to law do hereby state the following is true and correct to the best of my knowledge, information and belief:

and was crossing the street when he and "Rdex" went to rob him. The "old head" pulled out a gun and Rdex shot him with a shot gun." Then "Tizz" ^{said that he} shot the old head. "Tizz" said that ^{DW} ~~he~~ took the revolver from the old head. I think "Tizz" said that they shot the old head in the leg and also maybe in the head. The first time I know the details of what happened to Mr. Keal was from "Tizz." I don't know "Tizz" and "Rdex's" real names. I told "Tizz" it was messed up that Louie and Gene are doing life ^{for} ~~his~~ his work. DW

I verify that the facts set forth in this statement are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of Section 4904 of the Pennsylvania Crimes Code (18 Pa. C.S. §4904) relating to unsworn falsification to authorities.

Dannell Wiggins
Name

10-5-11
Date

Date of Birth: 8-14-78
Address: 3950 D Street
Phila 27 19124

Sherryl Taylor
Witness

10/5/11
Date

Shanna A. Taylor,
Investigator

IN THE PHILADELPHIA COURT OF COMMON PLEAS
CRIMINAL TRIAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	
Respondent	:	
	:	
	:	
	:	
v.	:	CP-51-CR-0408371-1998
	:	
	:	
EUGENE GILYARD	:	
Petitioner	:	

**CERTIFICATION OF WITNESS IN SUPPORT OF PETITION FOR POST-
CONVICTION RELIEF UNDER 42 Pa. C.S. § 9543**

PRELIMINARY STATEMENT

Petitioner, Eugene Gilyard, through counsel, respectfully submits this *Certificate of Witness In Support of Petition for Post-Conviction Relief Under 42 Pa. C.S. § 9543*.

Petitioner adopts and incorporates herein as if fully stated the factual and legal averments contained in the *Petition* (filed on February 3, 2012).

Petitioner reserves the right to amend this *Certification* upon further investigation.

IN THE PHILADELPHIA COURT OF COMMON PLEAS
CRIMINAL TRIAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :
Respondent :

v. :

CP-51-CR-0408371-1998

EUGENE GILYARD :
Petitioner :

CERTIFICATION OF WITNESS PURSUANT TO 42 Pa. C.S. § 9545(d)(1)

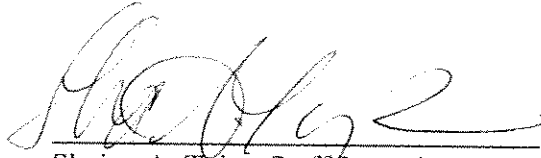
Pursuant to 42 Pa. C.S. § 9545(d)(1), Petitioner herein submits the following certification of witness in support of his *Petition for Post-Conviction Relief*.

1. I am an investigator employed by the Pennsylvania Innocence Project.
2. On October 5, 2011, staff attorney, Charlotte Whitmore, and I interviewed Donnell Wiggins at Coleman Hall, a Department of Corrections halfway house located at 3950 D Street, Philadelphia, PA.
3. Wiggins told us that he knew Eugene Gilyard and Lance Felder from the neighborhood. He was not close friends with Gilyard but they grew up together. Gilyard used to live on Gratz Street. Wiggins estimated that he has known Gilyard for about 15 to 20 years. Wiggins also knows the Felder family. He used to occasionally hang out with Rob Felder.
4. Wiggins first met "Tizz" through Gilyard. Gilyard and "Tizz" were on 17th Street looking for Xanax and Syrup. Gilyard introduced "Tizz" to Wiggins in 1996 sometime about a month before Mr. Keal was murdered. Wiggins told them they needed to go to 17th Street and Jefferson Street. Two days later, "Tizz" was in the neighborhood with

“Rolex.” “Rolex” and “Tizz” were not from the neighborhood. They were from Southwest Philadelphia. Wiggins believed they lived on Allison Street.

5. Wiggins was not present when Keal was killed. He believed he heard about it a few days or a week after it happened. He heard that “Rolex” and “Tizz” were the ones to kill him. About a month later, Wiggins was incarcerated.
6. Sometime in 1998 or 1999, Wiggins was incarcerated at SCI Graterford with “Tizz.” They were talking and “reminiscing” about the past. Wiggins told “Tizz” that it was messed up that Gilyard and Lance Felder were locked up and doing life for his work. “Tizz” said, “it is what it is man. That’s what happens when you play the game.”
7. Wiggins asked “Tizz” how the whole thing happened. “Tizz” said that he and “Rolex” were in the neighborhood and saw “the old head” come out of his bar and cross the street. They tried to rob him. “Tizz” said “the old head” pulled out a gun and “Rolex” shot him with a shot gun. “Tizz” then took the gun that Keal had and shot him with it. Wiggins thought “Tizz” said they shot Keal in the leg and head.
8. Wiggins did not know Gilyard and Felder were charged with the murder of Keal until he saw Felder in PICC. He saw Felder on his way to court one day and Felder told him that he was locked up for Keal’s murder. Wiggins is unsure of when this conversation happened.
9. Wiggins saw “Tizz” while incarcerated at Graterford in 2007 or 2008. They were on Block “E” together. They did not discuss Keal’s murder again. The last Wiggins knew of “Tizz” he was at Kintock about six months ago.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Shaina A. Tyler', written over a horizontal line.

Shaina A. Tyler, Staff Investigator
The Pennsylvania Innocence Project
at Temple University Beasley School of Law
1719 N. Broad Street
Philadelphia, PA 19122
215-204-4255

EXHIBIT L

COMMONWEALTH OF PENNSYLVANIA, PHILADELPHIA

CERTIFICATION OF Anthony Stokes

I, Anthony Stokes, being of full legal age, and being duly sworn according to law do hereby state the following is true and correct to the best of my knowledge, information and belief:

I know Ricky "Rolix" Welborn from the Southwest Philadelphia area. He grew up "under" me because of the age difference. When we first knew each other, we were friendly with each other and I let him borrow my two cars (1994 Cutlass Sierra and 1994 Ford Ranger). In July 1994, he got into a car accident while driving my Ford. I told him and his friends to fix my car but they refused to. I thought it was "BS" that he wouldn't pay me so I took a pistol off him. It was a .38 Smith & Wesson black pistol with a brown wood grain handle. The next day, "Rolix" wanted to talk to me about the Ford and I

I verify that the facts set forth in this statement are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of Section 4904 of the Pennsylvania Crimes Code (18 Pa. C.S. §4904) relating to unsworn falsification to authorities. No one has promised, given me anything, or threatened me to make this statement. AS

Anthony Stokes
Name

10/11/11
Date

Date of Birth: 4/26/58

Address: SCI Camp

Maria A. Tyler
Witness

10/11/11
Date

Maria A. Tyler

COMMONWEALTH OF PENNSYLVANIA, PHILADELPHIA

CERTIFICATION OF Anthony Stokes

I, Anthony Stokes, being of full legal age, and being duly sworn according to law do hereby state the following is true and correct to the best of my knowledge, information and belief:

agreed to meet with him. He asked me to park on the corner of 58th & Catherine but I didn't want to so I went around the block AS I was in the middle of the block in my car, I saw him run across the street. He was holding a sawed-off shot gun. He ran up to the passenger side (ab. 50 feet from me) and shot me through the window. He fired one time. He ran away with his ~~friends~~ friends. One of them was Tim "Tizz" Goodman. I shot back but missed him. I got out of the truck and went to the hospital. About a year after that, I ran into him again on the same corner

I verify that the facts set forth in this statement are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of Section 4904 of the Pennsylvania Crimes Code (18 Pa. C.S. §4904) relating to unsworn falsification to authorities. No one has promised, given me anything, or threatened me to make this statement. ADS

Anthony Stokes
Name

10/11/11
Date

Date of Birth: 4/26/68

Address: SCF Camp

Michael J. Taylor
Witness

10/11/11
Date

Michael J. Taylor

COMMONWEALTH OF PENNSYLVANIA, PHILADELPHIA

CERTIFICATION OF Anthony Stokes

I, Anthony Stokes, being of full legal age, and being duly sworn according to law do hereby state the following is true and correct to the best of my knowledge, information and belief:

again and he ambushed me again. He shot me through the shoulder. It was a "clean shot" times as he ran around my car shooting at me.

In between the two shooting incidents, I stabbed him 4-5 times.

"Rolex" was a robber and drug dealer. He robbed anything and anyone

I don't know Gene Gilyard or Lance Felder. I don't know anything about the 1985 shooting of Mr. Keal.

I verify that the facts set forth in this statement are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of Section 4904 of the Pennsylvania Crimes Code (18 Pa. C.S. §4904) relating to unsworn falsification to authorities. No one has promised, given me anything, or threatened me to make this statement. AAS

Anthony Stokes
Name

10/11/11
Date

Date of Birth: 4/26/50

Address: SCI Camp

Michael A. Taylor
Witness
Michael A. Taylor

10/11/11
Date

IN THE PHILADELPHIA COURT OF COMMON PLEAS
CRIMINAL TRIAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	
Respondent	:	
	:	
	:	
	:	
	:	
v.	:	CP-51-CR-0408371-1998
	:	
	:	
EUGENE GILYARD	:	
Petitioner	:	

**CERTIFICATION OF WITNESS IN SUPPORT OF PETITION FOR POST-
CONVICTION RELIEF UNDER 42 Pa. C.S. § 9543**

PRELIMINARY STATEMENT

Petitioner, Eugene Gilyard, through counsel, respectfully submits this *Certificate of Witness In Support of Petition for Post-Conviction Relief Under 42 Pa. C.S. § 9543*.

Petitioner adopts and incorporates herein as if fully stated the factual and legal averments contained in the *Petition* (filed on February 3, 2012).

Petitioner reserves the right to amend this *Certification* upon further investigation.

IN THE PHILADELPHIA COURT OF COMMON PLEAS
CRIMINAL TRIAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :
Respondent :

v. :

CP-51-CR-0408371-1998

EUGENE GILYARD :
Petitioner :

CERTIFICATION OF WITNESS PURSUANT TO 42 Pa. C.S. § 9545(d)(1)

Pursuant to 42 Pa. C.S. § 9545(d)(1), Petitioner herein submits the following certification of witness in support of his *Petition for Post-Conviction Relief*.

1. I am an investigator employed by the Pennsylvania Innocence Project.
2. On October 11, 2011, I interviewed Anthony Stokes at SCI Camp Hill located at 2500 Lisburn Street, Camp Hill, PA.
3. Stokes told me he me knew Ricky "Rolex" Welborn from his neighborhood. They did not grow up together since they have a big age difference but they were from the Southwest Philadelphia neighborhood. Initially they were friends and occasionally hung out together. Stokes would let Welborn borrow his cars. Stokes had a 1994 Cutlass Sierra and a 1994 Ford Ranger truck.
4. In July 1994, Welborn borrowed Stokes' Ford truck and got into a small accident. The bumper was messed up. Stokes told Welborn that he had to pay to get the bumper fixed but Welborn refused to. Stokes thought it was "BS" that Welborn would not pay to get the truck fixed.
5. About a month later, Stokes took a pistol from Welborn since Welborn had not fixed the

truck yet. Stokes described the pistol as a black .38 Smith and Wesson with a brown wood grain handle.

6. The following day, on August 30, 1994, Welborn asked Stokes to meet with him to discuss the truck. Stokes drove his truck to the intersection of 58th Street and Catherine Street. Welborn told him to pull over but Stokes did not want to because he had a feeling that Welborn would try to do something to him. Stokes drove around the block. When he got back on 58th Street, he saw Welborn run across the street holding a sawed-off shotgun.
7. Welborn ran up to the passenger side of the truck and fired one shot at Stokes. Stokes estimated that Welborn was about 50 feet away. The shot hit Stokes and many of the pellets got lodged in his chest, arms, face, and neck. Stokes shot back at Welborn but missed him. He did not hit anything with the shots he fired. Welborn ran away with his friends after he fired the shot. One of his friends included Tim "Tizz" Goodman.
8. After the shots were fired, Stokes got out of his truck and walked over to someone's stoop. He waited for an ambulance to take him to the Hospital of the University of Pennsylvania. Stokes was in the hospital for 13 days. His right eye was injured, and he has difficulty seeing. Stokes did not file charges against Welborn because of the "code of the street."
9. Almost a year later, Stokes was stopped at the same intersection (58th Street and Catherine Street), and Welborn ambushed Stokes again. Welborn ran around his car firing his 10mm gun at him. Several of the shots went through the car but only one shot hit Stokes. It was a "clean shot" through his right shoulder. He did not get stitches for this wound. One of the bullets even went through the brim of the cap he was wearing.

This was the last “run-in” Stokes had with Welborn.

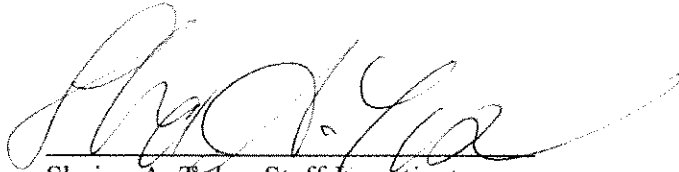
10. In between the two shooting incidents, Stokes stabbed Welborn four or five times.

Stokes did not want to give me additional information about the stabbing incident.

11. Stokes also said that Welborn was a “bad guy.” He was a robber and a drug dealer.

Welborn started doing robberies as a kid. He would rob people and places. It did not matter what he robbed, he just wanted to make money quickly. Lastly, Welborn was heavily into ‘smoking crack.’”

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Shaina A. Tyler". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Shaina A. Tyler, Staff Investigator
The Pennsylvania Innocence Project
at Temple University Beasley School of Law
1719 N. Broad Street
Philadelphia, PA 19122
215-204-4255



Hospital of the
University of Pennsylvania

STOKES, ANTHONY
128-16-57-5

DISCHARGE SUMMARY

ADMITTED: 08/30/95

DISCHARGED: 09/12/95

BIRTH DATE: 4/26/58

ATTENDING: William Hoff, M.D.

PRINCIPAL DIAGNOSIS: Multiple gunshot wounds.

SECONDARY DIAGNOSIS: Right shoulder, right deltoid, left humerus gunshot wound with a right scapular fracture, right iris injury and kwashiorkor malnutrition, left pneumothorax with chest tube placement.

OPERATIONS: Repair of a right ruptured orbit and intermaxillary fixation, tracheostomy and a G-tube placed on 9/1/95.

BRIEF HISTORY: This is a 37-year-old black male with multiple gunshot injuries.

ALLERGIES: No known allergies to medications.

PAST MEDICAL HISTORY: None.

PAST SURGICAL H PAST SURGICAL HISTORY: None.

PHYSICAL EXAM: When he came in airway was patent; he was talking. Spontaneous breath sounds equal and bilateral. Circulation was 2+ radial, femoral and carotids, capillary refill was brisk. He had a Glasgow coma scale of 15. He was fully exposed. He was 100% saturation. He had IV access placed. Labs were sent and NG and Foley's were placed. He was hemodynamically stable with a blood pressure of 150/90 and a heart rate of 88.

On secondary survey, his HEENT had 2 mm brisk reactive pupils but of note was a right corneal abrasion. Maxillofacial - Lower left teeth first three with alveolar ridge and mandibular fracture which was free floating. Neck without trauma. Chest - Bilateral equal breath sounds. Cardiovascular - regular rate and rhythm. Pelvis was stable. Abdomen was soft, nontender and nondistended. Back - T and L spines without injury. Rectal hem negative; no masses; normal prostate. Extremities - There was a bullet wound in the right deltoid, the right humerus and the left humerus. Neurologic - He was alert and oriented. Motor intact. Grossly intact cranial nerves and sensory intact.

On x-rays, spine showed no fractures or deformities. On chest, there was a right foreign body times two. Superior chest and proximal humerus was no fractures. Extremities - Left humerus, no fractures. Bullet overlying the bone.

HOSPITAL COURSE: The patient was brought in and admitted to the SICU. He was intubated and OMFS was consulted. During his stay in the hospital, it was found that the patient had trouble with right



Hospital of the
University of Pennsylvania

DISCHARGE SUMMARY

PAGE 2

STOKES, ANTHONY

128-16-57-5

eye vision, so ophthalmology was consulted and a prolapsed iris and ruptured right orbit was noted which was repaired. Also, the mandibular maxillary fracture was repaired with an intermaxillary fixation. Tracheostomy was performed and G-tube placed for nutrition to keep good stable nutritional status intact.

The patient did well throughout his hospital course. The left humerus was noted to have a palpable bullet which was removed in the hospital without any complications on the floor. A week prior to this discharge, the patient was found to be able to take PO liquids, Sustacal, ensure without any difficulties. It was felt the patient was stable to be discharged to home with follow up with Ophthalmology OMFS and Trauma Clinic and also ENT with Visiting Nurse to come and take care of all wounds. The patient was instructed to call if any increased drainage, discharge, bleeding or pain was from any of the wounds or if fever of greater than 101 occurred. Otherwise, he was instructed to follow up with all consults.

Prior to discharge, patient was seen by Ophthalmology in Ophthalmology Clinic. The patient left in stable condition, able to communicate, able to ambulate without difficulty and Visiting Nurses were to take care of his G-tube and Trach care and to assess Nutritional Status as the healing process continued.



Nevin Gokalp, M.D.

DD:09/12/95

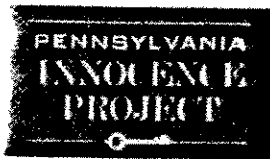
DT:09/12/95

TL277/0426

cc: William Hoff, M.D.

EXHIBIT M

.....



at Temple University
Beasley School of Law
1719 North Broad Street
Philadelphia, PA 19122
215-204-4255
www.innocenceprojectpa.org
[@innocenceprojectpa](https://twitter.com/innocenceprojectpa) [/innocenceprojectpa](https://www.facebook.com/innocenceprojectpa) [/innocenceprojectpa](https://www.instagram.com/innocenceprojectpa)

Richard C. Glazer
Executive Director

Marissa Boyers Bluestine
Legal Director

August 19, 2011

Mr. Ed McCann
Chief Assistant District Attorney, Homicide Unit at Philadelphia District Attorney's
Office
Three South Penn Square
Corner of Juniper and South Penn Square
Philadelphia, PA 19107-3499

RE: Commonwealth v. Eugene Gilyard
CP-51-CR-0408371-1998

Dear Mr. McCann:

We are writing to ask you to investigate a case of potential wrongful conviction. On August 31, 1995, Mr. Thomas Keal was shot and killed in North Philadelphia. Over two years later, Mr. Eugene Gilyard was convicted of this murder based solely on the eye-witness identification of the victim's daughter, Tonya Keal. Recently, a convicted felon named Ricky Welborn confessed to robbing and murdering Mr. Keal along with an accomplice who was not Mr. Gilyard. The Pennsylvania Innocence Project and the victim's daughter, Ms. Tonya Keal, respectfully request that the Philadelphia District Attorney's Office and the Philadelphia Police Department re-open the investigation of Mr. Keal's murder.

As you know, the Pennsylvania Innocence Project is an independent non-profit organization which investigates cases of possible wrongful convictions in Pennsylvania. The Pennsylvania Innocence Project confines itself to cases in which there is convincing evidence of the inmate's actual innocence or reason to believe that such evidence may exist. Conversely, we do not accept cases from inmates who seek to undo convictions based on trial error or a constitutional infraction, however meritorious the claim; our only interest as an organization is in identifying and freeing from custody persons who did not commit the crimes for which they are imprisoned. Thus our involvement in a case ceases if we develop or uncover evidence that incriminates the inmate.

Tonya Keal witnessed her father's murder. From her second-story window across

the street, she saw two men shoot her father and then turn and run away. She saw the men for a few seconds. Mr. Gilyard was implicated in the murder 2 years later, when Ms. Keal selected his picture from a photo array presented by police. There was no other evidence to connect Mr. Gilyard to the murder; his conviction was based exclusively on Ms. Keal's eye-witness identification. Mr. Gilyard has always maintained his complete innocence of Mr. Keal's murder.

On March 18, 2011, Ricky Welborn, a.k.a. "Rolex," confessed to participating in Mr. Keal's murder and stated that Mr. Gilyard was not involved. Mr. Welborn, who is currently incarcerated at SCI Frackville, gave a sworn statement to an investigator hired by Mr. Gilyard. See Mr. Welborn's March 18, 2011 affidavit, attached to this letter as Exhibit A. On June 20, 2011, Ricky Welborn provided a signed certification to Pennsylvania Innocence Project staff members in which he confessed in detail to participating in Mr. Keal's murder. See Mr. Welborn's June 20, 2011 certification, attached to this letter as Exhibit B.

Mr. Welborn's confession is credible based on both its specificity and that it fully corroborates what Ms. Keal saw that terrible night.

- Mr. Welborn admits that one day in August 1995, he and his friend (unnamed by Mr. Welborn but referred to as "Tizz" by others) were in North Philadelphia with a man named Rob. Rob told Mr. Welborn and "Tizz" that a man who owned a bar on 17th Street between Erie and Venango had \$50,000 in his house. During the day, Mr. Welborn and "Tizz" hung out with Rob at a Chinese store on 17th Street between Venango and Tioga.
- Sometime later that night or early the next morning, Mr. Welborn and his friend approached the decedent, Mr. Keal, as he was crossing the street near the corner of 17th and Pacific Streets. Mr. Welborn wielded a double-barreled sawed-off shotgun and "Tizz" carried a silver .22 revolver with tape around its handle. "Tizz" held the revolver to Mr. Keal's head, at which point Mr. Keal pulled out his .357 revolver with a black grip and said, "I ain't giving you shit." Mr. Welborn then shot Mr. Keal in the leg with the shotgun. "Tizz" then stood over Mr. Keal and shot him three or four times in the head with the .22 revolver.
- After the shooting, Mr. Welborn and "Tizz" took Mr. Keal's .357 and ran towards 16th and Venango Street. "Tizz" threw the .22 into an abandoned house, and the two men got into Mr. Welborn's light blue Audi 5000 and drove to West Philadelphia. Mr. Welborn used the sawed-off shotgun to commit another robbery in November of 1995. He sold Mr. Keal's .357 to a male known as "Chink."
- In 2006, Mr. Welborn told his lawyer, Daniel Greene, that he participated in a murder for which two other people had been convicted. Mr. Welborn maintains that Eugene Gilyard was not involved in Mr. Keal's murder. See Mr. Welborn's June 20, 2011 certification (Exhibit B).

The Pennsylvania Innocence Project has found more information, which further supports that a manifest injustice has occurred here. Staff members from the Project spoke to three eyewitnesses who corroborate Mr. Welborn's confession but who never came forward to police. Each of these eyewitnesses saw two men they knew as "Rolex" and "Tizz" walk toward where Mr. Keal was murdered and run from the crime scene immediately after shots were fired.

Eyewitness Michael Griddle was with Eugene Gilyard at a Chinese store about a block south of where Mr. Keal was shot when the shooting occurred. Shortly before the shooting, two men he knows as "Rolex" and "Tizz" came to the Chinese store. Mr. Griddle knew both men through Rob Felder, the brother of Lance Felder (Mr. Gilyard's co-defendant). "Rolex" and "Tizz" said that they were planning to rob the Beehive Bar across the street. Mr. Griddle told them not to rob that bar, since Mr. Griddle and his friends hung out there. "Rolex" and "Tizz" then walked up the street and robbed and shot Mr. Keal. After the shooting, "Rolex" and "Tizz" got into a car with a third person and drove away. Mr. Griddle knows who the third person is, and would reveal his identity if doing so were necessary to prove Eugene Gilyard's innocence. The third person was not Eugene Gilyard. See Mr. Griddle's June 14, 2011 certification, attached to this letter as Exhibit C.

Eyewitness Kenyatta Felder was also at the Chinese store with Eugene Gilyard when the crime occurred. That night, "Rolex" and "Tizz" approached the group of people at the Chinese store. Kenyatta knew "Rolex" and "Tizz" through his brother, Rob Felder. "Rolex" and "Tizz" said that they planned to rob the bar across the street. They were told not to do so because Kenyatta and his friends hung out there. "Rolex" and "Tizz" then walked up the street in the direction of Mr. Keal's store. A few minutes later Kenyatta heard gunshots, and then saw "Rolex" and "Tizz" running away. Kenyatta's brother Rob told him that "Rolex" threw a gun into the basement window of an abandoned house on Venango Street. See Mr. Felder's July 7, 2011 certification, attached to this letter as Exhibit D.

Eyewitness Donita Miekeals was sitting on her front steps at 16th and Venango on the night of the crime. She heard gunshots sometime in the early morning hours, and then saw "Rolex," "Tizz," and one or two other people running away down 17th and then onto Venango Street. Earlier that evening, Ms. Miekeals had seen "Rolex" and "Tizz" at the Chinese store on 17th Street. Ms. Miekeals told this information to the police at the time of the murder, but was never subpoenaed to testify at trial. See Ms. Miekeals' June 21, 2011 certification, attached to this letter as Exhibit D.

Mr. Welborn's confession corroborates Ms. Keal's accounts of the perpetrators' actions during the crime. Ms. Keal first looked out of her bedroom window minutes before the crime and saw a man, whom she later identified as Eugene Gilyard, pacing in the street with a red bandana. Her view of the man was extremely brief – five seconds at most. Moreover, she saw this man from directly above. Minutes later, Ms. Keal heard a gunshot and immediately ran to a second window. The first shot Ms. Keal heard was the loudest and lowest-sounding, consistent with Mr. Welborn first firing the shotgun at Mr.

Keal's leg. Ms. Keal then saw a man standing over her father holding a handgun to his head—precisely what Mr. Welborn says “Tizz” did. Her view from that window was partially obstructed by a screen and a window fan.

The length of time between the crime and Ms. Keal's identification of Mr. Gilyard is particularly concerning.¹ Ms. Keal first identified Mr. Gilyard from a photo array on December 31, 1997, over two years after her father's murder took place. Scientific studies show that the accuracy of eyewitness identifications declines when only weeks have passed between the crime and the confrontation, let alone years.² At trial, one of the detectives testified that Ms. Keal had been shown a photo array just days after the crime that contained Mr. Gilyard's photo, and that Ms. Keal failed to identify him.³ The probability that Ms. Keal would mistakenly *fail* to recognize Mr. Gilyard in a photo just days after the crime, and then *succeed* in identifying him over two years later, is extremely low.

In sum, Mr. Welborn's confession, when evaluated against the evidence presented at trial, is convincing after-discovered evidence that firmly establishes Mr. Gilyard's innocence of the crime for which he is serving a life sentence. Mr. Gilyard was convicted solely on the eyewitness identification of Tonya Keal. In light of the circumstances surrounding that identification, as well as the fact that Mr. Welborn has credibly confessed and absolved Mr. Gilyard of all wrongdoing, we request that you re-open the investigation of Mr. Keal's murder.

We would sincerely appreciate your cooperation in this matter. We share with you and your office the goal of having justice done, of punishing the guilty and setting the innocent free. It is most certainly not our aim to disparage the work of the police or prosecutor, even where it may have led to the conviction of an innocent person. We see nothing wrong with the way this case was investigated or prosecuted; we are simply concerned that an innocent man is being punished while a guilty man is not.

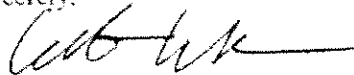
¹ There are many other factors which support the possibility that Ms. Keal's identification of Mr. Gilyard was inaccurate—the presence of guns, her distance from the scene, the poor lighting conditions, the obstructions to her view, the trauma she experienced in viewing the crime, as well as a likelihood of confirming feedback after she picked Mr. Gilyard's photo in the array -- but the two years between the crime and the identification is most concerning.

² See *Eyewitness Identification in Actual Criminal Cases: An Archival Analysis*, *Law and Human Behavior*, Vol. 25, No. 5 at 481 (October 2001), available online at <http://www.springerlink.com/content/k731j063w762jpxv>.

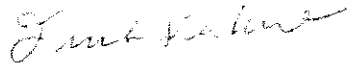
³ It was disputed at trial whether Ms. Keal was shown a photo array in 1995 that included a picture of Mr. Gilyard. Detective Dennis Dusak originally testified that Ms. Keal was not shown a photo array containing Mr. Gilyard's photo in 1995. However, Detective Dusak then testified that at least four photo arrays, identified as DF3, DF4, DF5, and DF6, were shown to Ms. Keal shortly after the murder, on September 2, 1995. Photo array DF5 contained a photograph of Mr. Gilyard. Detective Dusak testified that on September 2, 1995 Ms. Keal did not identify Mr. Gilyard after looking at his picture in photo array DF5.

Should you have any questions, you can reach Staff Attorney Charlotte Whitmore at 215-204-4255 or at cwhitmer@temple.edu. We look forward to hearing from you or your representative and are grateful for your attention.

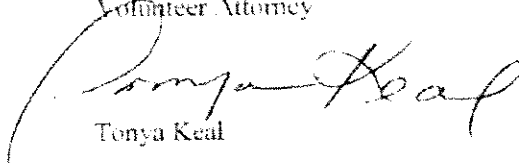
Sincerely,



Charlotte Whitmore
Staff Attorney



Frank DeSimone
Volunteer Attorney



Tonya Keal

EXHIBIT N

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF PHILADELPHIA

In the Common Pleas Court of the County of Philadelp

SS.

9511 0735 1/1

CRIMINAL SECTION

13

THE DISTRICT ATTORNEY OF PHILADELPHIA BY THIS INFORMATION CHARGES THAT
ON OR ABOUT 11/21/75 IN PHILADELPHIA,
RICKY ELBORN

IN THE COURSE OF COMMITTING A THEFT

1. THREATENED ANOTHER WITH OR INTENTIONALLY PUT ANOTHER IN FEAR OF IMMEDIATE SERIOUS BODILY INJURY
2. COMMITTED OR THREATENED IMMEDIATELY TO COMMIT ANY FELONY OF THE FIRST OR SECOND DEGREE
3. INFLECTED BODILY INJURY UPON ANOTHER, OR THREATENED ANOTHER WITH, OR INTENTIONALLY PUT ANOTHER IN FEAR OF, IMMEDIATE BODILY INJURY
4. PHYSICALLY TOOK OR REMOVED PROPERTY FROM THE PERSON OF ANOTHER BY FORCE HOWEVER SLIGHT
5. NOTICE IS HEREBY GIVEN THAT SHOULD THE DEFENDANT BE CONVICTED OF ROBBERY AS DEFINED IN 18 PA.C.S. 3701(A)(1)(I), (II) OR (III) OR ATTEMPT TO COMMIT SAME, THE COMMONWEALTH WILL PROCEED UNDER 42 PA.C.S. 9712 (CONCERNING SENTENCES FOR OFFENSES COMMITTED WITH FIREARMS) AND SEEK IMPOSITION OF A MANDATORY SENTENCE IN ACCORDANCE THEREWITH
6. NOTICE IS HEREBY GIVEN THAT SHOULD THE DEFENDANT BE CONVICTED OF ROBBERY AS DEFINED IN 18 PA.C.S. 3701(A)(1)(I), (II) OR (III) OR ATTEMPT TO COMMIT SAME, THE COMMONWEALTH MAY PROCEED UNDER 42 PA.C.S. 9714 (CONCERNING SENTENCES FOR SECOND AND SUBSEQUENT OFFENSES) AND SEEK IMPOSITION OF A MANDATORY SENTENCE IN ACCORDANCE THEREWITH

VICTIM-CLAUDE EDWARDS

NO. OF COUNTS - 1

5 PA.C.S. 17 1(1)(1).

All of which is against the Act of Assembly and the peace and dignity of the Commonwealth of Pennsylvania.

11/21/75	DISTRICT ATTORNEY LYNNE BRADLEY	ASSISTANT DISTRICT ATTORNEY CHARLES JUNDU	APPROVED
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COMMONWEALTH OF PENNSYLVANIA
COUNTY OF PHILADELPHIA

In the Common Pleas Court of the County of Philadelpt

CRIMINAL SECTION
10

ss. FILE 7755 1/1 10

THE DISTRICT ATTORNEY OF PHILADELPHIA BY THIS INFORMATION CHARGES THAT
IN OR ABOUT 10/14/75 IN PHILADELPHIA,
RICKY WELDRN

WITH THE INTENT OF PROMPTING OR FACILITATING THE COMMISSION OF A CRIME

1. AGREED WITH ANOTHER PERSON OR PERSONS THAT THEY OR ONE OR MORE OF THEM
WOULD ENGAGE IN CONDUCT WHICH WOULD CONSTITUTE SUCH CRIME OR AN ATTEMPT OR
SOLICITATION TO COMMIT SUCH CRIME, AND COMMITTED, OR SUCH OTHER PERSON OR
PERSONS COMMITTED, AN OVERT ACT IN PURSUANCE OF SUCH AGREEMENT

2. AGREED TO AID SUCH OTHER PERSON OR PERSONS IN THE PLANNING OR
COMMISSION OF SUCH CRIME OR IN AN ATTEMPT OR SOLICITATION TO COMMIT SUCH
CRIME AND COMMITTED, OR SUCH OTHER PERSON OR PERSONS COMMITTED, AN OVERT
ACT IN PURSUANCE OF SUCH AGREEMENT

CO-CONSPIRATORS-JOHN FERGUSON AND RONALD EPPS

CRIMINAL OBJECTIVE-ARMED ROBBERY

OVERT ACT: ROBBED THE COMPLAINANT AT POINT OF BUY

NO. OF COUNTS 1

3 P.A.C.S. 17(1).

All which is against the Act of Assembly and the peace and dignity of the Commonwealth of Pennsylvania.

11/20/77

DISTRICT ATTORNEY
LYNNE A. ...

ASSISTANT DISTRICT ATTORNEY
CHARLES J. ...

10343VE

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF PHILADELPHIA

In the Common Pleas Court of the County of Philadelphia

CRIMINAL SECTION
LC

SS. 9511 1703 171 7

THE DISTRICT ATTORNEY OF PHILADELPHIA BY THIS INFORMATION CHARGES THAT
ON OR ABOUT 11/19/95 IN PHILADELPHIA,
RICKY WELBORN

WAS, REPAIRED, SOLD, OR OTHERWISE DEALT IN, USED OR POSSESSED AN OFFENSIVE
WEAPON.

OFFENSIVE WEAPON-SAVED OFF SHOTGUN.

NO. OF COUNTS 1

IN PENNSYLVANIA.

All of which is against the Act of Assembly and the peace and dignity of the Commonwealth of Pennsylvania.

11/27/95	DISTRICT ATTORNEY LYNNE ABLEMAN	ASSISTANT DISTRICT ATTORNEY CHARLES JUNCO	APPROVED
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COMMONWEALTH OF PENNSYLVANIA
COUNTY OF PHILADELPHIA

In the Common Pleas Court of the County of Philadelphia

CRIMINAL SECTION
10

ss. 9611 0785 1/1

4

THE DISTRICT ATTORNEY OF PHILADELPHIA BY THIS INFORMATION CHARGES THAT
DATER ABOUT 11/21/73 IN PHILADELPHIA,
RICKY NELSON

1. UNLAWFULLY TOOK OR EXERCISED UNLAWFUL CONTROL OVER MOVABLE PROPERTY OF
ANOTHER PERSON WITH INTENT TO DEPRIVE THE OTHER PERSON THEREOF

OWNER- CLAUDE EDWARDS

PROPERTY- \$35.00 USC AND A GOLD RING

NO. OF COUNTS - 1

15 P.S. 3112.

All of which is against the Act of Assembly and the peace and dignity of the Commonwealth of Pennsylvania.

11/21/73

DISTRICT ATTORNEY

LYNNE AB

ASSISTANT DISTRICT ATTORNEY

CHARLES JUNO

APPROVED

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF PHILADELPHIA

In the Common Pleas Court of the County of Philadelphia

CRIMINAL SECTION

SS. 9411 0705 1/2

10

THE DISTRICT ATTORNEY OF PHILADELPHIA BY THIS INFORMATION CHARGES THAT
ON OR ABOUT 10/10/88 IN PHILADELPHIA,
RICKY WELBORN

1. POSSESSED AN INSTRUMENT OF CRIME WITH INTENT TO EMPLOY IT CRIMINALLY
2. POSSESSED A FIREARM OR OTHER WEAPON CONCEALED UPON HIS OR HER PERSON WITH INTENT TO EMPLOY IT CRIMINALLY

INSTRUMENT OF CRIME HANDBUN

FIREARM/WEAPON-HANDBUN

NO. OF COUNTS - 1

9-91-C.V. 1-7

All of which is against the Act of Assembly and the peace and dignity of the Commonwealth of Pennsylvania.

DISTRICT ATTORNEY

LYNNE A. ...

ASSISTANT DISTRICT ATTORNEY

CHARLES J. ...

APPROVED

EXHIBIT O



**First Judicial District of Pennsylvania
Court Summary**

Weilborne, Ricky
PHILA., PA. 19100
Aliases:
Weilborn, Ricky
Weilborne, Ricky
Weilborn, Ricky

DOB 09/22/1978

Sex: Male
Eyes: Brown
Hair: Black
Race: Black

Closed

Philadelphia

CP-51-CR-1107551-1995

Proc Status: Completed

DC No: 9518067462

OTN:

Arrest Dt: 10/19/1995

Disp Date: 04/07/1997

Disp Judge: Smith, Gregory E.

Def Atty: Grossman, Larry Steven - (CA)

<u>Seq No</u>	<u>Statute</u>	<u>Sentence Type</u>	<u>Program Period</u>	<u>Description</u>	<u>Sentence Length</u>	<u>Disposition</u>
1	18 § 3701	Confinement	04/07/1997	ROBBERY	Min: 5 Year(s) Max: 10 Year(s)	Guilty Plea
2	18 § 6106			CARRYING FIREARMS WITHOUT LICENSE		Nolle Prossed
3	18 § 6108			CARRYING FIRE ARMS/PUBLIC STREET OR PLACE		Nolle Prossed
4	18 § 3921			THEFT BY UNLAWFUL TAKING OR DISPOSITION		Nolle Prossed
5	18 § 3925			THEFT BY RECEIVING STOLEN PROPERTY		Nolle Prossed
6	18 § 907			POSSESSING INSTRUMENTS OF CRIME	Min: 2 Year(s) 6 Month(s) Max: 5 Year(s)	Guilty Plea
7	18 § 908.1	04/07/1997 Confinement		PROHIBITED OFFENSIVE WEAPONS		Nolle Prossed
8	18 § 2701			SIMPLE ASSAULT		Nolle Prossed
9	18 § 2705			RECKLESSLY ENDANGERING ANOTHER PERSON		Nolle Prossed
10	18 § 903	04/07/1997 Confinement		CRIMINAL CONSPIRACY	Min: 5 Year(s) Max: 10 Year(s)	Guilty Plea

CP-51-CR-0202041-1997

Proc Status: Completed

DC No: 9618050901

OTN: M7256443

Arrest Dt: 11/22/1996

Disp Date: 04/07/1997

Disp Judge: Smith, Gregory E.

Def Atty: Defender Association of Philadelphia - (PD)

<u>Seq No</u>	<u>Statute</u>	<u>Sentence Type</u>	<u>Program Period</u>	<u>Description</u>	<u>Sentence Length</u>	<u>Disposition</u>
1	18 § 2702	Confinement	04/07/1997	AGGRAVATED ASSAULT	Min: 5 Year(s) Max: 10 Year(s)	Guilty Plea
2	18 § 6106			CARRYING FIREARMS WITHOUT LICENSE		Nolle Prossed
3	18 § 6108			CARRYING FIRE ARMS/PUBLIC STREET OR PLACE		Guilty Plea

AOPC 3541 REV. 11/17/2011

Page 1 of 5

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Please note that if the offense disposition information is blank, this only means that there is not a "final disposition" recorded in the Common Pleas Criminal Court Case Management System for this offense. In such an instance, you must view the public web docket sheet of the case where the offense is charged in order to determine what the most up-to-date disposition information is for the offense.



**First Judicial District of Pennsylvania
Court Summary**

Welborne, Ricky (Continued)
Closed (Continued)

Philadelphia (Continued)

<u>Seq No</u>	<u>Statute</u>	<u>Sentence Dt.</u>	<u>Sentence Type</u>	<u>Program Period</u>	<u>Description</u>	<u>Sentence Length</u>	<u>Disposition</u>
		04/07/1997	Confinement			Min: 2 Year(s) 6 Month(s) Max: 5 Year(s)	
4	18 § 907				POSSESSING INSTRUMENTS OF CRIME		Guilty Plea
		04/07/1997	Confinement			Min: 2 Year(s) 6 Month(s) Max: 5 Year(s)	
5	18 § 2701				SIMPLE ASSAULT		Nolle Prossed
6	18 § 2705				RECKLESSLY ENDANGERING ANOTHER PERSON		Nolle Prossed

CP-51-CR-1100541-2004 Proc Status: Awaiting Appellate Court Decis DC No: 0412073758 OTN N2937620
 Arrest Dt: 09/10/2004 Disp Date: 07/06/2006 Disp Judge: Sarmina, M. Teresa
 Def Atty: Cherniack, Emily Beth - (CA)

<u>Seq No</u>	<u>Statute</u>	<u>Sentence Dt.</u>	<u>Sentence Type</u>	<u>Program Period</u>	<u>Description</u>	<u>Sentence Length</u>	<u>Disposition</u>
1	18 § 2502				Murder Of The First Degree		Guilty
		07/06/2006	Confinement	Life			
2	18 § 2502				Murder		Migrated Disposition
3	18 § 3701				Robbery-Inflict Serious Bodily Injury		Nolle Prossed
4	18 § 6106				Firearms Not To Be Carried W/O License		Nolle Prossed
5	18 § 6108				Carry Firearms Public In Phila		Nolle Prossed
6	18 § 6105				Possession Of Firearm Prohibited		Nolle Prossed
7	18 § 907				Poss Instrument Of Crime W/Int		Guilty
		07/06/2006	Confinement			Min: 9 Month(s) Max: 60 Month(s)	

CP-51-CR-0204481-2005 Proc Status: Awaiting PCRA Decision DC No: 0418027208 OTN N2937620
 Arrest Dt: 09/10/2004 Disp Date: 09/20/2007 Disp Judge: Byrd, Sandy L.V.
 Def Atty: Weaver, Sandjai - (CA)

<u>Seq No</u>	<u>Statute</u>	<u>Sentence Dt.</u>	<u>Sentence Type</u>	<u>Program Period</u>	<u>Description</u>	<u>Sentence Length</u>	<u>Disposition</u>
1	18 § 3701				Robbery-Inflict Serious Bodily Injury		Nolle Prossed
2	18 § 2702				Aggravated Assault		Guilty
		10/26/2007	Confinement	Other		Min: 10 Year(s) Max: 20 Year(s)	
3	18 § 2502				Criminal Attempt Murder		Nolle Prossed
4	18 § 6106				Firearms Not To Be Carried W/O License		Guilty
		10/26/2007	Probation	7 years		Max: 7 Year(s)	
5	18 § 6108				Carry Firearms Public In Phila		Guilty
		10/26/2007	Probation	5 years		Max: 5 Year(s)	

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**First Judicial District of Pennsylvania
Court Summary**

Weilborne, Ricky (Continued)

Closed (Continued)

Philadelphia (Continued)

<u>Seq No</u>	<u>Statute</u>	<u>Sentence Dt.</u>	<u>Sentence Type</u>	<u>Description</u>	<u>Program Period</u>	<u>Sentence Length</u>	<u>Disposition</u>
6	18 § 6105	10/26/2007	Confinement	Possession Of Firearm Prohibited	5 - 10 years	Min: 5 Year(s) Max: 10 Year(s)	Guilty Plea
7	18 § 3921			Theft By Unlaw Taking-Movable Prop			Nolle Prossed
8	18 § 3925			Receiving Stolen Property			Nolle Prossed
9	18 § 907			Poss Instrument Of Crime W/int			Nolle Prossed
10	18 § 2706			Terroristic Threats W/ Int To Terrorize Another			Nolle Prossed
11	18 § 2701			Simple Assault			Nolle Prossed
12	18 § 2705			Recklessly Endangering Another Person			Nolle Prossed

CP-51-CR-0811801-2005 Proc Status: Completed DC No: 0508012733 OTN:N3470622
 Arrest Dt: 07/12/2005 Disp Date: 08/30/2006 Disp Judge: DeFino-Nastasi, Rose
 Def Atty: Greene, Daniel H. - (CA)

<u>Seq No</u>	<u>Statute</u>	<u>Description</u>	<u>Disposition</u>
1	18 § 2702	AGGRAVATED ASSAULT	Not Guilty
2	18 § 2701	SIMPLE ASSAULT	Nolle Prossed
3	18 § 2705	RECKLESSLY ENDANGERING ANOTHER PERSON	Nolle Prossed
4	18 § 903	CRIMINAL CONSPIRACY	Nolle Prossed

MC-51-CR-1119291-1996 Proc Status: Completed DC No: 9618050901 OTN:M7256443
 Arrest Dt: 11/22/1996 Disp Date: 02/04/1997 Disp Judge: Retacco, Louis
 Def Atty: Defender Association of Philadelphia - (PD)

<u>Seq No</u>	<u>Statute</u>	<u>Description</u>	<u>Disposition</u>
1	18 § 2702	AGGRAVATED ASSAULT	Held for Court
2	18 § 2705	RECKLESSLY ENDANGERING ANOTHER PERSON	Held for Court
3	18 § 6106	CARRYING FIREARMS WITHOUT LICENSE	Held for Court
4	18 § 2701	SIMPLE ASSAULT	Held for Court
5	18 § 907	POSSESSING INSTRUMENTS OF CRIME WEAPON	Held for Court
6	18 § 6108	CARRYING FIRE ARMS/PUBLIC STREET OR PLACE	Held for Court

MC-51-CR-0907591-2004 Proc Status: Completed DC No: 0412073758 OTN:N2937620
 Arrest Dt: 09/10/2004 Disp Date: 10/19/2004 Disp Judge: Migrated, Judge
 Def Atty: Defender Association of Philadelphia - (PD)

<u>Seq No</u>	<u>Statute</u>	<u>Description</u>	<u>Disposition</u>
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**First Judicial District of Pennsylvania
Court Summary**

Walborne, Ricky (Continued)
Closed (Continued)

Philadelphia (Continued)

<u>Seq No</u>	<u>Statute</u>	<u>Description</u>	<u>Disposition</u>
1	18 § 2502	MURDER	Held for Court
2	18 § 3701	ROBBERY	Held for Court
3	18 § 6105	POSSESSION ARMS-CONV CRIME OF VIOLENCE	Held for Court
4	18 § 6106	CARRYING FIREARMS WITHOUT LICENSE	Held for Court
5	18 § 6108	CARRYING FIRE ARMS/PUBLIC STREET OR PLACE	Held for Court
6	18 § 907	POSSESSING INSTRUMENTS OF CRIME	Held for Court

MC-51-CR-0907601-2004

Proc Status: Completed

DC No: 0413027208

OTN: N2937620

Arrest Dt: 09/10/2004

Disp Date: 02/04/2005

Disp Judge: Migrated, Judge

Def Atty: Defender Association of Philadelphia - (PD)

<u>Seq No</u>	<u>Statute</u>	<u>Description</u>	<u>Disposition</u>
1	18 § 2502	ATTEMPTED MURDER	Held for Court
2	18 § 2702	AGGRAVATED ASSAULT	Held for Court
3	18 § 3701	ROBBERY	Held for Court
4	18 § 3921	THEFT BY UNLAWFUL TAKING OR DISPOSITION	Held for Court
5	18 § 3925	THEFT BY RECEIVING STOLEN PROPERTY	Held for Court
6	18 § 6105	POSSESSION ARMS-CONV CRIME OF VIOLENCE	Held for Court
7	18 § 6106	CARRYING FIREARMS WITHOUT LICENSE	Held for Court
8	18 § 6108	CARRYING FIRE ARMS/PUBLIC STREET OR PLACE	Held for Court
9	18 § 907	POSSESSING INSTRUMENTS OF CRIME	Held for Court
10	18 § 2706	TERRORISTIC THREATS	Held for Court
11	18 § 2701	SIMPLE ASSAULT	Held for Court
12	18 § 2705	RECKLESSLY ENDANGERING ANOTHER PERSON	Held for Court

MC-51-CR-0712851-2005

Proc Status: Completed

DC No: 0508012733

OTN: N3470622

Arrest Dt: 07/12/2005

Disp Date: 08/25/2005

Disp Judge: Migrated, Judge

Def Atty: Greene, Daniel H. - (CA)

<u>Seq No</u>	<u>Statute</u>	<u>Description</u>	<u>Disposition</u>
1	18 § 2702	AGGRAVATED ASSAULT	Held for Court
2	18 § 903	CRIMINAL CONSPIRACY	Held for Court

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Please note that if the offense disposition information is blank, this only means that there is not a final disposition recorded in the Common Pleas Criminal Court Case Management System for this offense. In such an instance, you must view the public web docket sheet of the case wherein the offense is charged in order to determine what the most up-to-date disposition information is for the offense.



First Judicial District of Pennsylvania
Court Summary

Welborne, Ricky (Continued)

Closed (Continued)

Philadelphia (Continued)

<u>Seq No</u>	<u>Statute</u>	<u>Description</u>	<u>Disposition</u>
3	18 § 2701	SIMPLE ASSAULT	Held for Court
4	18 § 2705	RECKLESSLY ENDANGERING ANOTHER PERSON	Held for Court

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Please note that if the offense disposition information is blank, this only means that there is not a "final disposition" recorded in the Common Pleas Criminal Court Case Management System for this offense. In such an instance, you must view the public web docket sheet of the case wherein the offense is charged in order to determine what the most up-to-date disposition information is for the offense.

EXHIBIT P



**First Judicial District of Pennsylvania
Court Summary**

Gooden, Timothy A.
Philadelphia, PA 19143
Aliases:
Lee, Donald
Lee, Timothy
Smith, Dernet
Tyler, Timothy
Gooden, Timothy
Gooden, Timothy I
Tyler-Geeden, Timothy

DOB 08/07/1977

Sex: Male
Eyes: Brown
Hair: Brown
Race: Black

Active

Philadelphia
MC-51-CR-0042050-2011 Proc Status: Awaiting Trial DC No: 1118059453 OTN: N7674516
Arrest Dt: 09/30/2011 Trial Dt: 01/17/2012 Legacy No:
Last Action: Arraignment Status Last Action Date: 11/01/2011 Last Action Room: 404
Next Action: Trial Next Action Date: 01/17/2012 Next Action Room: 706

<u>Seq No</u>	<u>Statute</u>	<u>Description</u>	<u>Disposition</u>
1	35 § 780-113	Int Poss Contr Subst By Per Not Reg	

MC-51-CR-0044928-2011 Proc Status: Awaiting Preliminary Hearing DC No: 1171000330 OTN: N7706230
Arrest Dt: 10/21/2011 Trial Dt: Legacy No:
Def Atty: Yanks, Harvey A. - (PR)
Last Action: Arraignment Preliminary Hearin Last Action Date: 11/08/2011 Last Action Room: 703
Next Action: Preliminary Hearing Next Action Date: 12/19/2011 Next Action Room: 703

<u>Seq No</u>	<u>Statute</u>	<u>Description</u>	<u>Disposition</u>
1	35 § 780-113	Manufacture, Delivery, or Possession With Intent to Manufacture or Deliver	
2	35 § 780-113	Conspiracy Manufacture, Delivery, or Possession With Intent to Manufacture or Deliver	
3	18 § 6105	Possession Of Firearm Prohibited	
4	35 § 780-113	Int Poss Contr Subst By Per Not Reg	
5	35 § 780-113	Use/Poss Of Drug Paraph	
6	18 § 907	Poss Instrument Of Crime W/Int	
7	18 § 908	Make Repairs/Sell/Etc Offens Weap	

Closed

Philadelphia
CP-51-CR-0913771-1996 Proc Status: Completed DC No: 9618057793 OTN: M7164570
Arrest Dt: 09/13/1996 Disp Date: 05/30/1997 Disp Judge: Allen, Jacqueline F.
Def Atty: Rudenstein, David Scott - (CA)

<u>Seq No</u>	<u>Statute</u>	<u>Description</u>	<u>Disposition</u>		
	<u>Sentence Dt.</u>	<u>Sentence Type</u>	<u>Program Period</u>	<u>Sentence Length</u>	
1	18 § 3701	ROBBERY			Guilty

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Please note that if the offense disposition information is blank, this only means that there is not a "final disposition" recorded in the Common Pleas Criminal Court Case Management System for this offense. In such an instance, you must view the criminal web docket sheet of the case wherein the offense is charged in order to determine what the most up-to-date disposition information is for the offense.



**First Judicial District of Pennsylvania
Court Summary**

Gooden, Timothy A. (Continued)

Closed (Continued)

Philadelphia (Continued)

<u>Seq No</u>	<u>Statute</u>	<u>Description</u>	<u>Disposition</u>
<u>Sentence Dt.</u>	<u>Sentence Type</u>	<u>Program Period</u>	<u>Sentence Length</u>
05/30/1997	Confinement		Min: 7 Year(s) Max: 14 Year(s)
2	18 § 6106	CARRYING FIREARMS WITHOUT LICENSE	Nolle Prossed
3	18 § 6108	CARRYING FIRE ARMS/PUBLIC STREET OR PLACE	Guilty
05/30/1997	Probation		
4	18 § 6110	VUFA DEL TO MINOR-DRUG ADDICT ETC	Nolle Prossed
5	18 § 3921	THEFT BY UNLAWFUL TAKING OR DISPOSITION	Guilty
6	18 § 3925	THEFT BY RECEIVING STOLEN PROPERTY	Not Guilty
7	13 § 907	POSSESSING INSTRUMENTS OF CRIME	Guilty
05/30/1997	Probation		
8	18 § 2706	TERRORISTIC THREATS	Guilty
05/30/1997	No Further Penalty		
9	18 § 2701	SIMPLE ASSAULT	Guilty
10	18 § 2706	RECKLESSLY ENDANGERING ANOTHER PERSON	Not Guilty
11	18 § 903	CRIMINAL CONSPIRACY	Not Guilty
12	18 § 3701	ROBBERY	Guilty
05/30/1997	Confinement		Min: 7 Year(s) Max: 14 Year(s)
13	18 § 6106	CARRYING FIREARMS WITHOUT LICENSE	Nolle Prossed
14	18 § 6108	CARRYING FIRE ARMS/PUBLIC STREET OR PLACE	Guilty
05/30/1997	Probation		
15	18 § 6110	VUFA DEL TO MINOR-DRUG ADDICT ETC	Nolle Prossed
16	18 § 3921	THEFT BY UNLAWFUL TAKING OR DISPOSITION	Guilty
17	18 § 3925	THEFT BY RECEIVING STOLEN PROPERTY	Not Guilty
18	18 § 907	POSSESSING INSTRUMENTS OF CRIME	Nolle Prossed
19	18 § 2706	TERRORISTIC THREATS	Guilty
05/30/1997	No Further Penalty		
20	18 § 2701	SIMPLE ASSAULT	Guilty

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Please note that if the offense disposition information is blank, this only means that there is not a "final disposition" recorded in the Common Pleas Terminal Court Case Management System for this offense. In such an instance, you must view the public web socket sheet of the case wherein the offense is charged in order to determine what the most up-to-date disposition information is for the offense.



**First Judicial District of Pennsylvania
Court Summary**

Gooden, Timothy A. (Continued)

Closed (Continued)

Philadelphia (Continued)

<u>Seq No</u>	<u>Statute</u>		<u>Description</u>	<u>Disposition</u>
<u>Sentence Dt.</u>	<u>Sentence Type</u>	<u>Program Period</u>	<u>Sentence Length</u>	
21	18 § 2705		RECKLESSLY ENDANGERING ANOTHER PERSON	Not Guilty
22	18 § 903		CRIMINAL CONSPIRACY	Nolle Prossed
CP-51-CR-0308471-2006		Proc Status: Completed	DC No: 06C4005662	OTN N3804202
Arrest Dt: 02/03/2006		Disp Date: 04/20/2007	Disp Judge: Wagan, Chris R.	
Def Atty: Meyers, Jay - (CA)				

<u>Seq No</u>	<u>Statute</u>		<u>Description</u>	<u>Disposition</u>
1	18 § 2702		Aggravated Assault	Nolle Prossed
2	18 § 2701		Simple Assault	Nolle Prossed
3	18 § 2705		Recklessly Endangering Another Person	Nolle Prossed
MC-51-CR-1116731-1995		Proc Status: Completed	DC No: 9571006127	OTN M6801491
Arrest Dt: 11/22/1995		Disp Date: 12/03/1996	Disp Judge: Merriweather, Ronald B.	
Def Atty: Himebaugh, Teri B. - (CA)				

<u>Seq No</u>	<u>Statute</u>		<u>Description</u>	<u>Disposition</u>
<u>Sentence Dt.</u>	<u>Sentence Type</u>	<u>Program Period</u>	<u>Sentence Length</u>	
1	35 § 780-113		KNOWING/INTENTIONALLY POSS CONTROLLED SUBST	Gilty
12/03/1996	Probation			
MC-51-CR-0704461-1996		Proc Status: Completed	DC No: 9622033343	OTN M7077103
Arrest Dt: 07/05/1996		Disp Date: 12/17/1996	Disp Judge: Kirkland, Lydia Y.	
Def Atty: Defender Association of Philadelphia - (PD)				

<u>Seq No</u>	<u>Statute</u>		<u>Description</u>	<u>Disposition</u>
1	75 § 3731		DRIVING UNDER INFLUENCE ALCOHOL/CONTRL SUB	Dismissed
MC-51-CR-0913671-1996		Proc Status: Completed	DC No: 9618057793	OTN M7164570
Arrest Dt: 09/13/1996		Disp Date: 10/03/1996	Disp Judge: Bfount, Lynwood	
Def Atty: Defender Association of Philadelphia - (PD)				
<u>Seq No</u>	<u>Statute</u>		<u>Description</u>	<u>Disposition</u>
1	18 § 3701		ROBBERY	Dismissed
2	18 § 3925		THEFT BY RECEIVING STOLEN PROPERTY	Dismissed
3	18 § 2705		RECKLESSLY ENDANGERING ANOTHER PERSON	Dismissed
4	18 § 6106		CARRYING FIREARMS WITHOUT LICENSE	Dismissed

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Please note that if the offense disposition information is blank, this only means that there is not a final disposition recorded in the Common Pleas Criminal Court Case Management System for this offense. In such an instance you must view the public web docket sheet of the case wherein the offense is charged in order to determine what the most up-to-date disposition information is for the offense.



**First Judicial District of Pennsylvania
Court Summary**

Gooden, Timothy A. (Continued)

Closed (Continued)

Philadelphia (Continued)

<u>Seq No</u>	<u>Statute</u>	<u>Description</u>	<u>Disposition</u>
5	18 § 2702	AGGRAVATED ASSAULT	Dismissed
6	18 § 3921	THEFT BY UNLAWFUL TAKING OR DISPOSITION	Dismissed
7	18 § 2701	SIMPLE ASSAULT	Dismissed
8	18 § 907	POSSESSING INSTRUMENTS OF CRIME WEAPON	Dismissed
9	18 § 6108	CARRYING FIRE ARMS/PUBLIC STREET OR PLACE	Dismissed

MC-51-CR-0913681-1996 Proc Status: Completed DC No: 9618057793 OTN:M7164570
 Arrest Dt: 09/13/1996 Disp Date: 10/03/1996 Disp Judge: Blount, Lynwood
 Def Atty: Defender Association of Philadelphia - (PD)

<u>Seq No</u>	<u>Statute</u>	<u>Description</u>	<u>Disposition</u>
1	18 § 3701	ROBBERY	Held for Court
2	18 § 3925	THEFT BY RECEIVING STOLEN PROPERTY	Held for Court
3	18 § 2705	RECKLESSLY ENDANGERING ANOTHER PERSON	Held for Court
4	18 § 6106	CARRYING FIREARMS WITHOUT LICENSE	Held for Court
5	18 § 3921	THEFT BY UNLAWFUL TAKING OR DISPOSITION	Held for Court
6	18 § 2701	SIMPLE ASSAULT	Held for Court
7	18 § 907	POSSESSING INSTRUMENTS OF CRIME WEAPON	Held for Court
8	18 § 6108	CARRYING FIRE ARMS/PUBLIC STREET OR PLACE	Held for Court
9	18 § 903	CRIMINAL CONSPIRACY	Held for Court

MC-51-CR-0913691-1996 Proc Status: Completed DC No: 9618057793 OTN:M7164570
 Arrest Dt: 09/13/1996 Disp Date: 10/03/1996 Disp Judge: Blount, Lynwood
 Def Atty: Defender Association of Philadelphia - (PD)

<u>Seq No</u>	<u>Statute</u>	<u>Description</u>	<u>Disposition</u>
1	18 § 3701	ROBBERY	Held for Court
2	18 § 3925	THEFT BY RECEIVING STOLEN PROPERTY	Held for Court
3	18 § 2705	RECKLESSLY ENDANGERING ANOTHER PERSON	Held for Court
4	18 § 6106	CARRYING FIREARMS WITHOUT LICENSE	Held for Court
5	18 § 3921	THEFT BY UNLAWFUL TAKING OR DISPOSITION	Held for Court

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Please note that if the offense disposition information is blank, this only means that there is not a final disposition recorded in the Common Pleas Criminal Court Case Management System for this offense. In such an instance, you must view the public web docket sheet of the case wherein the offense is charged in order to determine what the most up-to-date disposition information is for the offense.



**First Judicial District of Pennsylvania
Court Summary**

Gooden, Timothy A. (Continued)

Closed (Continued)

Philadelphia (Continued)

<u>Seq No</u>	<u>Statute</u>	<u>Description</u>	<u>Disposition</u>
6	18 § 2701	SIMPLE ASSAULT	Held for Court
7	18 § 907	POSSESSING INSTRUMENTS OF CRIME WEAPON	Held for Court
8	18 § 6108	CARRYING FIRE ARMS/PUBLIC STREET OR PLACE	Held for Court
9	18 § 903	CRIMINAL CONSPIRACY	Held for Court

MC-51-CR-0155681-2006

Proc Status: Completed

DC No: 0004005662

OTN: N3634202

Arrest Dt: 02/03/2006

Disp Date: 03/14/2006

Disp Judge: Moore, Jimmie

Def Atty: Meyers, Jay - (CA)

Seq No Statute

1 18 § 2702

2 18 § 903

3 18 § 2701

4 18 § 2705

Description

AGGRAVATED ASSAULT

CRIMINAL CONSPIRACY

SIMPLE ASSAULT

RECKLESSLY ENDANGERING
ANOTHER PERSON

Disposition

Held for Court

Dismissed

Held for Court

Held for Court

MC-51-CR-0021583-2009

Proc Status: Completed

DC No: 0918031249

OTN: N6144390

Arrest Dt: 05/13/2009

Disp Date: 03/30/2010

Disp Judge: Neifield, Marsha H.

Def Atty: Defender Association of Philadelphia - (PD)

Seq No Statute

1 35 § 780-113

Description

Int Poss Contr Subst By Per Not Reg

Disposition

Withdrawn

MC-51-SU-0001166-1996

Proc Status: Completed

DC No: 9618049469

OTN:

Arrest Dt: 08/09/1996

Disp Date: 10/29/1996

Disp Judge: Silberstein, Alan K.

Seq No Statute

1 18 § 5507

Description

Obstruction Highways

Disposition

Guilty Plea

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Please note that if the offense disposition information is blank, this only means that there is not a final disposition recorded in the Common Pleas Criminal Court Case Management System for this offense. In such an instance, you must view the public web ticket sheet of the case wherein the offense is charged in order to determine what the most up-to-date disposition information is for the offense.

5 15:

WHO LIVES AT

SE CHRISTIAN ST PHILA. PA. /
VIOLATING THE PENAL LAWS OF PENNSYLVANIA ON OR ABOUT
AY , SEPTEMBER 12, 1996 IN THE COUNTY OF PHILADELPHIA.

ITS COMMITTED BY THE ACCUSED WERE:

OBBS CREEK PARKWAY, DEPT. IN CONCERT WITH OTHERS, AT POINT OF
RIBBLY TAKE FROM THE COMPLAINANT, ARNOLD HINTON,
TO WIT; THE DEPT TOOK HIS WALLET WITH \$37 AND HIS PAGER AFTER
PLIE DOWN AND TELLING COMPL IF COMPL RAN HE WOULD BE SHOT,
T LICENSED BY THE COMMONWEALTH TO CARRY A

OF 3

VIOLATION OF PA. PENAL LAWS, SECTION(S) AND TITLE(S):

- ROBBERY 3921-M1 THEFT
- RSP 2701-M2 SIM ASSLT
- REAP 0907-M1 PIC
- VUFA 6108-M1 VUFA
- VUFA 0903-F2 CONSP
- VUFA 2706-M1 TERR THREATS

IT IS AGAINST THE PEACE AND DIGNITY OF THE COMMONWEALTH OF PA.
THAT A WARRANT OF ARREST OR A SUMMONS BE ISSUED AND THAT THE
BE REQUIRED TO ANSWER THE CHARGES I HAVE MADE. THIS COMPLAINT
WAS REVIEWED AND APPROVED BY JUDITH RIDDLE A.D.A.
R TO OR AFFIRM THE WITHIN COMPLAINT UPON MY KNOWLEDGE, INFORMATION
BELIEF, AND SIGN IT ON / , BEFORE PHILA. MUNICIPAL COURT
BAIL COMMISSIONER

SIGNATURE OF AFFIANT

THE ABOVE NAMED AFFIANT SWORE OR AFFIRMED THAT THE FACTS SET
THE COMPLAINT WERE TRUE AND CORRECT TO THE BEST OF HIS/HER
INFORMATION AND BELIEF, AND SIGNED IT IN MY PRESENCE. I BELIEVE
AFFIANT TO BE A RESPONSIBLE PERSON AND THAT THERE IS PROBABLE
THE ISSUANCE OF PROCESS.

ISSUING AUTHORITY SEAL

I APPEARED BEFORE JUDGE/BAIL COMMISSIONER
I HEREBY

g 9/2

RECEIVED

SEP 02 1999

PCRA UNIT

Appointed by: J. Carafello 01/12/99

DAVID RUDENSTEIN, ESQUIRE
Attorney at Law
Atty. I.D. No. 33023
1364 Knorr Street
Philadelphia, PA 19111
(215) 725-9421

Attorney for:

DEFENDANT TIMOTHY TYLER

RECEIVED

Plaintiff

SEP 02 1999
COMMONWEALTH OF PENNSYLVANIA
Criminal Motion Court
First Judicial District of PA

COURT OF COMMON PLEAS
OF PHILADELPHIA
CRIMINAL TRIAL DIVISION

vs.

Defendant

TIMOTHY TYLER

CP 9609-1377

AMENDED PETITION UNDER
POST-CONVICTION RELIEF ACT

TO THE HONORABLE, THE JUDGES OF THE SAID COURT:

The petitioner, Timothy Tyler, by and through his court appointed counsel, David Rudenstein, hereby seeks relief pursuant to the Post-Conviction Relief Act and, in support of said petition, says the following:

1. The defendant was arrested on September 12, 1996 in the City and County of Philadelphia and was charged with two (2) counts of robbery and related offenses.

The defendant was represented at all relevant times by Valerie Jones, Esquire, of the Defender Association.

Hon. Barbara Joseph
RE: Com. vs. Tyler
09/02/99

Page Two

defendant to an aggregate term of seven (7) to fourteen (14) years at a state correctional institution. Thereafter, the defendant did not take any appeal to the Superior Court of Pennsylvania. However, on December 8, 1998, the defendant did file his pro se PCRA petition and this counsel was thereafter appointed.

II. FACTUAL HISTORY:

By way of factual history, the Commonwealth called Arnold Hinton, (N/T, 04/14/97, p. 8, et seq.). Mr. Hinton testified that he was robbed on September 12, 1996 at approximately 2:30 AM near the 6100 block of Cobbs Creek Parkway, (N/T, p. 8). At that time, he did not know the defendant Tyler, (N/T, p. 9). While walking on the city streets, this witness saw Mr. Tyler approach a female, apparently asking for a cigarette and, thereafter, the male turned towards Hinton, pulled a gun and demanded money, (N/T, p. 10, et seq.). Mr. Hinton had his wallet and pager removed from his person, (N/T, p. 12). According to Hinton, there was a street lamp in the immediate vicinity, (N/T, p. 13). Mr. Hinton and his friend, Durelle, who was also present, sought the aid of police and, Philadelphia Police, put the two gentlemen in a car and went hunting for the assailant, (N/T, p. 15, et seq.). According to Mr. Hinton, he saw Mr. Tyler and identified him, approximately one and one-half (1-1/2) hours later in the presence of the police, (N/T, p. 17).

Hon. Barbara Joseph
RE: Com. vs. Tyler
09/02/99

Page Three

One Durelle Brownley was also called by Commonwealth, (N/T, p. 35, et seq.). He offered testimony similar and cumulative in nature to the testimony of Mr. Hinton.

Police Officer Lawrence Henry, (N/T, 04/15/97, p. 4, et seq.), testified that he put Mr. Hinton and Mr. Brownley in his patrol wagon and that the two gentlemen identified a male exiting a 1985 station wagon and who had just proceeded into a corner store, (N/T, p. 6). Mr. Tyler was then arrested.

The defense offered no evidence. The defense rested.

III. LEGAL ANALYSIS:

It is clear that this defendant did not file a P.C.R.A. petition within the one (1) year window as permitted by the statute. The issue then becomes whether or not this defendant is entitled to nunc pro tunc relief upon a showing that he requested that counsel take a direct appeal but that counsel failed to do so.

In Commonwealth vs. Hall, 713 A. 2d 650 (Pa. Super. 1998), the Court held, in pertinent part, that such a defendant would be entitled to nunc pro tunc relief, but outside of the confines of the P.C.R.A.

In the recent Supreme Court decision of Commonwealth vs. Lantzy, Supreme. Ct. of Pa., decided July 7, 1999, the High Court held that such relief would be governed by P.C.R.A. standards. Prejudice or actual innocence need not be demonstrated, as the