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Mr. Scott David Allen
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c/o Central Prison
4285 Mail Service Center
Raleigh, NC 27699-4285

Gregg O. McCrary Report

Dear Scott:

This letter summarizes the report prepared by Gregg O. McCrary, retired Supervisory Special Agent with the FBI.

Section I: Overview of the Crime and Crime Scene

McCrary provides an overview of the crime and crime scene based on his review of law enforcement reports, crime scene photographs, autopsy reports and selected trial transcript pages. He details the discovery of Christopher Gailey's body by Wesley Hopkins, Jr. and Julie Culler on July 11, 1999, Hopkin's subsequent report to Lieutenant Barry Bunting of the Randolph County Sheriff's Office (RCSO), and Bunting's initial observations at the crime scene. He identifies the crime scene photographer and sets forth his observations of the crime scene based on those photographs and other information contained in law enforcement reports :

- Deputy Catha Wright, of the Randolph County Sheriff's Office, took crime scene photos. The victim was wearing camouflage pants, black boots and was shirtless. A semi-automatic, 45 caliber handgun was found lying between his feet under his left leg. Subsequent investigation revealed that there was one spent round still chambered in the weapon and another round jammed in the receiver. Eleven live .45-caliber rounds were located beside the victim's left hip and a red pouch that held additional .45-caliber ammunition was located along side the body. A handgun magazine loaded with live .45-caliber rounds was located about three or four feet from the victim's head. She testified that the victim's black T-shirt was found near the body, with a rock on top of it, and that there were two expended shotgun shells nearby.
- There were a total of five spent shotgun shells and a number of unspent shotgun shells recovered at the scene. Deputy Wright also identified a crime scene photograph

depicting a small nylon black holster that was near some of the shotgun shells, about 13 feet from the victim's head. A gym bag was located approximately three feet to the left of the victim's body. A knife, apparently stained with blood, was lying on top of that gym bag. Investigators located a smaller gym bag inside the larger gym bag. The victim had a pager on his belt and a hat and flashlight were located underneath the victim's left side. A camouflage facemask and an envelope containing two keys were found in the pocket of the victim's fatigue pants. A water-proof plastic canister containing approximately \$1,944.00 dollars was located with the victim's body.

McCrary then provides a description of Gailey's wounds and the findings of the Chief Medical Examiner, Dr. John D. Butts. He notes Butts' testimony that the wound to Gailey's knee contained birdshot, fired from several yards away, and that the shoulder wound suffered by Gailey was caused by buckshot from approximately one foot away. He also notes Butts' conclusion that Gailey would have lost consciousness within minutes, with death following "relatively quickly."

McCrary also notes that Barium, Antimony and lead were detected on Gailey's hands.

Section II: Prosecution's Hypothesis

McCrary summarizes the prosecution's theory of the case, based primarily on the testimony of Vanessa Smith.

Section III: Testing the Prosecution's Hypothesis

McCrary states that "any reliable hypothesis has to account for, and be tested against, the following facts:"

- The .45-caliber handgun was jammed with a spent casing in the chamber
- There were 11 loose .45-caliber rounds on the ground near the body
- There were additional live .45-caliber rounds in an ammo pouch near the body
- A magazine with live .45-caliber ammunition was found a few feet from the victim's head
- There were no .45-caliber shell casings other than the one spent casing jammed in the handgun
- A holster was found 13 feet from the victim's head
- There were five spent shotgun shells and a number of unspent shotgun shells strewn about the crime scene

- A blood-stained knife was found sitting atop the victim's gym bag
- The victim had no knife wounds
- The victim's shirt was found on a rock with another rock on top of it
- The victim's shirt had no blood or other defects
- There was a plastic canister with \$1,944.05 in cash found at the scene
- There was suspiciously little blood at the scene, especially since the medical examiner found little or no blood in the victim's body

From these facts, McCrary concludes that:

- Vanessa Smith's scenario that the group composed of Gailey, Smith and Allen were on their way to retrieve guns to sell to get cocaine was not credible, because they already possessed cocaine and cash
- The prosecution's theory totally ignores victimology, including the fact that Gailey was a drug dealer, that his former compatriot, Dustin Maness, was reportedly in the woods that night, and that Maness had recently brought assault charges against Gailey
- Smith's story that she heard Gailey's handgun fired repeatedly hours later, as she and Allen were leaving the scene, is "unfathomable," because it is not medically possible and there were no additional spent .45-caliber shells at the crime scene
- The crime scene does not fit the prosecution theory that the shooting occurred while Gailey, Smith and Allen were walking down the path, given Gailey's shirt draped over the rock and held down by another, smaller rock, the loose rounds spilled on the ground, and the location of the holster and magazine found at the scene. It is clear that Gailey drew his weapon and fired in the course of a struggle

Section IV: An Alternative Hypothesis

McCrary describes what he thinks the crime scene evidence means, along with some comments and conclusions about law enforcement's investigation:

- The totality of the evidence points to a confrontation that resulted in a gunfight, not an execution-style killing
- The evidence indicates that a shotgun or shotguns were fired multiple times
- In the course of the gunfight, Gailey was able to draw and fire his handgun

- The spilled shotgun shells indicate that the shooter or shooters attempted to reload in the course of the fight
- The fact that there were five spent shotgun shells at the scene, and only two wounds on the victim, indicate a "moving gunfight"
- The absence of blood in the body and at the crime scene signal the possibility that the victim was assaulted and bled out elsewhere
- The prosecution's theory fails to account for the fact that a shotgun was found in Robbie Johnson's bedroom
- The five spent shotgun shells found at the scene were never tested to determine if they matched the shotgun found in Johnson's bedroom, or if they were all fired by the same weapon
- The blood-stained knife also suggests a confrontation, yet no tests were performed by law enforcement to type the blood, to determine if it were human, or to attempt to identify the source
- Rain following the shooting explains the minimal amount of gun residue on Gailey's hands
- The affidavits of Dolly Ponds and Troy Spencer make clear that Smith had a proclivity for exploiting people and relationships, and using situations for revenge and self-gratification, as evidenced by Smith's inculpatory statements to Spencer and her behavior while incarcerated
- The evidence suggests Smith had several motives for killing Gailey and blaming Allen: she wanted the cocaine and cash Gailey was carrying, and wanted to get back at Allen for spending her money and running off with another woman
- The investigation of this crime was inadequate and insufficient: 1) it did not address the victimology suggested by the facts, 2) the spent shotgun shells were not tested against the only shotgun recovered in the investigation, 3) the shotgun shells - spent or live - were not examined for finger prints, 4) the victim's pager was not forensically examined and no call records were retrieved, 5) the knife and blood on the knife were virtually ignored, and 6) the record does not show any canvass of local hospitals or primary care facilities for knife wound or gunshot victims

Section V: Conclusions

Agent McCrary concludes as follows:

- The evidence points to a running gunfight and not the execution-style murder portrayed by the prosecution
- The evidence contradicts Smith's story and discredits her as a witness
- Smith's various statements are inconsistent and further discredit her as a witness
- Smith's motives for coming forward are dubious, and likely based on her manipulative and vengeful character
- The evidence overall raises "legitimate questions" as to Allen's guilt

Please let me know if you have questions regarding the above summary. I do not have any additional information about scheduling at this time, but am working on it. I am informed by the Assistant Attorney General assigned to your case that an answer to the first MAR has been prepared, but will have to be amended based on our recent filing. The Court has not yet responded to my request for a hearing.

Sincerely,

UNTI & SMITH, PLLC



Michael L. Unti

cc: Margaret C. Lumsden, Esq.