WAYNE COUNTY PROSECUTOR
KYM L. WORTHY

Rule 3.6 Trial Publicity

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter

As prosecutors we do not try our cases in the media. Our statements are governed by our professional rules of conduct and the interests of justice for our community. It is our duty to follow the evidence and argue that evidence in court.

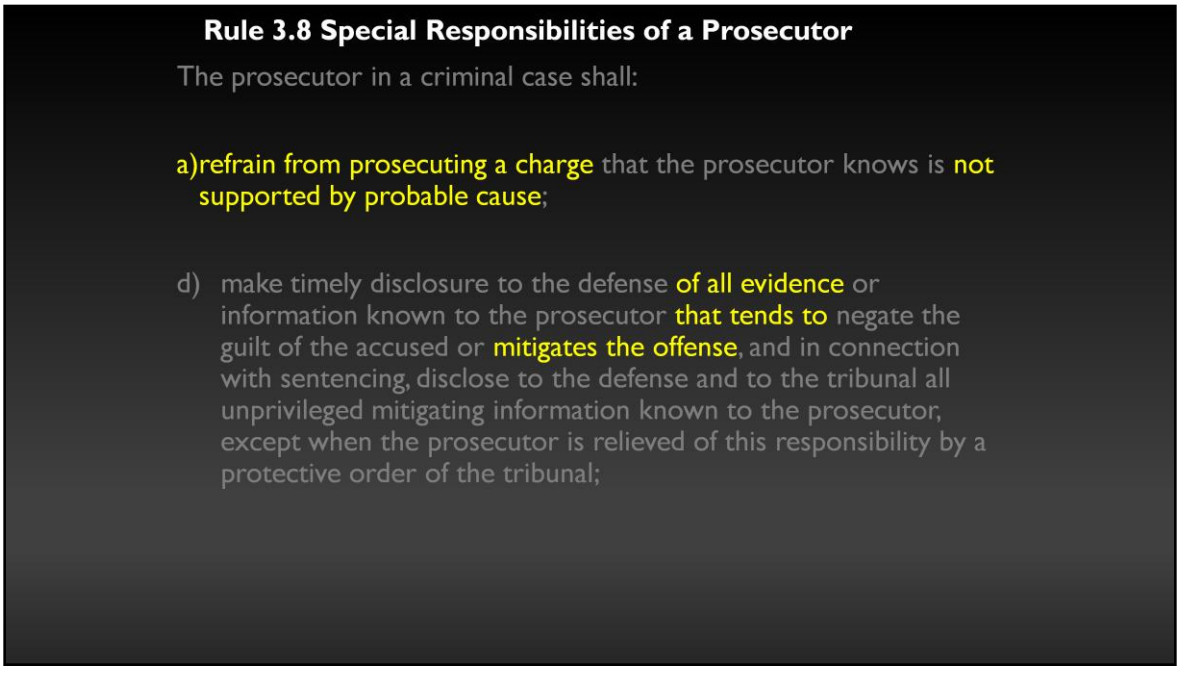
Rule 3.8 Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

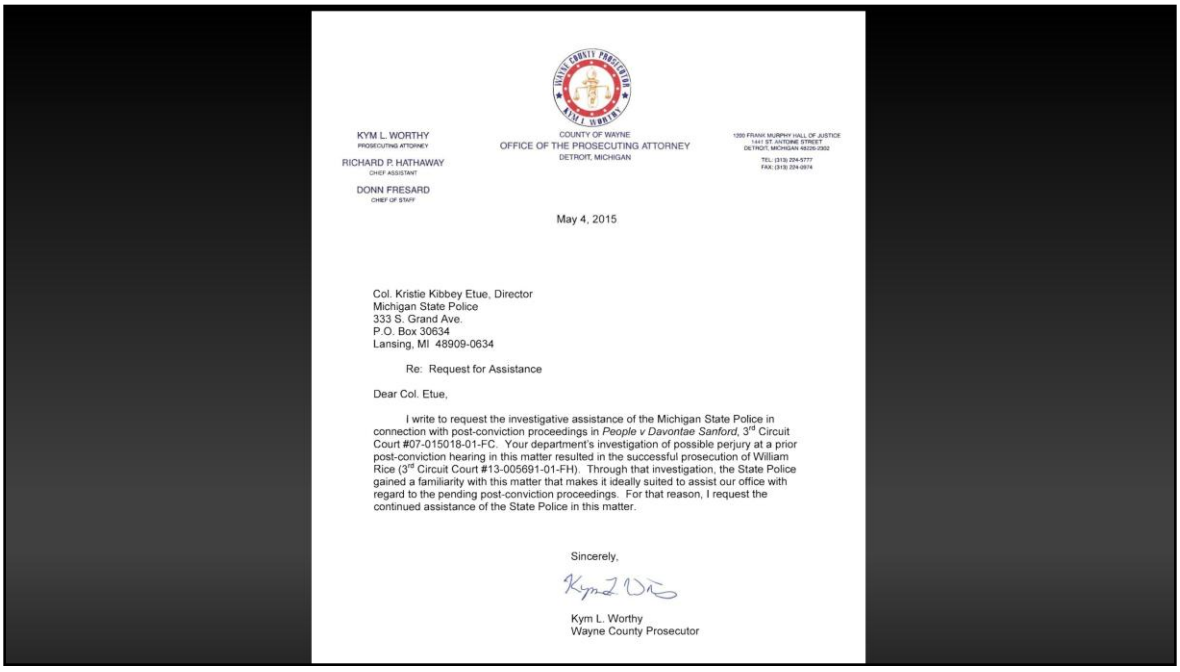
a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

Prosecutor has a duty to the community when evidence comes to light that calls a conviction into question to disclose and investigate that evidence.



WCPO received information on 5/20/16 that called into question the murder conviction of Davontae Sanford. The evidence was the culmination of an investigation by the MSP and was promptly turned over to the defense.



KYM L. WORTHY
PROSECUTING ATTORNEY

RICHARD P. HATHAWAY
CHIEF ASSISTANT

DONN FRESARD
CHIEF OF STAFF

COUNTY OF WAYNE
OFFICE OF THE PROSECUTING ATTORNEY
DETROIT, MICHIGAN

1200 FRANK MURPHY HALL OF JUSTICE
1441 ST. ANTOINE STREET
DETROIT, MICHIGAN 48226-2302

TEL: (313) 224-5777
FAX: (313) 224-0974

May 4, 2015

Col. Kristie Kibbey Etue, Director
Michigan State Police
333 S. Grand Ave.
P.O. Box 30634
Lansing, MI 48909-0634

Re: Request for Assistance

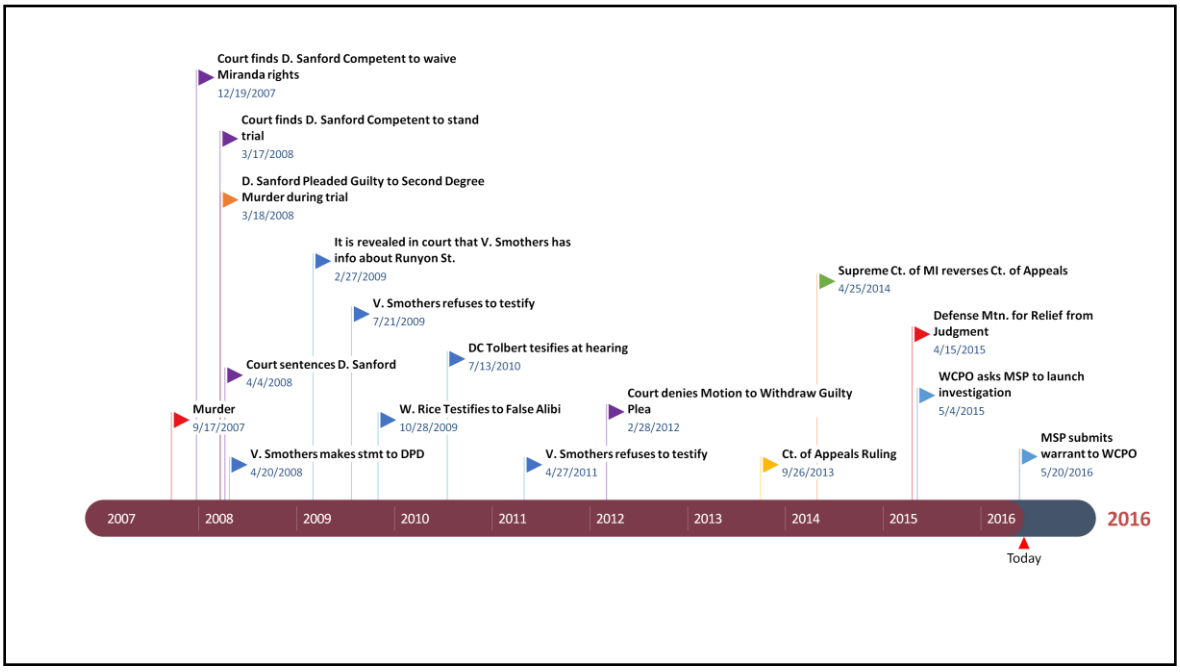
Dear Col. Etue,

I write to request the investigative assistance of the Michigan State Police in connection with post-conviction proceedings in *People v Davontae Sanford*, 3rd Circuit Court #07-015018-01-FC. Your department's investigation of possible perjury at a prior post-conviction hearing in this matter resulted in the successful prosecution of William Rice (3rd Circuit Court #13-005691-01-FH). Through that investigation, the State Police gained a familiarity with this matter that makes it ideally suited to assist our office with regard to the pending post-conviction proceedings. For that reason, I request the continued assistance of the State Police in this matter.

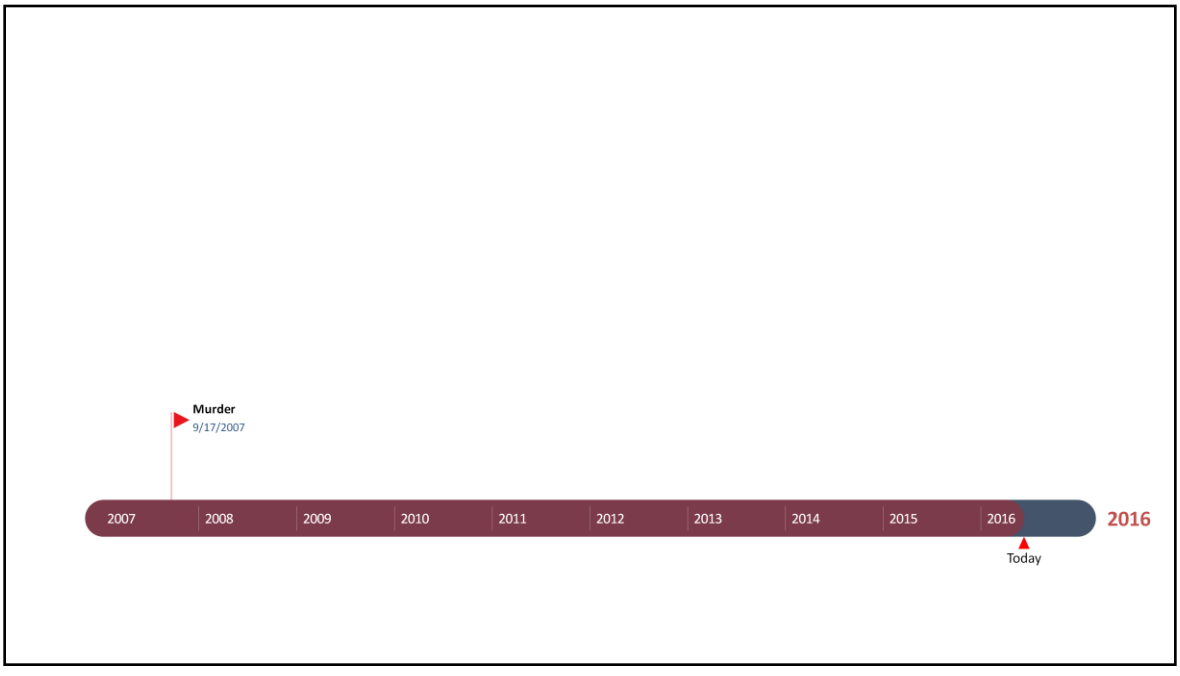
Sincerely,

Kym L. Worthy
Wayne County Prosecutor

On May 4, 2015 I requested that MSP undertake an investigation into the Davontae Sanford case. My request came after years of post-conviction hearings and appeals.



This case began in 2007 and has been litigated almost continuously since.
I am going to walk you through the timeline to show how this case unfolded, and show how the new information from MSP led to the conclude that the interests of justice required that Davontae Sanford's convictions be set aside.



Throughout the years, the press articles, and court filings it is important to remember that this case is about the murder of four human beings in September of 2007.
4 people were shot to death, one survived multiple gunshot wounds, and a child escaped the shootings unscathed.

19741 Runyon St. where 6 people were inside that night.

Brian Dixon

Died due to gunshot wounds

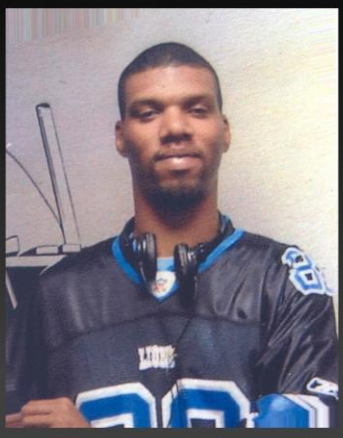
Michael Robinson

Died due to gunshot wounds

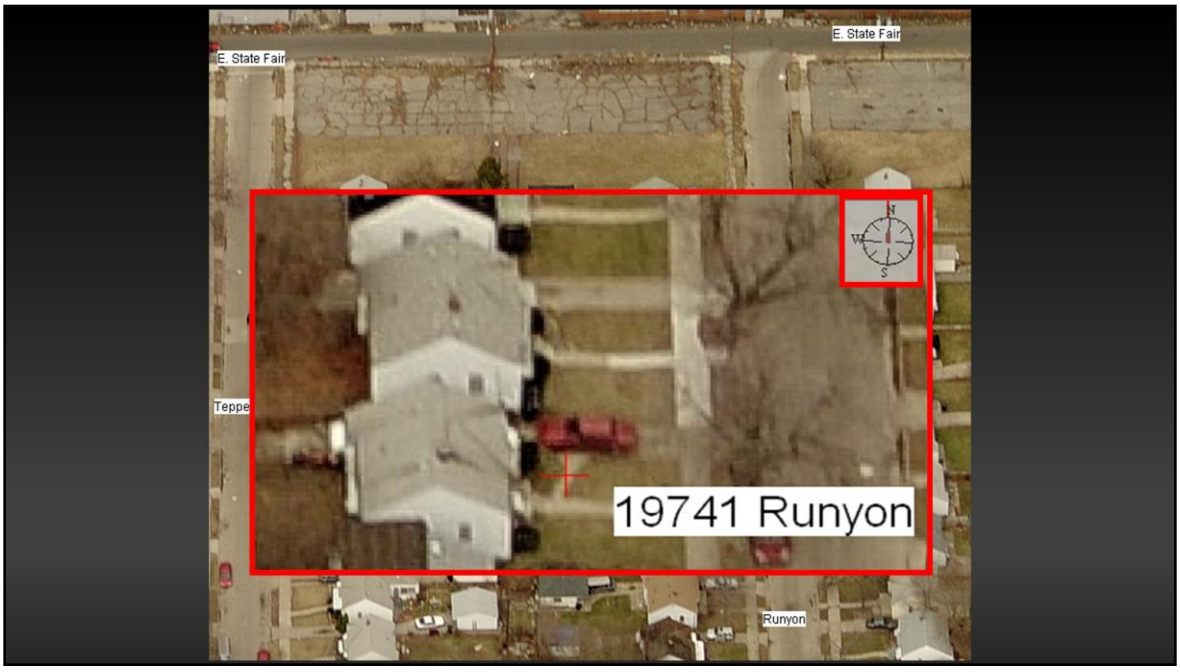
Nicole Chapman

Died due to gunshot wounds

D'Angelo McNoriell



Died due to gunshot wounds



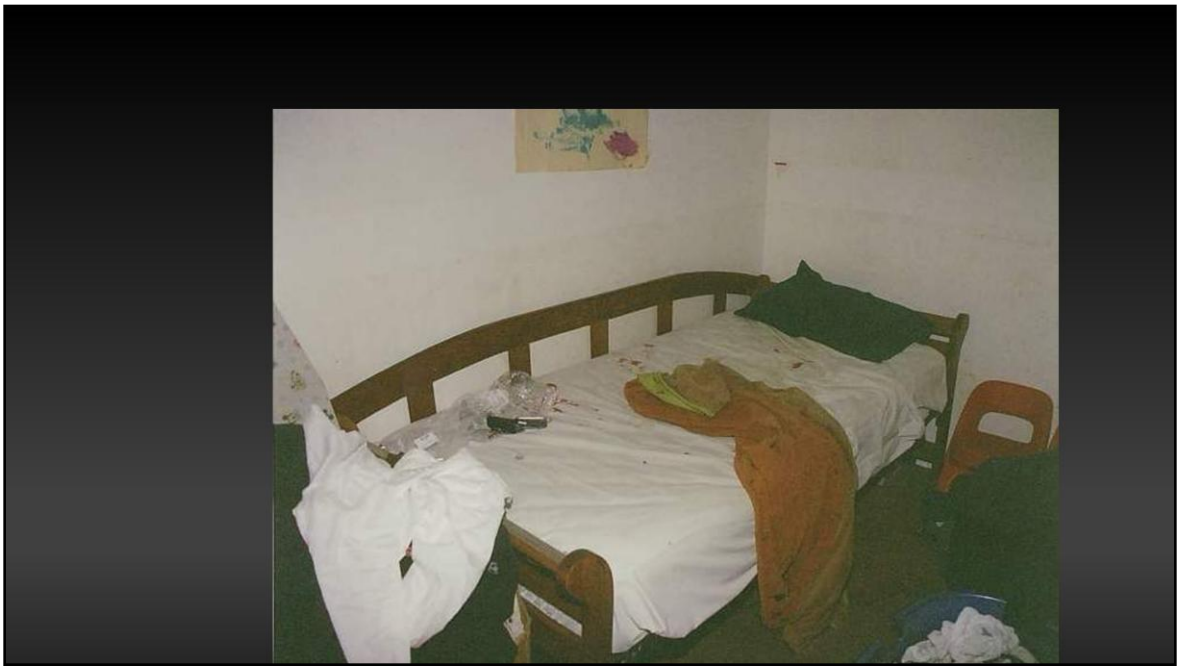
- These occurred on Runyon St. on the east side of Detroit.
- The evidence showed that at least two guns were fired from the outside of the house through the front door into the front room which was occupied by the adults who were in the house at the time.
- There was firearms evidence from at least one 7.62x39 rifle and a .45 handgun.

Shows fired casings on the front lawn of the address. The front porch is at the left side of this picture.

This is a picture of the car in the driveway that could be seen in the last picture. The corner of the house can be seen in the top right of this picture.

This is the security door of the house which shows bullet damage.

This is the front door showing damage by bullets going through the door. The shattered glass from the door can be seen on the floor.



This is the bed in the back bedroom. A fifth victim, a female, was hit five times. She ran from the front room into this bedroom. there was a the child who was sleeping in this room. She hid under the bed.

While she was hiding under the bed, she had a brief conversation with one of the assailants. He wanted to know where valuables were and she denied knowing. She would identify the voice of this person as Davontae Sanford's voice under oath at trial.

An off duty DPD chaplain lived down the street.
He heard the shots and saw figures running up Runyon in the direction of St. Fair.
The figures noticed him and shots were exchanged across Runyon.
The casings from the gun fired at the chaplain matched the casings at the scene of the murder.

These pictures show the damage to the Chaplain’s home from incoming fire.

DPD requested a dog to respond to the scene to track scent evidence.

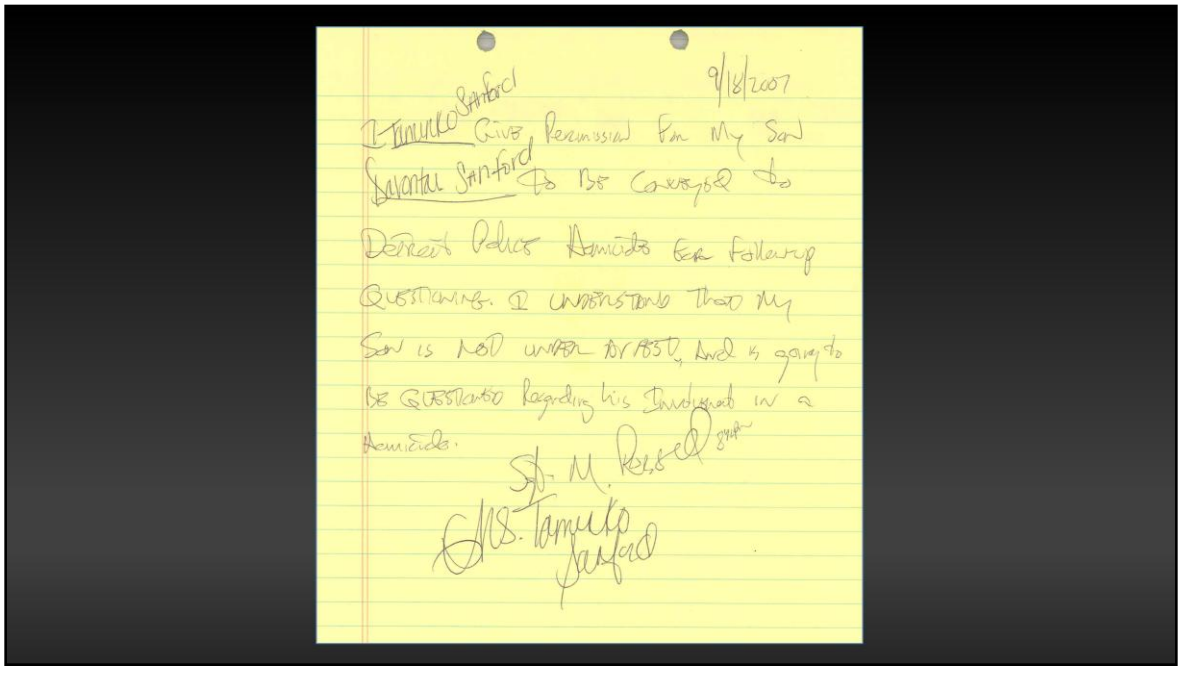
The Dog track picked up from the scene of the second shooting and tracked to Beeland street and lost the scent outside of 19700 Beeland, Davontae Sanford's home.

At the end of the dog track, was Davontae Sanford's house at 19700 Beeland St.

In the house were clothes that matched the description given by the surviving witness.
The pants tested positive for Gunshot Residue, a test used at the time.

Guardian's Consent

The night of the murder, Mr. Sanford approached police and asked what they were investigating.
Based on the ensuing conversation with Mr. Sanford, police determined that they would like to speak with Mr. Sanford at the station.



9/18/2007

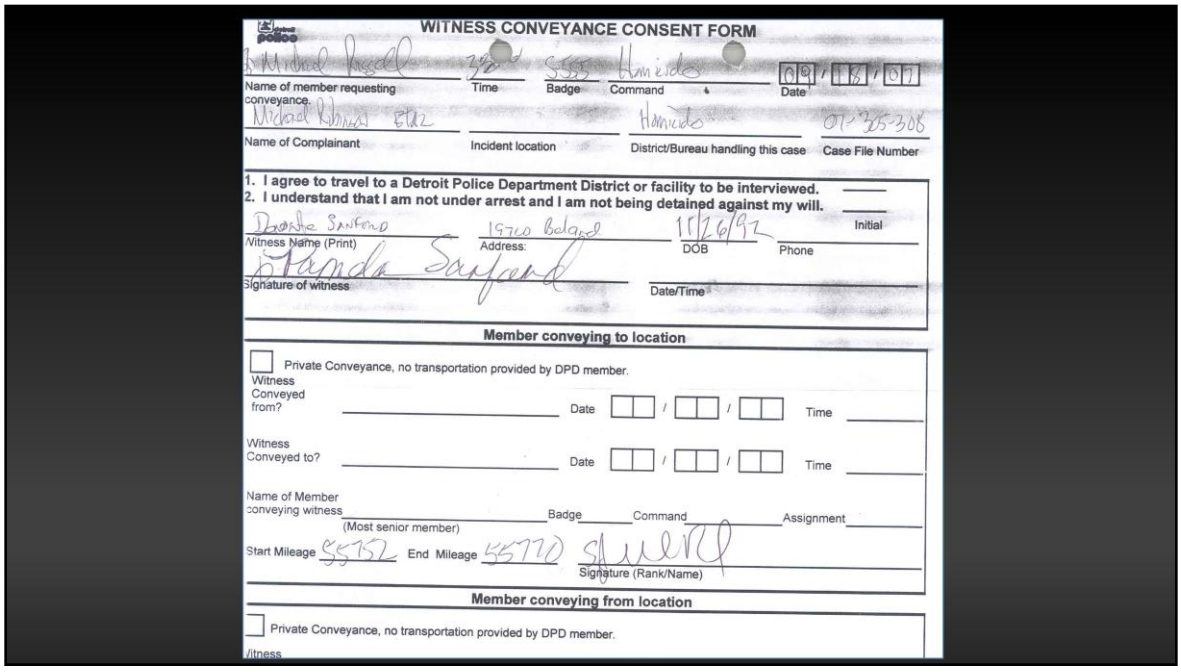
I Tamiko Sanford Give Permission For My Son Davontal Sanford To Be Conveyed to Detroit Police Homicide For Followup Questioning. I Understand That My Son is Not Under Arrest, And is going to Be Questioned Regarding his Involvement in a Homicide.

Sgt. M. Russell

Ms. Tamiko Sanford

Sgt. Russell went to Mr. Sanford's house and spoke with Ms. Tamiko Sanford.
He did not have a standard DPD consent form, so he wrote out a consent on a sheet of paper and Ms. Sanford signed it.

Mr. Sanford then was taken to police headquarters, read his rights even though he was not under arrest, spoke to police, and was returned home.



WITNESS CONVEYANCE CONSENT FORM

Name of member requesting conveyance | Time | Badge | Command | Date

Name of Complainant | Incident location | District/Bureau handling this case | Case File Number

1. I agree to travel to a Detroit Police Department District or facility to be interviewed. ____
2. I understand that I am not under arrest and I am not being detained against my will. ____

Witness Name (Print) | Address | DOB | Phone | Initial

Signature of witness | Date/Time

Member conveying to location

☐ Private Conveyance, no transportation provided by DPD member.

Witness Conveyed from? | Date | Time

Witness Conveyed to? | Date | Time

Name of Member conveying witness (Most senior member) | Badge | Command | Assignment

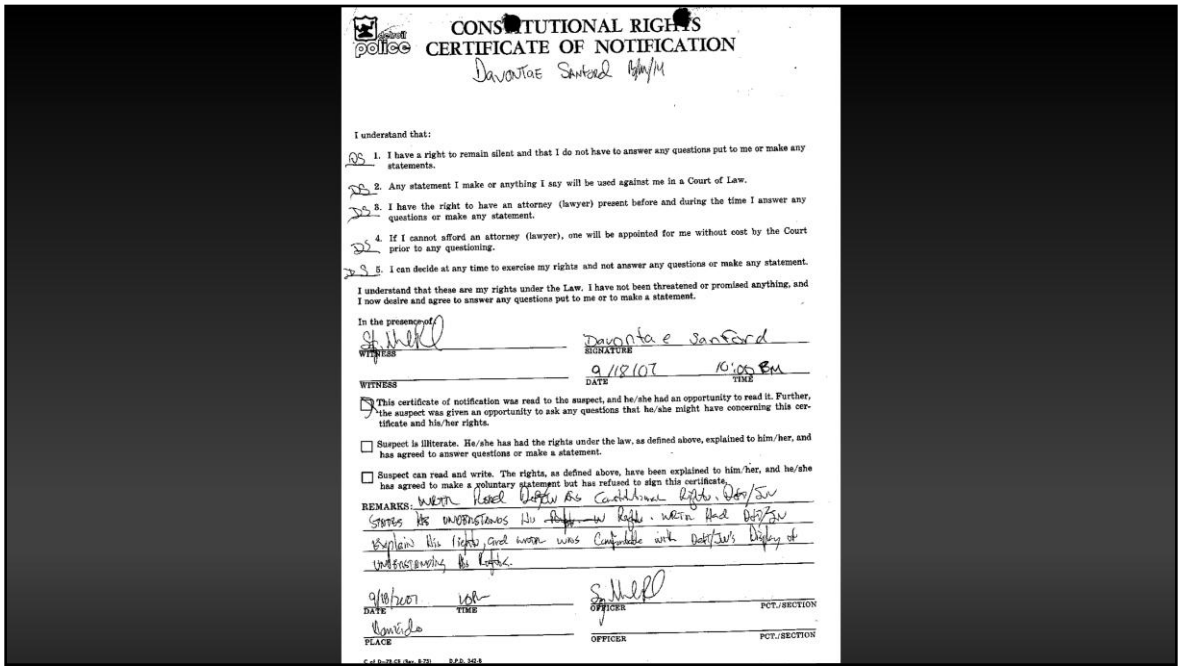
Start Mileage | End Mileage | Signature (Rank/Name)

Member conveying from location

☐ Private Conveyance, no transportation provided by DPD member.

Witness

The detectives went back to Mr. Sanford's house later that day and again received consent from an adult, to convey Mr. Sanford to the police station.



police

CONSTITUTIONAL RIGHTS
CERTIFICATE OF NOTIFICATION

Davontae Sanford B/M/M

I understand that:

DS 1. I have a right to remain silent and that I do not have to answer any questions put to me or make any statements.

DS 2. Any statement I make or anything I say will be used against me in a Court of Law.

DS 3. I have the right to have an attorney (lawyer) present before and during the time I answer any questions or make any statement.

DS 4. If I cannot afford an attorney (lawyer), one will be appointed for me without cost by the Court prior to any questioning.

DS 5. I can decide at any time to exercise my rights and not answer any questions or make any statement.

I understand that these are my rights under the Law. I have not been threatened or promised anything, and I now desire and agree to answer any questions put to me or to make a statement.

In the presence of:

WITNESS: [signature] SIGNATURE: Davontae Sanford

WITNESS: DATE: 9/18/07 TIME: 10:05 PM

☒ This certificate of notification was read to the suspect, and he/she had an opportunity to read it. Further, the suspect was given an opportunity to ask any questions that he/she might have concerning this certificate and his/her rights.

☐ Suspect is illiterate. He/she has had the rights under the law, as defined above, explained to him/her, and has agreed to answer questions or make a statement.

☐ Suspect can read and write. The rights, as defined above, have been explained to him/her, and he/she has agreed to make a voluntary statement but has refused to sign this certificate.

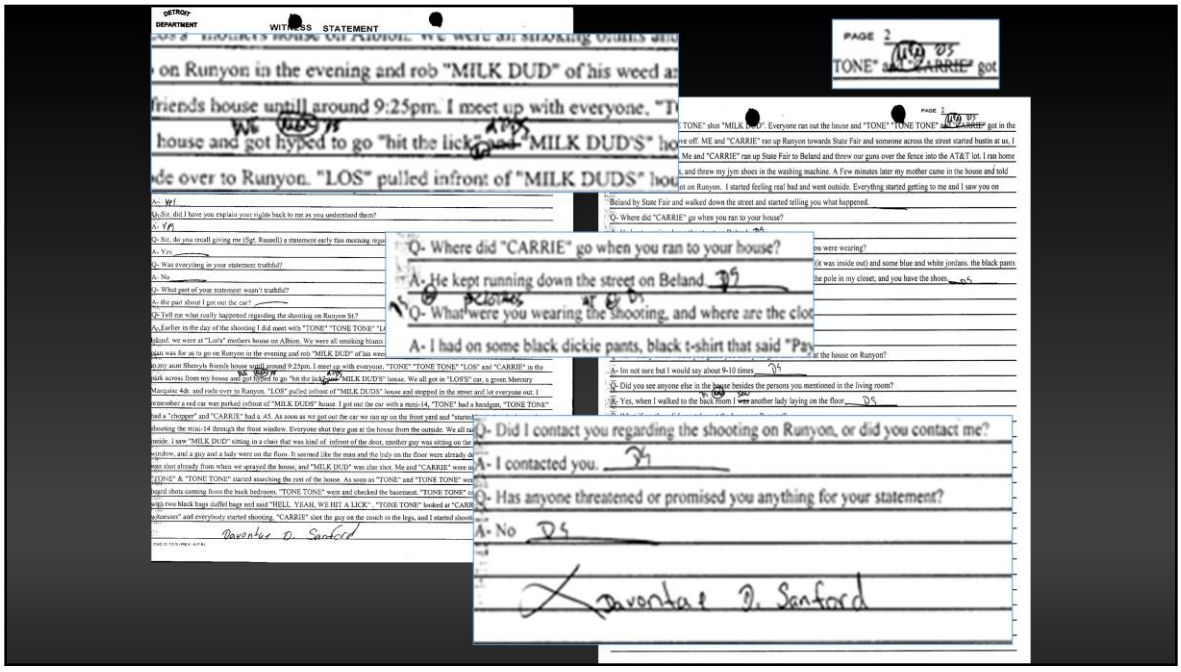
REMARKS: WRITTEN Read Defn/JW as Constitutional Rights. Def/JW STATES HE UNDERSTANDS HIS ~~Rights~~ W Rights. WRITTEN Had Def/JW Explain His rights, and WRITTEN was Comfortable with Def/JW's Display of Understanding His Rights.

DATE: 9/18/2007 TIME: 10PM OFFICER: [signature] PCT./SECTION

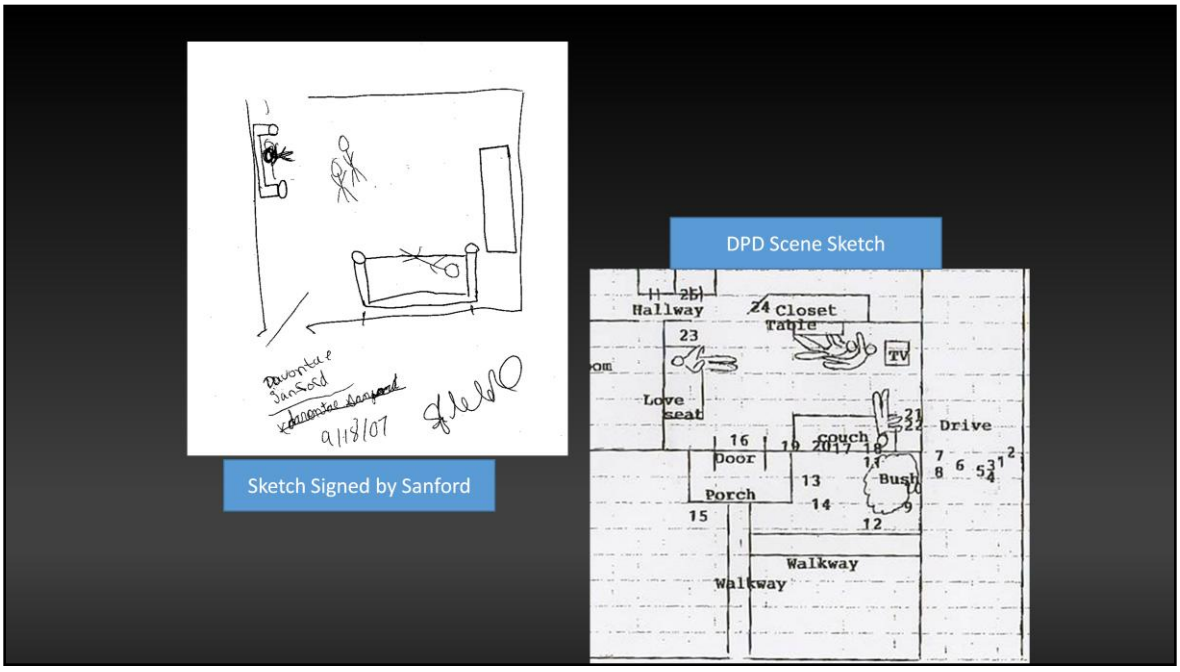
PLACE: Homicide OFFICER: PCT./SECTION

C of D-73 CS (Rev. 8-73) D.P.D. 342-8

Mr. Sanford was read his rights. Indicated that he understood each of them.



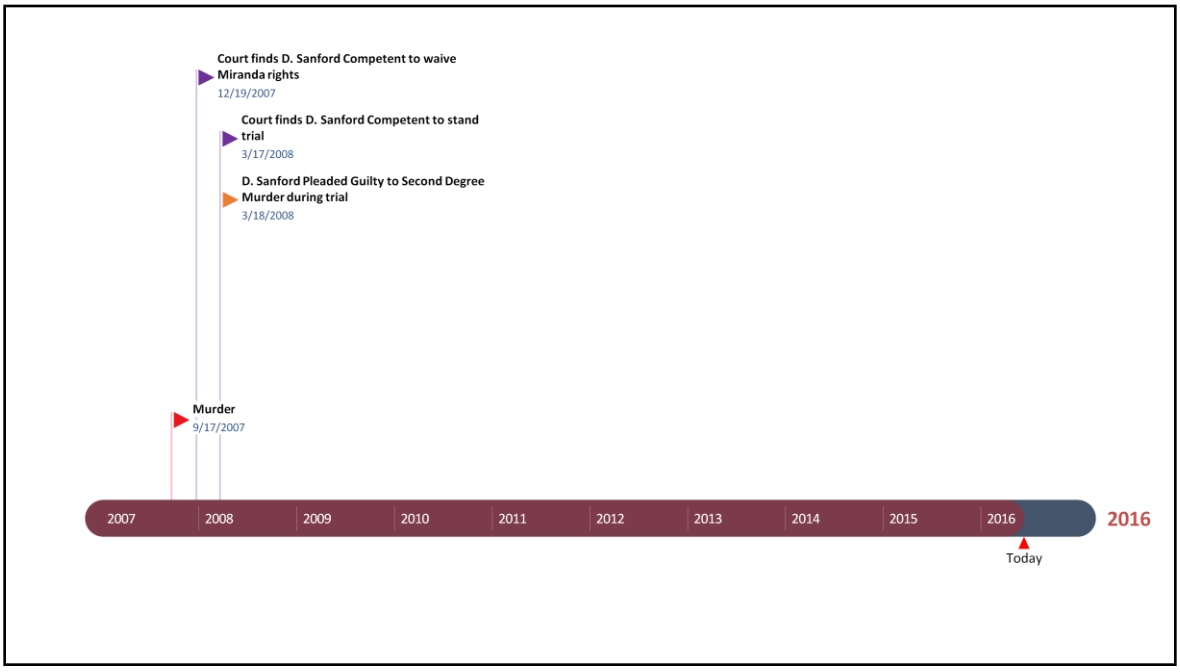
- Mr. Sanford gave a statement which was typed up.
- The detective testified to intentionally making mistakes in the typing as a check to see if Mr. Sanford then read the statement.
- The detective brought the typed statement and Mr. Sanford read it and made corrections that he then initialed.
- Mr. Sanford confesses to participating in the murders in this statement.



At the same time as giving the statement, a sketch was drawn of the crime scene, which included the location of the bodies and couches.

Information that was contained in Mr. Sanford's sketch would only be known to someone who had viewed the crime scene.

You can see the similarities with the DPD Crime Scene Sketch which was not available to investigators at the time that Mr. Sanford was making his statement, because DPD evidence techs were still drawing it.

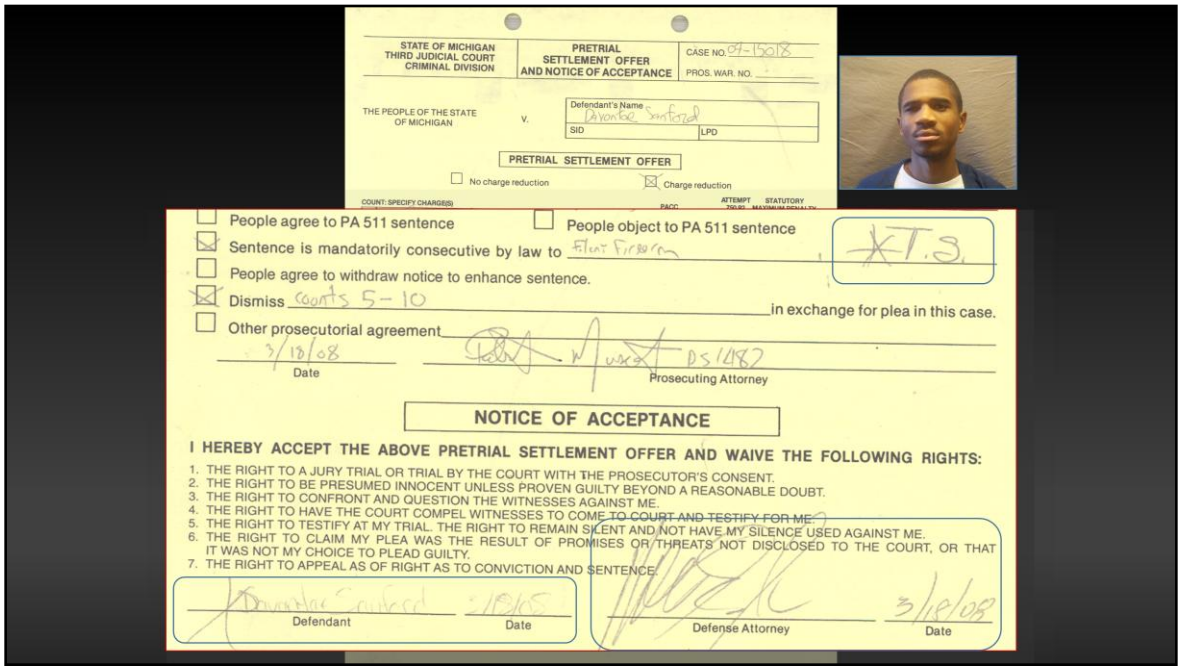


- Mr. Sanford was examined by the Michigan Forensic Center.

- The Court found Mr. Sanford
  - Competent to Waive his Miranda Rights, and
  - Competent to Stand Trial.

- Mr. Sanford went to trial and on the second day of trial pleaded guilty.

Plea under oath



STATE OF MICHIGAN
THIRD JUDICIAL COURT
CRIMINAL DIVISION

PRETRIAL SETTLEMENT OFFER AND NOTICE OF ACCEPTANCE

CASE NO. 09-15018
PROS. WAR. NO.

THE PEOPLE OF THE STATE OF MICHIGAN v. Defendant's Name Davonte Sanford
SID LPD

PRETRIAL SETTLEMENT OFFER

☐ No charge reduction ☒ Charge reduction

COUNT: SPECIFY CHARGE(S) PACC ATTEMPT 750.92 STATUTORY MAXIMUM PENALTY

☐ People agree to PA 511 sentence ☐ People object to PA 511 sentence

☒ Sentence is mandatorily consecutive by law to Felony Firearm

☐ People agree to withdraw notice to enhance sentence.

☒ Dismiss Counts 5-10 in exchange for plea in this case.

☐ Other prosecutorial agreement

3/18/08 Date

DS 1482 Prosecuting Attorney

NOTICE OF ACCEPTANCE

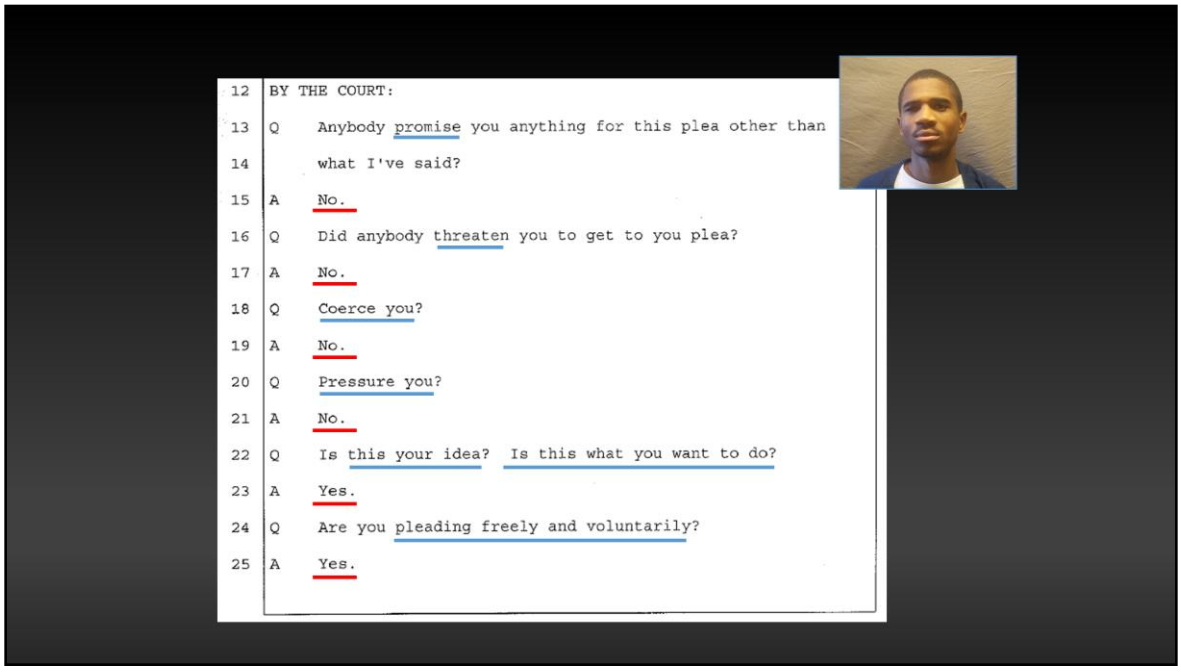
I HEREBY ACCEPT THE ABOVE PRETRIAL SETTLEMENT OFFER AND WAIVE THE FOLLOWING RIGHTS:

1. THE RIGHT TO A JURY TRIAL OR TRIAL BY THE COURT WITH THE PROSECUTOR'S CONSENT.
2. THE RIGHT TO BE PRESUMED INNOCENT UNLESS PROVEN GUILTY BEYOND A REASONABLE DOUBT.
3. THE RIGHT TO CONFRONT AND QUESTION THE WITNESSES AGAINST ME.
4. THE RIGHT TO HAVE THE COURT COMPEL WITNESSES TO COME TO COURT AND TESTIFY FOR ME.
5. THE RIGHT TO TESTIFY AT MY TRIAL. THE RIGHT TO REMAIN SILENT AND NOT HAVE MY SILENCE USED AGAINST ME.
6. THE RIGHT TO CLAIM MY PLEA WAS THE RESULT OF PROMISES OR THREATS NOT DISCLOSED TO THE COURT, OR THAT IT WAS NOT MY CHOICE TO PLEAD GUILTY.
7. THE RIGHT TO APPEAL AS OF RIGHT AS TO CONVICTION AND SENTENCE.

Davonte Sanford Defendant 3/18/08 Date

Defense Attorney 3/18/08 Date

Plea signed after video of his confession was played in court and his sketch was admitted.
The plea form was signed by Defendant, Defendant's attorney, and initialed by Defendant's mother.
After meeting with the four victims' families in the jury room with the trial prosecutor.


BY THE COURT:
Q Anybody promise you anything for this plea other than what I've said?
A No.
Q Did anybody threaten you to get to you plea?
A No.
Q Coerce you?
A No.
Q Pressure you?
A No.
Q Is this your idea? Is this what you want to do?
A Yes.
Q Are you pleading freely and voluntarily?
A Yes.

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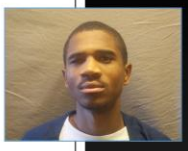
Q Knowingly and intelligently?
A Yes.
Q And you understand the consequences of this plea?
A Yes.
Q And it's your idea?
A Yes.
Q And just so the record is clear, I let you talk to your mother and other relatives, whoever you designated to talk to here in court; is that right?
A Yes.
Q And we've taken breaks every time it's been requested of me, to accommodate your ability to talk to whoever you want for as long as you want; is that right?
A Yes.
Q Did you get an adequate and reasonable time to talk to everybody you wanted to?
A Yes.



BY THE COURT:

Q On September 17, 2007, did you go to 19741 Runyon street in the City of Detroit, County of Wayne, State of Michigan?

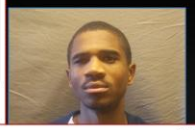
A Yes.

Q With other indi

A Yes.

Q And you had a g

A Yes.



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Q What kind of gun did you have?

A Mini 14.

Q Mini 14. Is that what you called it?

A Yes.

Q And that a, it's bigger than a handgun, but smaller than a rifle?

A Yes.

Q And it was loaded with live bullets?

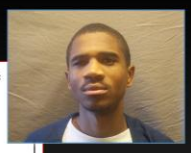
A Yes.

Q Real bullets, a real gun, right?

A Yes.

Q And you shot into the house with others?

A Yes.



Q And you killed by shooting, you, or the others you were with, in shooting into the house killed Michael Robinson, Dangelo McNoriell, Nicole Chapman and Brian Dixon; is that right?

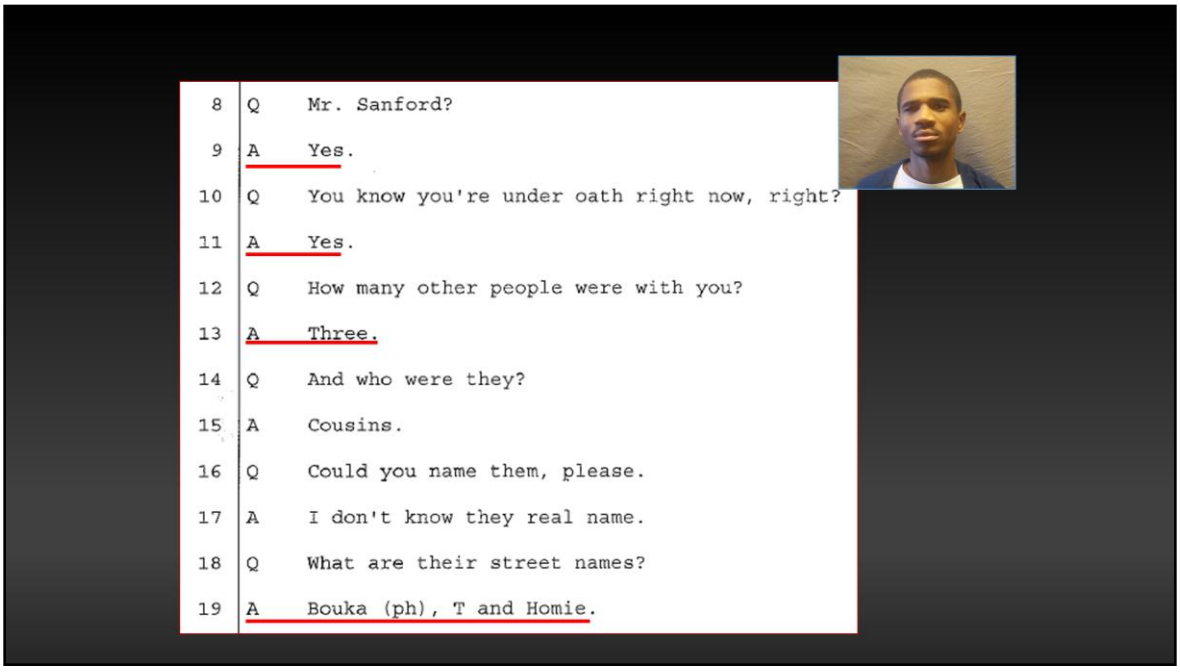
A Yes.

Q And those bullets that were shot from you and the other persons that you were with took their lives; is that right?

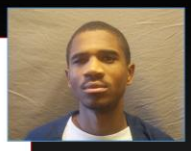
A Yes.

Q And you then went in the house and then more shots were fired; is that right?

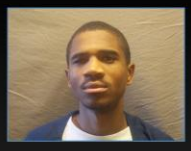
A Yes.



Same three names as D later used on prison call with his step-father on may 28, 2008 where Mr. Sanford identifies who was and was not involved in the Runyon shooting.



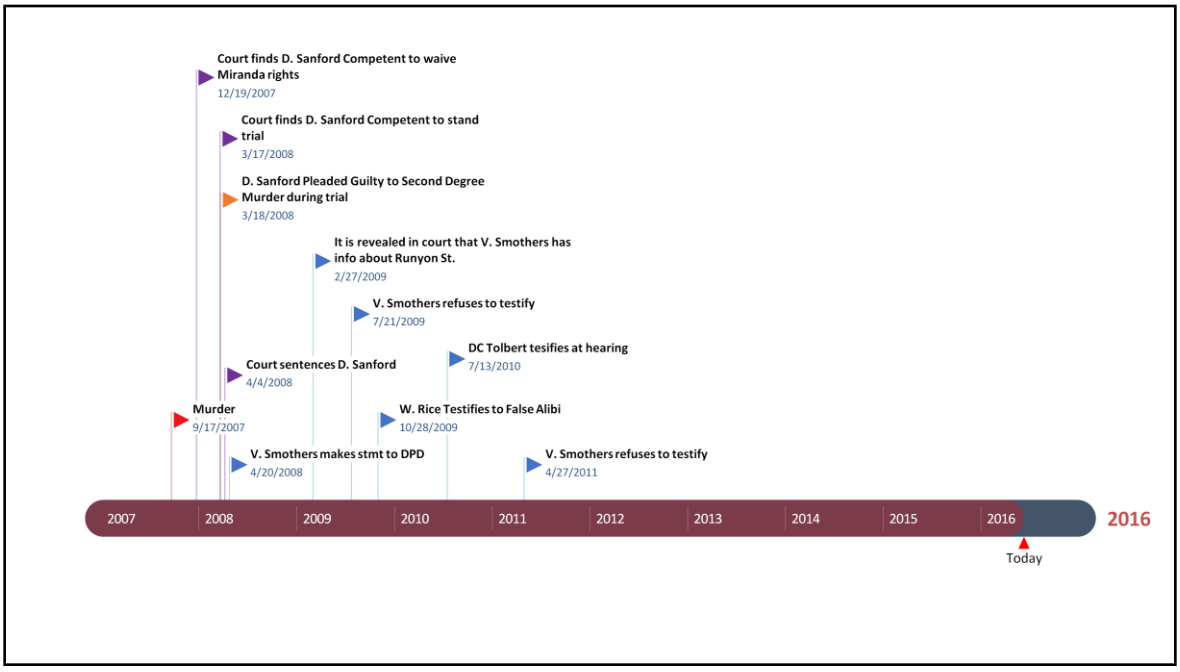
4	Q	And did either of those three individuals have guns?
5	A	Yes.
6	Q	Do you know what kind of guns they had?
7	A	No.
8	Q	Handguns, long guns?
9	A	Oh. Handgun and long guns.
10	Q	Who had a handgun and who had a long gun?
11	A	Bug had a long gun, T had handgun.
12	Q	Do you know what kind of handguns?
13	A	No.
14	Q	You don't know what the caliber was?
15	A	No.
16	Q	Do you know what kind of long gun it was?
17	A	Um, AK.



DPD, ATF, and independent examiners agree that an AK-47 type firearm used at Runyon St.

16	Q	Do you know what kind of long gun it was?
17	A	Um, AK.

- Davontae Sanford's identification of an AK-47, was corroborated by the physical evidence.
- Firearms evidence also became one of the causes for concern about this conviction.
  - Sanford confesses to using a Ruger Mini-14. A mini-14 typically fires a different type of ammunition, .223, none of which was found at either shooting site.
  - The ATF, independent examiner, and DPD labs did not agree as to whether all of the 7.62x39mm ammunition was fired from one firearm.
    - DPD determined all casings to be fired from one firearm.
    - ATF determined that there could have been one firearm may have been used

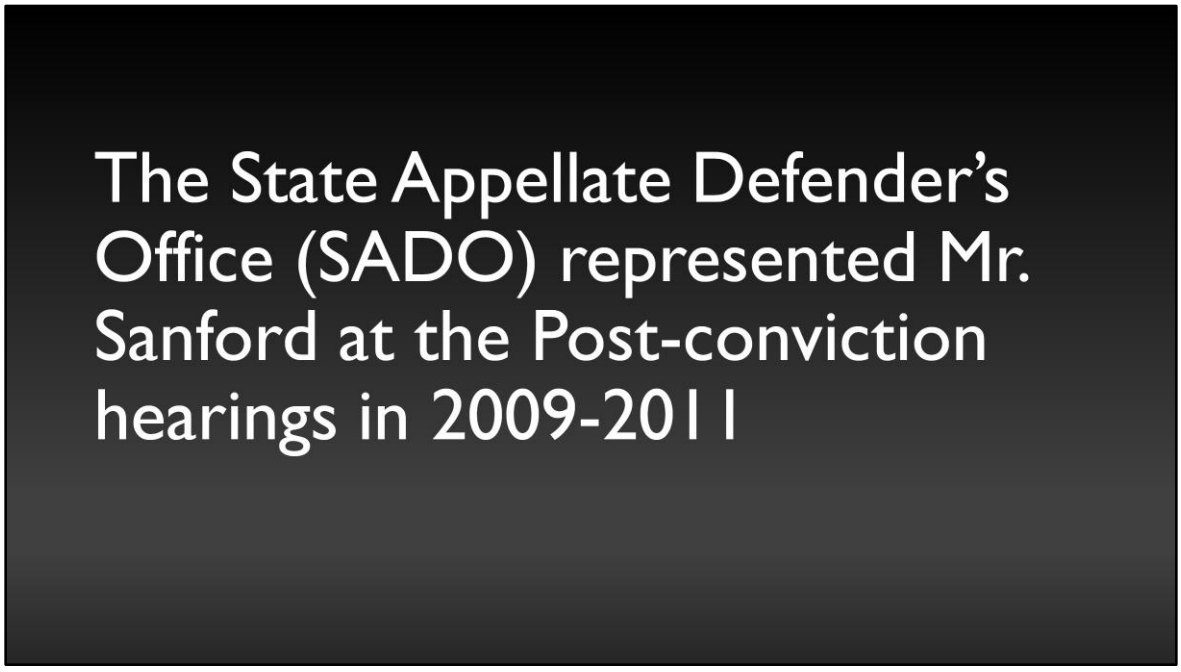


After the trial and plea, Mr. Sanford was sentenced and Post-conviction hearings began.

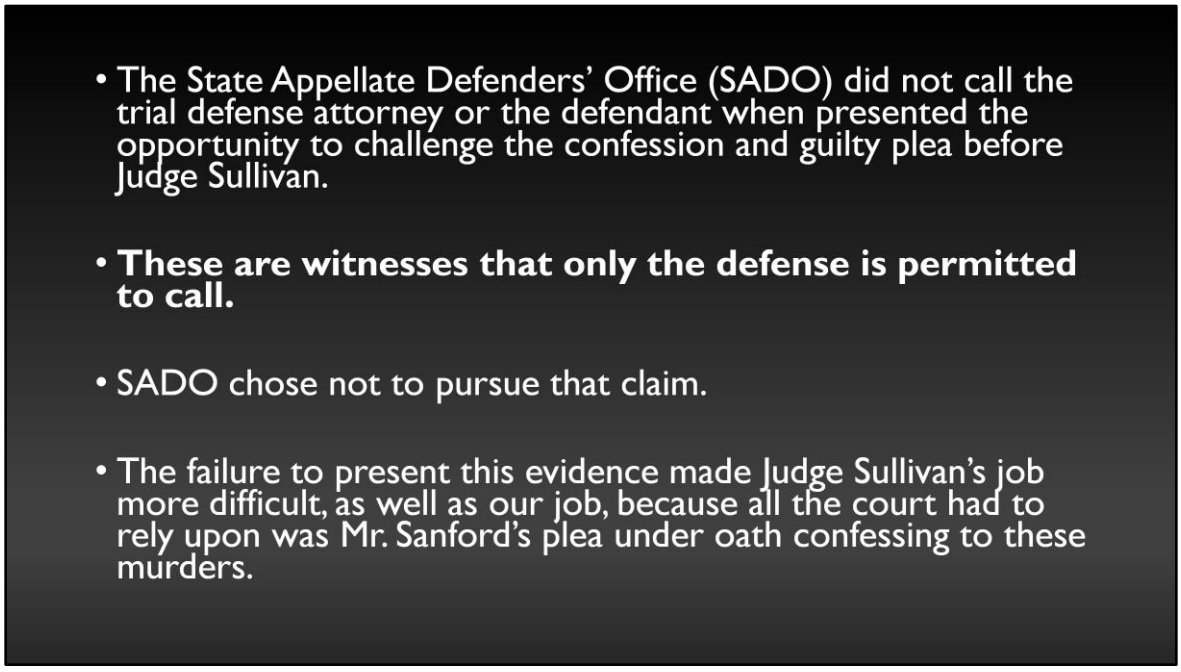
During two years of hearings before Judge Sullivan, Vincent Smothers was called to testify, twice. Both times he asserted his 5th Amendment right and refused to answer questions under oath.

Investigating officers, including Deputy Chief James Tolbert and Sgt. Michael Russell testified about taking Mr. Sanford's statement.

The defense also called witnesses.



Despite what has been said about ineffective counsel at trial, as a former judge, I am well aware that to a challenge of the guilty plea where the claim is actual innocence, the defendant and the trial attorney must testify to explain why the defendant chose to plead guilty and admit his guilt under oath. This was never done.



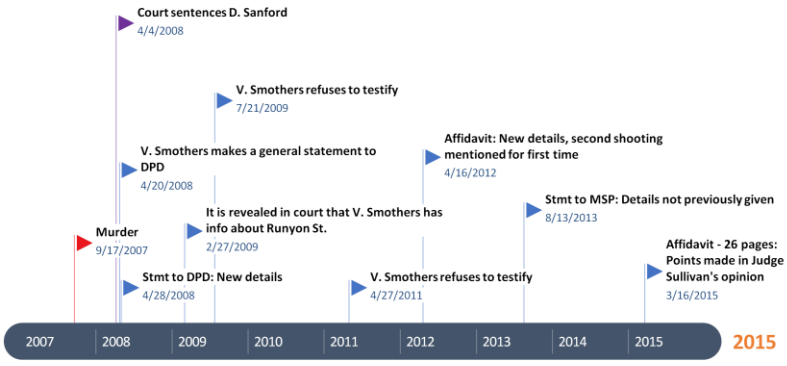
The State Appellate Defender's Office (SADO) did not call the trial defense attorney or the defendant when presented the opportunity to challenge the confession and guilty plea before Judge Sullivan.

These are witnesses that only the defense is permitted to call.

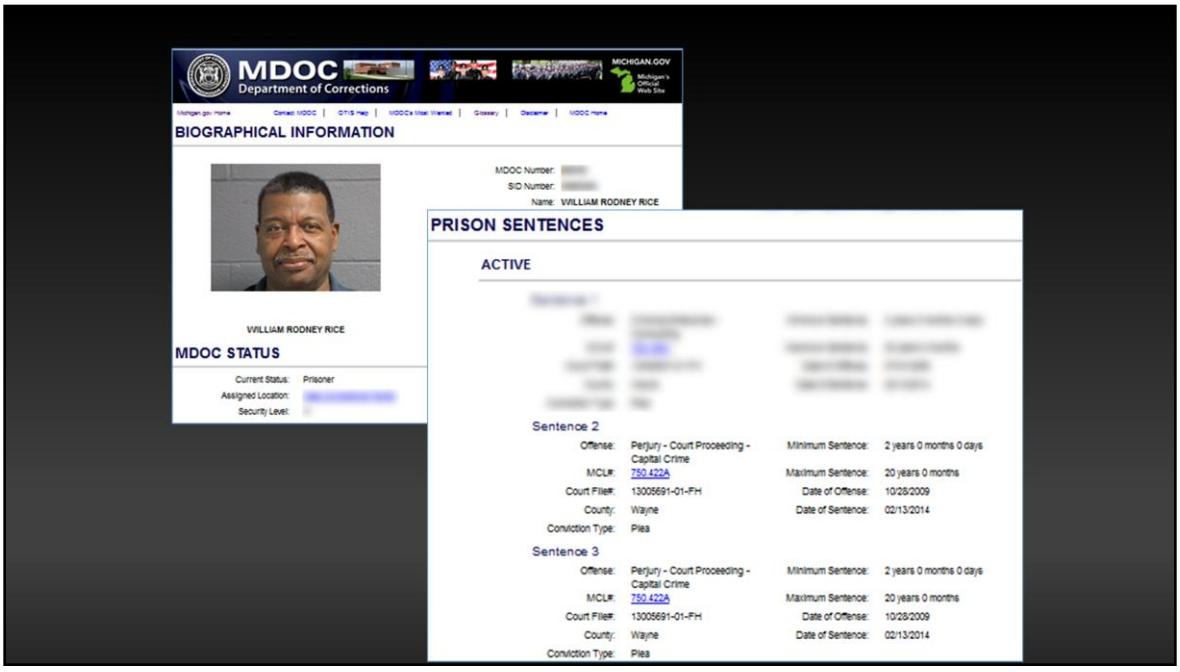
The failure to present this evidence made Judge Sullivan's job more difficult as well as our job, because all the court had to relay upon was Mr. Sanford's plea under oath confessing to these murders.

There has been some criticism regarding delays. Some of these delays were due to the firearms examinations.
•3/18/09 – The court ordered retesting of firearms evidence due to problems with the Detroit Police Crime lab.
•7/21/09 – Prosecutor informs the court that the ATF has completed their examination of firearms evidence; defense asks for appointment of David Balash to do an independent examination of firearms evidence.
•3/16/10 –Balash testifies about his findings as to firearms evidence.
•7/3/10 ATF firearms examiners Walter Dadridge testifies about his findings.

Evolution of V. Smothers' Statement



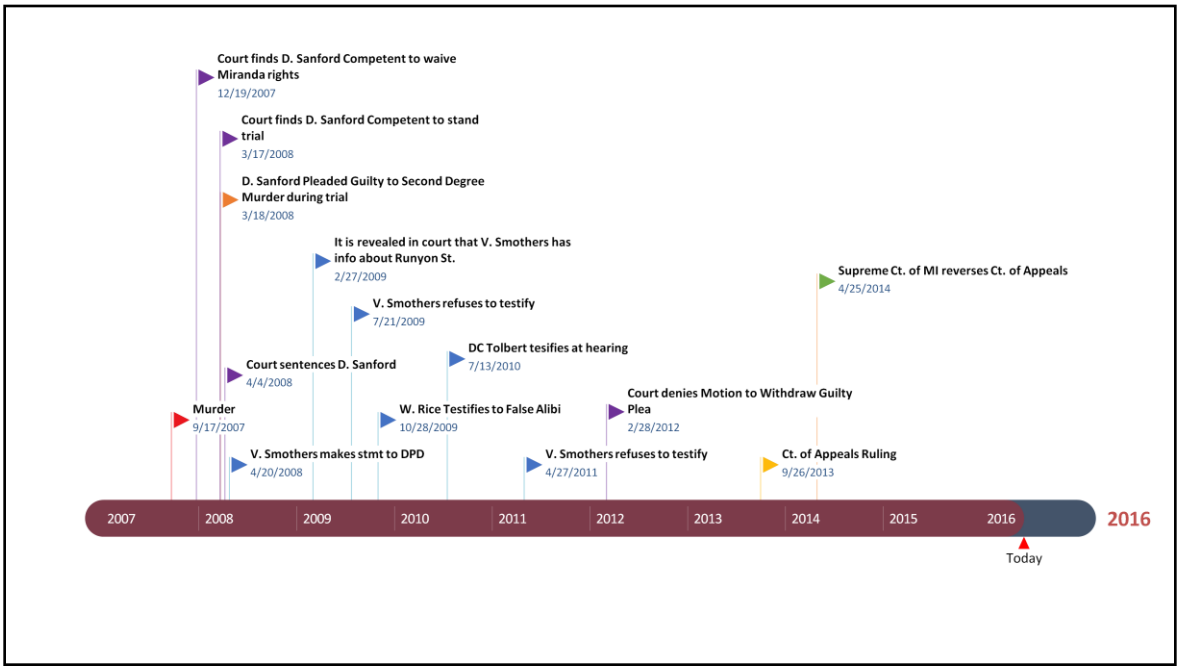
Vincent Smothers has made several statements about the Runyon St. murders during the past 8 years.
Mr. Smothers made his first statement to police in 2008, a few weeks after Mr. Sanford pleaded guilty and was sentenced.
The first statement was vague devoid of facts
In 2012, Judge Sullivan issued a detailed opinion that laid out the inaccuracies and omissions in Mr. Smothers' statements up to that point in time.
In 2015, Mr. Smothers signed a 26 page affidavit that had details that were addressed by Judge Sullivan. An affidavit is only a precursor to testifying under oath in court.
Mr. Smothers has submitted another affidavit in which he claims responsibility for another murder, but my office has been notified that he is recanting that affidavit.



A perjured alibi was presented by Mr. Sanford's attorney during the hearings before Judge Sullivan.

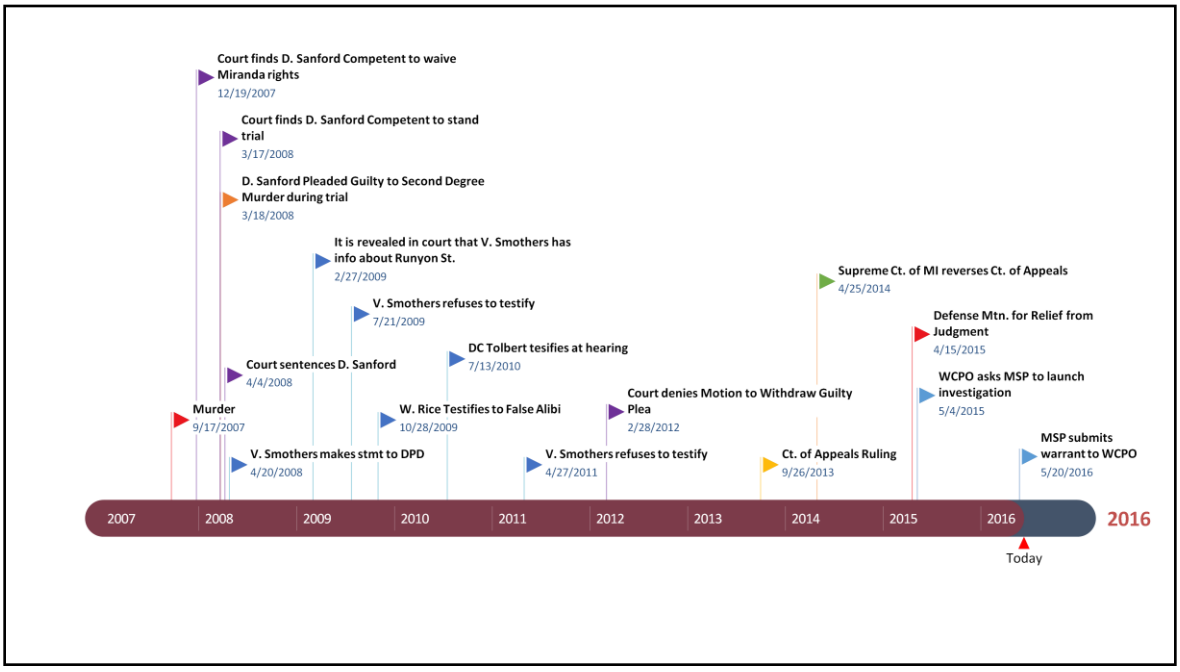
Former head of DPD homicide, William Rice who had a personal relationship with Davontae Sanford's relative testified that Davontae was at a house with Rice. Cell phone records showed this testimony to be false. Rice pleaded guilty to perjury in 2014.

This alibi and the knowledge that it was false was known at the time of trial.

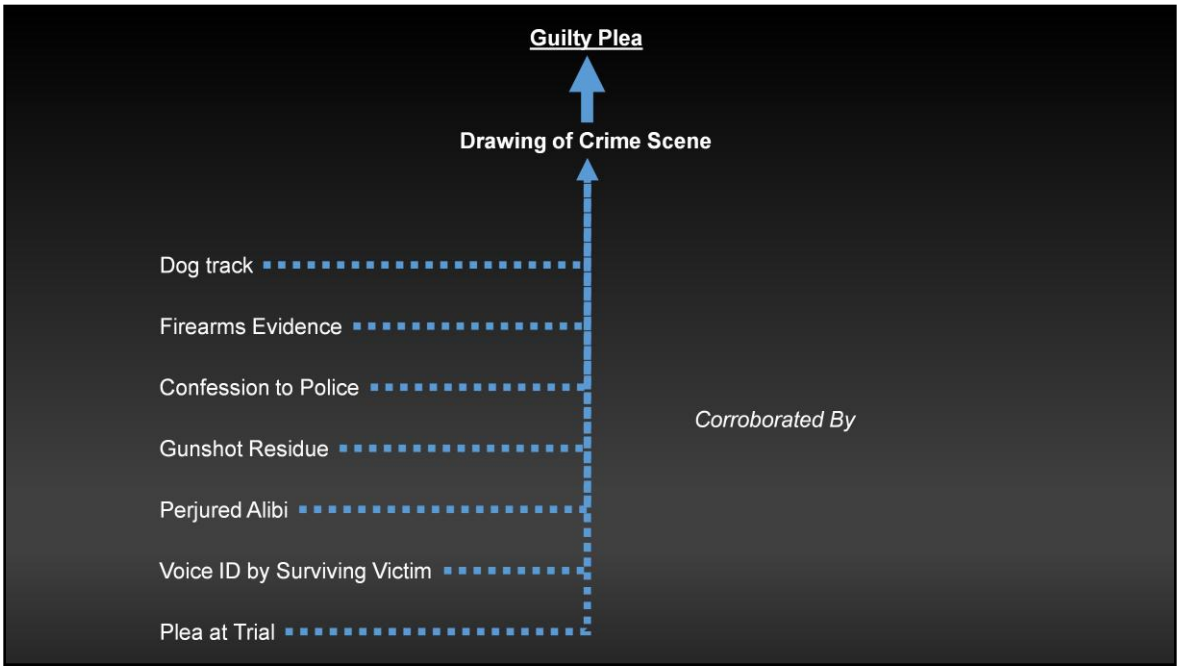


After the post-conviction testimony was concluded, the Circuit Court denied Mr. Sanford's motion to withdraw his Guilty Plea. Part of judge Sullivan's opinion was based on the testimony of Deputy Chief Tolbert.

Later, the Court of Appeals overturned this decision and later yet, the Michigan Supreme Court overturned the Court of Appeals and re-instated the Circuit Court's ruling.



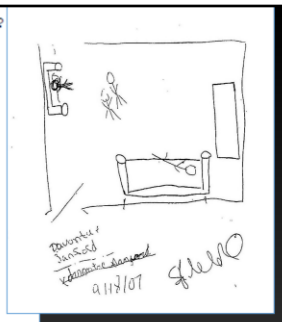
In April of 2015, Mr. Sanford filed a new motion for relief from judgment and after that, as I stated at the beginning, I requested that MSP undertake an investigation. MSP unearthed new information not available to us at the time this case was charged, the time of the trial and plea, and the time of the prior post-conviction litigation. That new information has undermined Sanford's confession and plea, and as a result, we agreed to vacate his convictions and dismiss the case.



We believed that the sketch that Mr. Sanford signed was a key piece of evidence because it corroborates the other evidence of the case. It demonstrates a knowledge of the crime scene and the aftermath of the crime.
The drawing corroborates and is corroborated by:
•The dog tracking evidence that led from Runyon to Mr. Sanford's house
•The firearms evidence that showed guns matching Mr. Sanford's description were used
•Mr. Sanford's confession to police about his involvement
•The perjured alibi because it shows that alibi to be false, just as the phone records proved.
•The voice ID by the surviving victim
•His plea at trial.

THE COURT: Say, may I ask a question?
MR. PULEO: Sure. Go ahead, Judge.
THE COURT: Was this sketch done entirely in the defendant's hand?
THE WITNESS: Yes, it was.
THE COURT: So you gave him -- what you gave him was a blank piece of paper?
THE WITNESS: That's correct.
THE COURT: And then he drew everything on it except for --
THE WITNESS: Sergeant Russell's signature.

Deputy Chief Tolbert
7/13/10



We viewed the sketch as so important because of its origins.

On 7/13/10, Deputy Chief Tolbert testified that Mr. Sanford drew the sketch from a blank piece of paper, and then signed it.

Sgt. Michael Russell stated that Mr. Sanford drew the sketch without being shown pictures of it.

Mr. Sanford being able to draw the sketch would demonstrate that all of the information came from Mr. Sanford's recollection of his participation in the crime.

THE COURT: Say, may I ask a question?
MR. PULEO: Sure. Go ahead, Judge.
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Deputy Chief Tolbert 7/13/10

Q. So, so who drew the house here?
A. I think I did draw, I drew the house.
Q. Okay, you drew the house.
A. I said this is the house, where were the bodies.
Q. Okay. So you drew the house and you said hey, show me where the bodies were.
A. You were in there, this is the house, where are the bodies.
Q. Okay. And so then he just draws the bodies in there.
A. Exactly.
Q. Okay.

Deputy Chief Tolbert, 9/11/15

MSP conducted a follow-up interview with Deputy Chief Tolbert during their investigation and submitted this interview with their warrant requests.
As you heard, during this interview, Deputy Chief Tolbert responded to questions that undermined his prior testimony that Mr. Sanford created a sketch from a blank paper.

This interview with Deputy Chief Tolbert occurred in September of 2015. MSP continued the investigation until they delivered the warrant requests to me in May of this year.

In charging and prosecuting this case, my office relied on the investigation of DPD and the evidence gleaned therefrom. Every day our Appeals division receives motions and letters from defendants who pleaded guilty and now regret that decision. Statements under Oath to the court matter and must be held in the highest regard which is why justice is not served by overturning every conviction by plea when one of these motions is received.

But when evidence undermining a conviction is discovered and a full investigation is completed, we do act. On receipt of the MSP report regarding the Runyon St. murders, I directed that the evidence of Tolbert's statement be shared with Mr. Sanford's attorneys.

My office attempted to stipulate with the defense to dismiss the conviction against Mr. Sanford and were ordered to file motion by the court, which was filed yesterday.

The warrant submitted on the Runyon Street homicides will be returned to the Michigan State Police for further investigation.

The warrant request submitted by MSP for James Tolbert is currently under review.