To The
Honorable James S. Gilmore, III
Governor of the Commonwealth of Virginia

A PETITION

FOR

EXECUTIVE CLEMENCY

FOR

CARL HAMILTON CHICHESTER

Scheduled to be executed on
Tuesday, April 13, 1999

This Case Presents
Truly Extraordinary Reasons
Why Chichester Should Not Be Put To Death

*Two of the eyewitnesses to these offenses, Patricia Eckert and William Fruit, initially stated that they believed the triggerman to be the suspect who jumped over the counter [who prosecutors claimed was **not** Carl Chichester.]*

Sworn pleading of Assistant Commonwealth's Attorney Richard Conway

I received information from a concerned citizen that the citizen was present when a subject identified as Billy Cain, white male, sixteen years of age, made a statement that he and a subject known as "L.A." went into Little Caesar's Pizza Shoppe and that he, Billy Cain, shot the man because he thought he was "going for a gun". Through my investigation of police department and juvenile court records, I have learned the subject known as "L.A." has a real name of Nathaniel Dixon, black male, sixteen years of age. According to those records, Mr. Dixon resides at 7687 Callan Drive, Manassas, Virginia.

Sworn Affidavit of Detective C.B. Sowards

[The attorneys' brief in this case] *is the sorriest thing I have read from anybody. . . . It's an embarrassment. It's no brief. It's nothing but a bunch of sentences. . . .* [If the attorneys' performance is not outside the range of competence required in Virginia] *then the system is a farce. It is an absolute farce if that's the truth. . . . This is awful.*

Statement of United States District Court Judge Robert E. Payne

If this execution is to be carried out in my name, based on my verdict, then Mr. Chichester should not be executed.

Statement of Chichester juror, Camille Houston

I ask the Governor to reevaluate the case in light of this evidence that was never presented to us. I no longer have faith in my verdict. I do not believe the verdict is correct given this evidence.

Statement of Chichester juror, Diana T. Hyman

A Summary Of Reasons
Why Chichester Should Not Be Put To Death

- The prosecutor, police, and trial lawyers had statements from two eyewitnesses that Chichester *did not kill* Timothy Rigney but never told this to the jurors.

- The prosecutor, police, and trial lawyers had information that two persons named Billy Cain and Nathaniel Dixon said that *they did* kill Timothy Rigney but never told this to the jurors.

- Jurors say that, had they been told this information, they would not have convicted Chichester of shooting Timothy Rigney, and would not have sentenced him to death. *These jurors plead with the Governor not to carry out the execution in their name and based on their verdict.*

- The unexplained inability of the prosecutor, police, and trial lawyers to locate a witness whose name, address, and telephone number are published in the local public telephone directory calls into doubt the sincerity of their efforts. The doubt becomes grave when it is also considered that this "un-discoverable" witness would provide undeniable testimony contrary to the prosecution's theory of the case.

- The claimed inability of the prosecution and police

to locate an exculpatory witness is further suspect because, according to the assistant prosecutor on the case, he actually *did contact the mystery witness' parents after the crime*, and that they indicated that they did not want their son involved further in the case.

- Jurors were never told that the "squarish shaped . . . . box like" gun described by one of the eyewitnesses as the gun held by Chichester *could not have fired the shot that killed Timothy Rigney.*

- The forensic testimony presented to jurors by the prosecution was incorrect, and Chichester was never given an opportunity to rebut it with accurate testimony. Accurate testimony would have shown that there was *no physical evidence that Chichester shot Mr. Rigney.*

- Chichester's co-defendant, Sheldon McDowell, who two eyewitnesses said they believed killed Mr. Rigney, is serving only a term of years, and will someday be paroled. The jurors who convicted and sentenced McDowell never heard the information from these two eyewitnesses.

- Chichester did not kill Timothy Rigney and the evidence that was never presented to the jury creates more than a reasonable doubt about his guilt – as proved by the affidavits of Chichester's jurors.

Since Chichester did not kill Mr. Rigney, he cannot be convicted of capital murder, and should never have become *eligible* for a death sentence, let alone be put to death.

A. Introduction

Carl Hamilton Chichester did not shoot Timothy Rigney, according to eyewitnesses to the crime.

Nonetheless, Chichester will be executed on April 13, 1999, unless the Governor intervenes. Chichester asks that the Governor commute his sentence to life in prison.

Chichester was sentenced to death because he was believed to be one of the two masked robbers of a Little Caesar's Pizza, in Manassas, Virginia. During the robbery, one of the robbers shot the store manager, Timothy Rigney. Mr. Rigney died of the single gunshot wound from a .380 handgun.

There is no dispute that two eyewitnesses to the crime reported to police that the person the prosecution said was Chichester did *not* shoot the victim in this case.

Neither is it disputed that Chichester's lawyer failed to tell jurors this crucial fact.

Even more incredible, however, is the fact that the name, address, and telephone number of one of the exculpatory eyewitnesses' were in the local public telephone book, but Chichester's lawyer never bothered to locate or contact him!

A third eyewitness described the weapon held by the robber prosecutors said was Chichester as one which *could not* have killed Mr. Rigney.

Moreover, a police officer investigating the case reported in a sworn affidavit that he was told by a "concerned citizen" that two other people admitted that they committed the crimes at the Little Caesar's Pizza. Although police had the names of these allegedly confessed killers, and the address of at least one of the two, they never located or questioned them. Chichester's attorneys requested but were refused the assistance of a trained investigator to help them find the two allegedly confessed killers.

B. The Facts of the Crime

The crime at issue involved the armed robbery of a pizza shop in Manassas, Virginia. At about 10:45 p.m., two masked robbers entered the store. One jumped over the service counter and stood on the "employee" side while the other remained in the "customer" area. Both were armed with handguns. The victim was the store manager, Timothy Rigney. He was shot a single time by a .380 caliber handgun.

There were four eyewitnesses to the crime: William Fruit, Denise Matney, Patricia Eckert, and Robert Harris. Fruit and Matney were employees of the Little Caesar's and stood on the employee side of the counter. Eckert and Harris were customers and stood on the customer side of the counter.

At the time of the crime, Fruit and Eckert reported to police that Mr. Rigney was shot by the robber on the *employee* side of the counter. (Prosecutors argued at trial that Chichester was the robber on the ***customer*** side of the counter. Prosecutors said that the robber on the ***employee*** side of the counter was Sheldon McDowell. Despite the statements of these witnesses, prosecutors only charged McDowell as a principal in the second degree. He is serving only a term of years. McDowell never testified about who shot Mr. Rigney.)

Denise Matney was not sure who shot Mr. Rigney, and Harris placed the "shooter" on the customer side. See. Chichester v. Taylor, No. 98-15, slip op. at 4 (4th Cir. January 6, 1999).

Chichester and Sheldon McDowell, each of whom already was charged in the robbery of another area pizza store, were charged with the crimes at Little Caesar's.

By the time of the trial (more than two years later and after Mr.Chichester had pled guilty to another robbery of a pizza store), Eckert said that she was no longer sure who shot Timothy Rigney. Matney testified at trial that she now believed that the shot came from the customer side of the counter. Harris placed the shooter at the same position as he had in his report to police. Mr. Harris testified that he believed the robbers to be black because of the sound of their voices.

Jurors heard nothing about Fruit's account of the crime and nothing about the changes in the reports of eyewitnesses Eckert and Matney. Trial counsel made no effort to subpoena Fruit to Chichester's trial, and, although his name, address, and telephone number were in the local public telephone book, did not contact him. App. 9.

Jurors also never heard evidence that a police detective, Detective Clifford Sowards, filed a sworn affidavit with the court stating the following:

> I received information from a concerned citizen that the citizen was present when a subject identified as Billy Cain, white male, sixteen years of age, made a statement that he and a subject known as "L.A." went into Little Caesar's Pizza Shoppe and that he, Bill Cain, shot the man because he thought he was "going for a gun". Through my investigation of police department and juvenile court records, I have learned the subject known as "L.A." has a real name of Nathaniel Dixon, black male, sixteen years of age. According to those records, Mr. Dixon resides at 7687 Callan Drive, Manassas, Virginia.

App. 3. Despite having this information, police never located or contacted these alleged killers. Also, police never revealed to Chichester's lawyers the identity of the "concerned citizen" who was the source of the information in the affidavit. Chichester's lawyers requested the assistance of a trained investigator to locate Billy Cain and Nathaniel Dixon, but were refused.

The Virginia Supreme Court reasoned that since the police could not find these two, there was no reason to give Chichester a chance to find them. But, since the Commonwealth had already decided to charge Chichester with the crimes at the Little Caesar's, police had little or no motivation to seek other suspects. For Chichester, on the other hand, it was quite literally a matter of life or death.

Because Virginia law prohibits courts from

considering evidence not presented at trial - even if it is evidence of innocence - the Governor will be the one and only person who will ever consider this evidence.

C. The Evidence Of Innocence In This Case

1. William Fruit

Mr. Fruit reported to police that he believed that the person on the *employee side* of the counter shot Mr. Rigney. He had been making and cutting pizzas in the back of the store when the robbers entered. The robber on the employee side of the counter brought him up to the cash register area.

Fruit maintained his poise and wits during the robbery while others were overcome with fear. According to Denise Matney, the store manager trainee, who froze out of fear, it was Fruit who came forward to ensure that the robbers' requests were complied with in a manner likely to minimize confrontation and violence. As mentioned earlier, Fruit's composure was acknowledged by others at the scene, including Denise Matney.

> William [Fruit] was cutting and taking pizzas out of the oven and cutting them. And this guy who jumped over the counter, went around, got William, walked him around here to the cash register and then he - one of them - one of them told us to get it open. And I was so scared and I just like stood there

> shaking because I was so scared. And then William told me to get the register open. And so I pressed the No sale [sic] button and I opened up the register and the guy who jumped across the counter, he took the money out of the register.

Mr. Fruit was 16-years old at the time.

Immediately after the crime Fruit told police that the person who shot Timothy Rigney was standing on the ***employee*** side of the counter (where prosecutors claimed McDowell stood). App. 2. Police apparently recorded an incorrect address for Fruit. Prince William County court records show that, by the date of the crime, the Fruits had sold the house at the address recorded by police. App. 15-16.

This is especially troubling because, according to Assistant Commonwealth's Attorney Richard Conway's sworn affidavit, he was in contact with Mr. Fruit's parents prior to the February, 1993, trial of Chichester's co-defendant, Sheldon McDowell. App. 13-14.

Neither the Commonwealth's Attorney's office nor the County Sheriff's office has explained *how they could fail to successfully locate and serve a subpoena on a witness whose name, address, and telephone number were in the local public telephone book.*

Of course, since the Commonwealth's Attorney's

office had already determined that they would prosecute Chichester rather than McDowell as the "triggerperson" for the shooting, they had no incentive to try to locate a witness like Mr. Fruit who said that McDowell, rather than Chichester, shot Timothy Rigney.

In any event, in addition to the fact that the family's correct address was in the local public telephone directory, the Fruits kept the *same telephone number at both addresses*.

Even if the Commonwealth's Attorney's office might have been happy if Mr. Fruit was never found, Chichester's lawyers certainly should have had great motivation to find him. It is incredible, and inexplicable, that the lawyers never even bothered to try to contact Mr. Fruit by telephone, and made no effort to determine his new address.

Trial counsel candidly admit that they made no effort to contact Mr. Fruit other than to stop by the address where they already knew the prosecutor had been unsuccessful in serving a subpoena on Fruit to come to the trial of Chichester's co-defendant, Sheldon McDowell, some six months before Chichester's trial. There is no dispute that, had they looked in the telephone book, the cost of a local phone call would have put them in touch with Mr. Fruit.

As demonstrated by the affidavits of the jurors in

Chichester's case, the evidence of Fruit's initial account of the crime would have raised a reasonable doubt in jurors minds whether Chichester was the robber who actually shot Timothy Rigney. App. 10-12.

Unless all twelve jurors were convinced beyond a reasonable doubt that Chichester, rather than McDowell, shot Mr. Rigney, Chichester could not be convicted of capital murder. A person must be convicted of capital murder before a jury can even be asked to determine whether the person is ***eligible*** for a death sentence. Only after the jurors have decided unanimously and beyond a reasonable doubt that the defendant is eligible for a death sentence, do the jurors begin to make the decision whether the death penalty is the appropriate sentence for that defendant.

If jurors had reasonable doubts about whether Chichester shot Mr. Rigney they could have convicted him of first degree murder and sentenced him to life in prison, but the question whether Chichester should be put to death could never have been presented to the jury.

2. Patricia Eckert

Like William Fruit, Patricia Eckert told police at the time of the crime that she believed that the person who shot Timothy Rigney was the robber who stood on the *employee* side of the service counter. App. 2. By the time of the trial – which was two years after the crime and which followed

Chichester's plea of guilty to the robbery of another pizza store – Ms. Eckert said that she no longer was sure which robber fired the shot. Neither the prosecutor nor Chichester's trial attorneys ever told the jurors what Ms. Eckert recalled about the crime just after it occurred.

Ms. Eckert testified that each of the robbers had a gun.

3. Denise Matney

Denise Matney first told police that she did not know which masked robber shot Timothy Rigney. Two years later at the trial she testified that the robber on the *customer* side of the counter shot Mr. Rigney. See Chichester v. Taylor, No. 98-15 (4th Cir. January 6, 1999) (unpublished).

But Ms. Matney's description of the weapon held by the robber in the *customer* area is one of a weapon that *could not* have fired the shot that killed Mr. Rigney. Ms. Matney described the gun held by the robber in the customer area as "squarish in shape . . . . box like," matching that of a MAC 11, and *not* that of a .380. See App. 4 (photograph of MAC 11) and 5 (photograph of .380).

It is not disputed that the victim in this case was killed by a .380-caliber weapon.

The only weapon the prosecutor ever associated with Chichester in these proceedings was a MAC 11.

Ms. Matney said that the robbery "happened very fast and I was very scared." She recalled how William Fruit came to her aid. It was Fruit who came forward to ensure that the robbers' requests were complied with in a manner likely to minimize confrontation and violence.

> William [Fruit] was cutting and taking pizzas out of the oven and cutting them. And this guy who jumped over the counter, went around, got William, walked him around here to the cash register and then he - one of them - one of them told us to get it open. And I was so scared and I just like stood there shaking because I was so scared. And then William told me to get the register open. And so I pressed the No sale [sic] button and I opened up the register and the guy who jumped across the counter, he took the money out of the register.

Joint Appendix in the 4th Circuit 1143-44.

The fact that Fruit was more composed during the crime counsels a greater reliability in his version of events. This is made even more emphatic in light of Matney's altered recollection of events.

4. The Commonwealth's Forensic Expert's Testimony Was Wrong And Chichester Never Was Given A Chance To Tell This To The Jurors

The prosecutor presented evidence from a state forensic expert to support his argument that the victim was shot from the customer side of the counter. The state's experts testified that there was no evidence of gunpowder residue on the victim's clothing or body, and that such residue would be expected if the shot came from within 2-3 feet of the victim. Although the prosecutor never offered any testimony about the relative distances between the two robbers and the victim, he argued that this evidence indicated that the shooter must have been standing on the customer side of the counter.

Chichester has been refused every request to be allowed to develop and present his own forensic expert testimony which would show that Chichester did not shoot Timothy Rigney. He requests that the Governor provide this assistance to him now in order for the Governor to make an accurate and fair determination on clemency.

A forensic expert would have provided powerful rebuttal evidence and testimony. For example, an expert could have dramatically rebutted the prosecutor's estimation that powder soot deposits would have been present on the victim if the gun was within three feet of the victim. See

DiMaio, Vincent, GUNSHOT WOUNDS, 60 (CRC Press 1985) ("On the basis of the author's experience, the maximum distance out to which powder soot deposition occurs for handguns is 20 to 30 cm.") A distance of 30 cm is less than one foot!

This evidence would have rebutted the prosecutor's argument that the absence of soot deposits indicates that the shot was fired from the customer side of the counter. An expert also would have testified that the presence of soot deposits is dependent on a number of factors, including range, propellant, angle of the muzzle to the target, barrel length, caliber of the weapon, type of weapon, target material. DiMaio at 60. An attachment to the muzzle of a weapon may eliminate soot deposits entirely. DiMaio at 61. None of this evidence was investigated or presented.

Because Chichester has been refused the opportunity to develop and present evidence and testimony from an independent forensic expert when requested previously, he now asks the Governor to provide him this opportunity. This request is appropriate in light of the conflicting eyewitnesses testimony and the limited circumstantial evidence in the case. The testing and other analysis required for the presentation of this evidence would not take more than a few weeks, and could be accomplished by a short reprieve from the Governor to allow time for the testing and analysis to occur, and for the Governor to review the conclusions of the independent expert.

D. Chichester's Lawyers' Performance Was An Embarrassment

The representation Chichester received from trial counsel in this case was extremely poor. The federal district court judge who reviewed the attorneys' appeal in the case called it "the sorriest thing I have read from anybody." Transcript of 10/7/97 argument at 36. But the judge did not stop there:

> It's an embarrassment. . . . It's no brief. It's nothing but a bunch of sentences, unconnected, no cases cited.

Id. When the Attorney General refused to admit that the brief was outside the range of competency required in Virginia, the judge admonished:

> If that's true, then the system is a farce. It is an absolute farce if that's the truth. . . . I have never seen [a brief] that comes close to this. This is awful.

Id. at 37.

In fact, the lawyer's brief was more than an embarrassment; it may have involved a fraud of sorts on the court. At the beginning of the brief the attorneys listed 60 cases as though these cases were cited as legal support for the arguments in the brief. But the actual arguments in the

brief did not cite a single case! It appears that these cases were inserted at the beginning of the brief simply to make it look legitimate. A copy of the brief is attached at App. 17.

Jurors who sat on Mr. Chichester's trial agreed with the federal judge's assessment of trial counsel's performance. The foreman of the jury told Chichester's counsel that the jurors considered the lawyer's performance to be "laughable." He noted that he watched one of Chichester's attorneys dozing off during the trial.[1] Jurors commented to one another about how bad Chichester's lawyers.

The comments of the federal judge and the jury foreman are truly extraordinary. There is something terribly wrong with a system which would require citizens of the Commonwealth to determine the guilt or innocence of another person – let alone to determine whether that person shall be put to death by the Commonwealth – based on

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This same attorney, in another death penalty case, unintentionally waived of all of his client's state habeas claims because he filed the inmate's petition in the wrong court. See Lonnie Weeks v. Warden. In Weeks, Chichester's trial lawyer was appointed to represent Weeks in attacking the performance of Weeks' trial attorneys. At the same time, Weeks' trial lawyer was appointed to represent Chichester in attacking the performance of Chichester's trial lawyers. The State Bar issued a Legal Ethics Opinion stating that "flip-flopping" lawyers in this manner created a conflict of interest. The attorney's negligence in filing in the wrong court occurred while counsel was under this conflict of interest.

court-appointed shoddy representation of that person. In such circumstances, only one party, the Commonwealth, is even represented in any meaningful way.

E. Why Was No One Told This Evidence Of Chichester's Innocence?

It is difficult to imagine more powerful evidence of innocence that an eyewitness who says that the suspect did not commit the crime charged. More difficult to imagine, however, is a lawyer who knows of such an eyewitness, and does not make an earnest effort to locate the exculpatory eyewitness. The lawyer's neglect become "off the charts" when all it would have taken to locate the witness was a few seconds to flip through the local telephone directory.

These un-imaginable circumstances – and more – should erode all confidence that Chichester was tried, convicted, and sentenced in a manner that even approaches "fairness." The circumstances have shattered the confidence of jurors at Chichester's trial.

The testimony and evidence that they did not hear overshadows what was presented. In addition to the omission of eyewitness "Chichester- didn't-do-it" testimony, jurors also were not told:

> that one of the eyewitnesses who testified (more than two years after the crime) that she could no longer recall which robber shot Mr. Rigney, told police at

the time of the crime that it was McDowell, rather than Chichester, who fired the shot;

that one of the eyewitnesses who said that the shot was fired by the robber on the *customer* side of the counter, originally told police that she did not know which robber shot Mr. Rigney;

that police knew that two persons named Billy Cain and Nathaniel Dixon had admitted to committing the crime;

that the "squarish shaped . . . . box like" gun described by Denise Matney as the gun held by Chichester *could not have fired the shot that killed Timothy Rigney*;

that the forensic testimony presented by the prosecution was incorrect, and that Chichester was never given an opportunity to rebut it with accurate testimony which would show that there was *no physical evidence that Chichester shot Mr. Rigney*.

Unfortunately, only the prosecutor and police knew all of this evidence at the time of the trial. Chichester's lawyers knew some of it but did little or nothing about it.

As a result, the jurors and the surviving members of Mr. Rigney's family have been denied the truth about what happened to Timothy Rigney. There was no reason that this

information should have been kept secret from them. Timothy Rigney's tragic and needless death deserves a thorough and fair review, so that responsibility for his death can be properly assigned and justice dispensed.

Virginia justice is strong enough to re-examine itself when appropriate. Executing Chichester purely in retribution for Mr. Rigney's death, rather than with confidence beyond a reasonable doubt that justice and fairness have been provided to *all*, dishonors the Commonwealth, the memory of Mr. Rigney and his strong sense of Christian morality, and the citizens of the Commonwealth called upon to make the difficult decision whether to take a man's life based solely on what they are allowed to hear at a trial.

F. Jurors Who Sentenced Chichester To Death Ask that His Execution Not Be Carried Out In Their Names

Two of the jurors who convicted and sentenced Chichester to death have provided affidavits stating that, had they been presented with this evidence, they "would not have voted to convict Mr. Chichester of capital murder[.]" One pronounced that she "no longer ha[s] faith in [her] verdict." The other juror implored, "[i]f this execution is to be carried out in my name, based on my verdict, then Mr. Chichester should not be executed."

The jury foreman also expressed to Chichester's

counsel his significant concern that the new information would have made a difference in the jurors' deliberations, and stated that he was considering providing a written statement to this effect.

The Governor should not turn a deaf ear to those citizens of the Commonwealth called upon to make the most difficult decisions any of us could imagine: whether the Commonwealth should put someone to death based on their verdict.

The Commonwealth should not impose such an awesome responsibility upon any of her citizens without assuring them that, should credible evidence come to light which destroys the jurors' confidence in their verdict, their voices and concerns will be head. This assurance is critical in a case, such as this one, where credible evidence goes to the innocence of a person who is to be put to death by the Commonwealth.

If the Governor is unwilling to hear these concerned jurors, then all jurors or potential jurors asked to make a life or death decision will be haunted by the fact that, should the error of their judgement come to light after the trial, the Commonwealth will provide no forum in which they can be heard.

The Commonwealth's concern for such citizens should be especially heightened in cases such as this one, where the evidence of innocence so important to the jurors

was in the hands of the Commonwealth's Attorney, the police, and the court-appointed lawyers, but never was told to jurors.

F. CONCLUSION

Because this case raises significant and credible evidence that Chichester did not shoot Timothy Rigney and, therefore, is not guilty of capital murder and is not eligible to be sentenced to death, the Governor should intervene to commute Chichester's sentence to life imprisonment, or provide such other relief as the Governor deems appropriate.

Respectfully submitted,

CARL HAMILTON CHICHESTER
Sussex I State Prison
Waverly, Virginia

To The
Honorable James S. Gilmore, III
Governor of the Commonwealth of Virginia

APPENDIX TO

A PETITION

FOR

EXECUTIVE CLEMENCY

FOR

CARL HAMILTON CHICHESTER

Scheduled to be executed on
Tuesday, April 13, 1999

Table Of Contents

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

COMMONWEALTH OF VIRGINIA :

vs. : CRIMINAL NOS. 32888, 32889 32890, 32891

CARL HAMILTON CHICHESTER :

ANSWER

COMES NOW the Commonwealth, by her counsel, and answers the Motion for Discovery and Inspection previously filed herein and states as follows:

1. The defendant made video taped statements to Detective C.R. Sowards, wherein he denied involvement in the offenses committed at Joe's Pizza and at Little Caesar's Pizza. This videotape may be inspected by making prior arrangements with Detective Sowards.

See also attached copies of three forms entitled "Plea of Guilty to a Felony" dated July 7, 1992 and executed by the defendant in Criminal Numbers 30915, 20916 and 30917 in the Circuit Court of Prince William County.

2. See attached copies of Report of Autopsy dated August 19, 1991, and certificates of analyses dated August 23, 1991, August 30, 1991, September 11, 1991, two (2) dated December 30, 1991, January 6, 1992, May 12, 1992 and November 16, 1992.

3. The attorneys for the defendant have reviewed that physical evidence which the Commonwealth intends to introduce in its case-in-chief which is currently in the custody of the Clerk of the Circuit Court of Prince William County in Criminal Numbers 32888 - 32891. Any additional evidence is in the custody and control of the Prince William County Police Department and may be inspected by contacting Detective C.R. Sowards.

4. Two of the eyewitnesses to these offenses, Patricia Eckert and William Fruit, initially stated that they believed the triggerman to be the suspect who jumped over the counter. Eckert later stated that her face was buried in her boyfriend's chest at the time and that she did not know which suspect fired the fatal shot. The Commonwealth's evidence will show that the defendant was not the suspect who jumped over the counter.

Having fully answered the defendant's Motion for Discovery and Inspection, the Commonwealth files this, her Answer.

COMMONWEALTH OF VIRGINIA

RICHARD A. CONWAY, Assistant
Commonwealth's Attorney
County of Prince William
9311 Lee Avenue
Manassas, VA 22110

CERTIFICATE

I hereby certify that a true copy of the foregoing Answer was mailed, postage prepaid, to Bryant A. Webb, 4309 Ridgewood Center Drive, Woodbridge, VA 22192 and R. Randolph Willoughby, 9259 Center Street, Manassas, VA 22110, this 20th day of August, 1993.

RICHARD A. CONWAY, Assistant
Commonwealth's Attorney

The material facts constituting probable cause that the search should be made are:

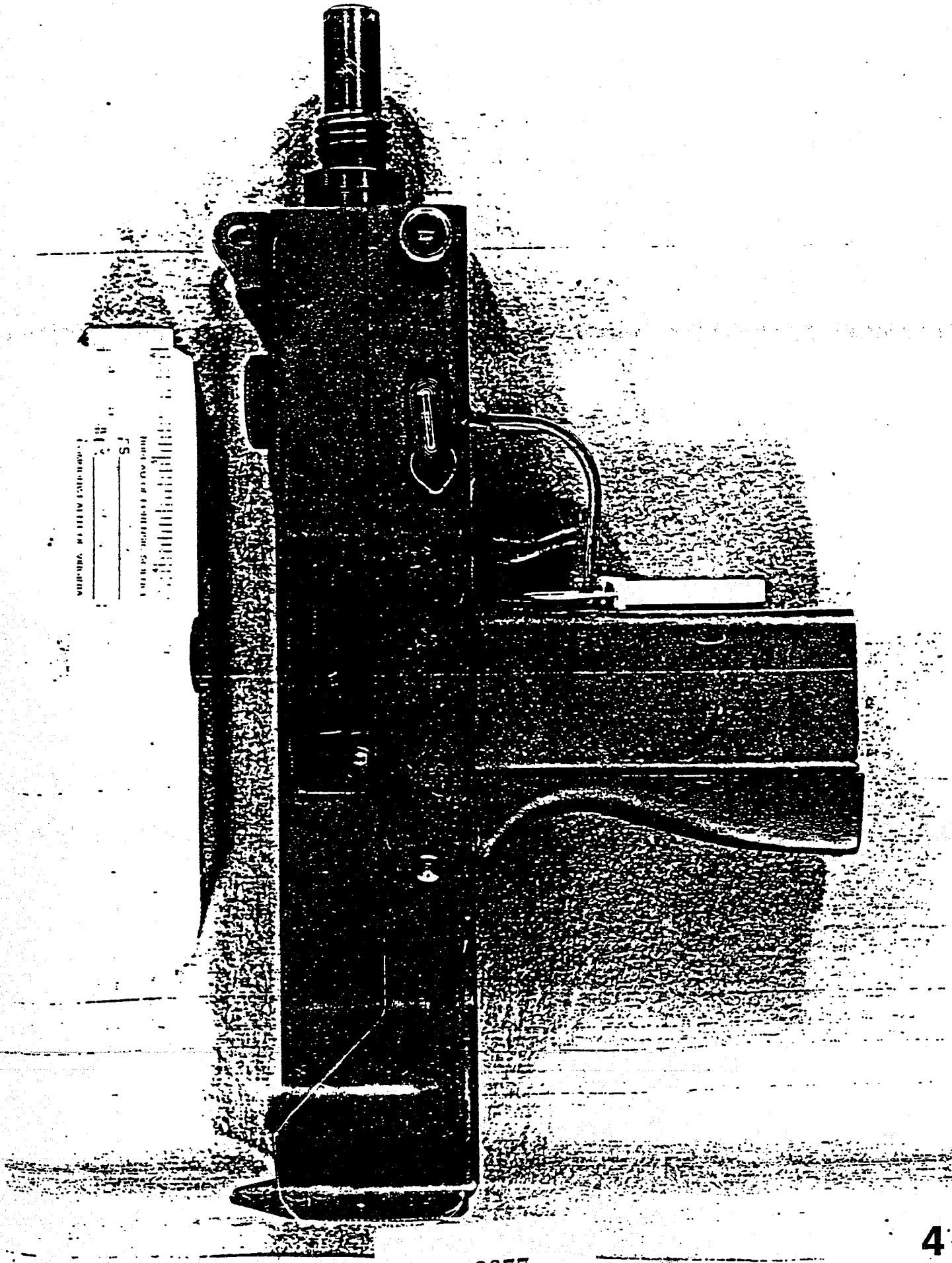
On 8/16/91 at approximately 10:40 p.m., Mr. Timothy Rigney was working at Little Caesar's Pizza shop located in the Manaport Shopping Center, 8421 Sudley Road, Manassas, Virginia. Two subjects wearing ski masks on their faces entered the establishment for the purpose of robbing the employees of money. During the course of the robbery, one of the subjects shot and killed Mr. Rigney as he was attempting to open one of the registers. The autopsy on Mr. Rigney revealed he was shot with a .380 caliber weapon, and the ammunition was silver tipped, hollow point ammunition, manufactured by Winchester. A witness at the scene observed an additional weapon of unknown caliber in the hands of the other robber.

Witnesses also observed one suspect climb over the counter, and a footwear impression was recovered from the counter area. The overall pattern is of a lug design sole.

On 8/27/91, I received information from a concerned citizen that the citizen was present when a subject identified as Billy Cain, white male, sixteen years of age, made a statement that he and a subject known as "L.A." went into Little Casesar's Pizza Shoppe and that he, Billy Cain, shot the man because he thought he was "going for a gun". Through my investigation of police department and juvenile court records, I have learned the subject known as "L.A." has a real name of Nathaniel Dixon, black male, sixteen years of age. According to those records, Mr. Dixon resides at 7687 Callan Drive, Manassas, Virginia.

TARA L. WEBER, MAGISTRATE
THIRTY-FIRST JUDICIAL DISTRICT
COMMONWEALTH OF VIRGINIA

254



.380 / Mac-11 9m Photos

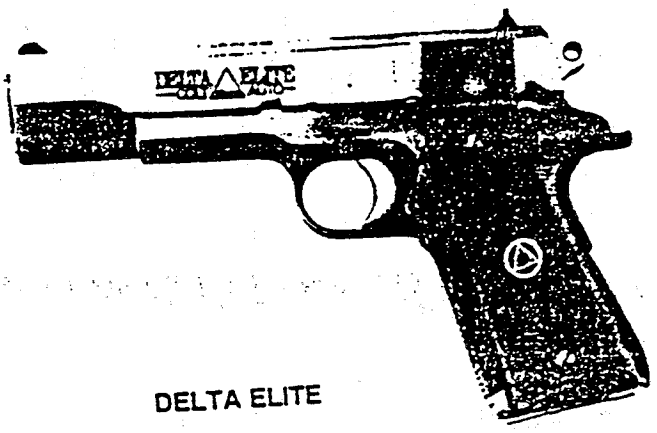
COLT AUTOMATIC PISTOLS

MKIV SERIES 80

DELTA ELITE AND DELTA GOLD CUP

The proven design and reliability of Colt's Government Model has been combined with the powerful 10mm auto cartridge to produce a highly effective shooting system for hunting, law enforcement and personal protection. The velocity and energy of the 10mm cartridge make this pistol ideal for the serious handgun hunter and the law enforcement professional who insist on downrange stopping power.

SPECIFICATIONS
Type: 0 Frame, semiautomatic pistol
Caliber: 10mm **Magazine capacity:** 8 rounds
Rifling: 6 groove, left-hand twist, one turn in 16"
Barrel length: 5" **Overall length:** 8½"
Weight (empty): 38 oz.
Sights: 3-dot, high-profile front and rear combat sights; Accro rear sight adjustable for windage and elevation (on Delta Gold Cup only)
Sight radius: 6½" (3-dot sight system), 6¾" (adjustable sights)
Grips: Rubber combat stocks with Delta medallion
Safety: Trigger safety lock (thumb safety) is located on left-hand side of receiver; grip safety is located on backstrap; internal firing-pin safety
Price: $807.00 ($860.00 Stainless)



DELTA ELITE

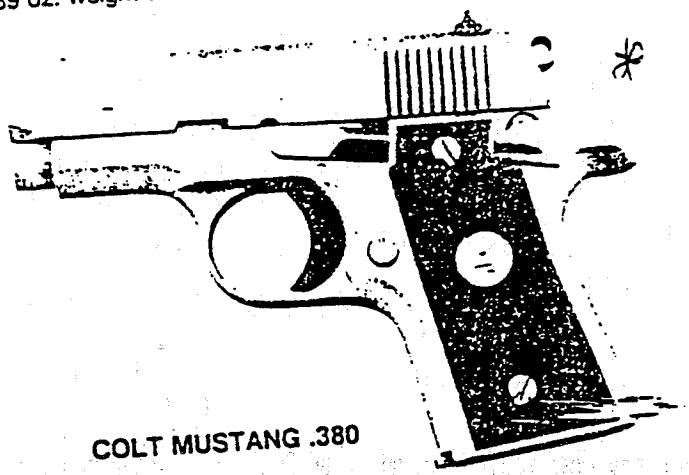
Also available:
DELTA GOLD CUP. Same specifications as Delta Elite, except 39 oz. weight and 6¾" sight radius. Stainless. $1027.00

COLT MUSTANG .380

This backup automatic has four times the knockdown power of most 25 ACP automatics. It is a smaller version of the 380 Government Model.

SPECIFICATIONS
Caliber: 380 ACP **Capacity:** 6 rounds
Barrel length: 2¾" **Overall length:** 5½"
Height: 3.9" **Weight:** 18.5 oz.
Prices: $462.00 Standard, blue
493.00 Stainless steel

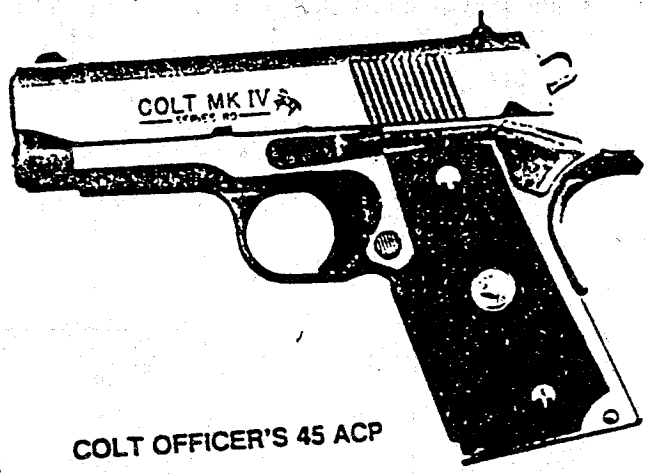
Also available:
MUSTANG POCKETLITE 380 with aluminum alloy receiver; ½" shorter than standard Govt. 380; weighs only 12.5 oz. **Prices:** $462.00 ($493.00 in nickel).
MUSTANG PLUS II features full grip length (Govt. 380 model only) with shorter compact barrel and slide (Mustang .380 model only); **weight:** 20 oz. **Prices:** $443.00 blue; $473.00 stainless steel.


COLT MUSTANG .380

COLT OFFICER'S 45 ACP

SPECIFICATIONS
Caliber: 45 ACP **Capacity:** 6-rounds
Barrel length: 3½" **Overall length:** 7¼"
Weight: 34 oz.
Prices: $789.00 Stainless steel
735.00 Standard blue
863.00 Ultimate stainless

Also available:
OFFICER'S LW w/aluminum alloy frame (24 oz.) and blued finish. **Price:** $735.00



COLT OFFICER'S 45 ACP

Prince William County, VA

GTE

YOUR OFFICIAL TELEPHONE DIRECTORY

Arcola
Dale City
Dulles
Haymarket
Independent Hill
Lorton
Manassas
Manassas Park
Nokesville
Quantico
Triangle
Dumfries
Woodbridge-Occoquan

Including Listings For
Stafford

CONTENTS

This cover symbolizes the merger of GTE and Contel completed in 1991. Our company is now GTE.

Area Code 703
November 1991

SUBPOENA REQUEST

Va. habeas Order

FRICK Steve T
248 Kent Dr Manas Pk ---------- 257-0897
Todd S 12512 Arrowhead St Wdbg ---------- 490-5216
FRICKE Daniel & Dorothy
13293 Kenny Rd D Cty ---------- 590-0981
FRICKLETON C M Stafford ---------- 659-9325
FRIDAY Stephanie E
5119 Leesburg Ct D Cty ---------- 680-5801
FRIDLEY Conrad D 9812 Town Ln Manas ---------- 330-6253
James R 2212 Longview Dr Wdbg ---------- 490-3539
Larry M 1423 Forest Ln Wdbg ---------- 494-9848
FRIE David J 8007 Swift Creek Ct Fairfx Sta ---------- 690-1015
FRIEBERG Dan & P J 113 Oak Dr Staffrd ---------- 720-1158
FRIECE Ned M 10212 Carmel Way Manas ---------- 361-7228
FRIED William A MD
14904 Jeff Davis Hwy Wdbg ---------- 490-1600
Metro ---------- 690-1656
FRIEDENFELS E M Woodbridge ---------- 680-3683
FRIEDLAND Marcel
4380 Shady Knoll Ct Dumfries ---------- 670-4537
FRIEDLANDER Ronald K
12902 Kerrydale Rd D Cty ---------- 590-0069
FRIEDLANDER'S Jewelers ---------- See J B Robinson Jewelers
FRIEDLE David C Manassas ---------- 330-8475
FRIEDLINE Russell & Bonnie
5286 Sudberry Ln D Cty ---------- 680-7866
FRIEDMAN Arnold J MD
385 Garrisonville Rd Stafford ---------- 659-0408
FRIEDMAN Arnold J MD
2296 Opitz Blvd Wdbg ---------- 878-0740
FRIEDMAN David Mark
7233 Saint Lucia Ct Manas ---------- 369-7516
Fern Woodbridge ---------- 491-6638
Gary C 5708 Horsesa Dr Broad Run ---------- 754-2708
Greg M 214 Stern Cove Staffrd ---------- 720-0326
FRIEDMAN Herman I Fairfax ---------- 643-0263
FRIEDMAN J J Woodbridge ---------- 878-6658
Michael A 8821 Richmond Av Manas ---------- 368-9503
Miles 8033 Whiting Dr Manas ---------- 791-3757
FRIEDRICH Carolyn F
13343 Paramount Ln D Cty ---------- 878-3986
Christian & Paula
9201 Amelia Ct Manas ---------- 361-4625
FRIEDRICHS Michael
6776 River Rd Manas ---------- 368-3037
FRIELDS John & Roxana
1022 Portugal Dr Staffrd ---------- 659-3012
Paul W 10857 Cambri Dr Manas ---------- 335-9008
Thomas L 205 Admiral Cove Staffrd ---------- 659-4836
FRIEND Betty L 9011 Centreville Rd Manas ---------- 369-3935
D 1756 River Bend Way Wdbg ---------- 490-8816
Donald N 9021 Centreville Rd Manas ---------- 335-2110
H S 3903 Willow Ln Wdbg ---------- 491-3835
John A 3914 Peachurst Ln Wdbg ---------- 670-4719
John A 16141 Oakwood Ln Wdbg ---------- 670-7771
Malcolm J 128 Scott Dr Manas ---------- 368-5974
Roy F 4746 Kirkdale D Cty ---------- 590-9129
Steven J 13424 Grosvenor Dr Wdbg ---------- 490-3358
T Woodbridge ---------- 441-0663
T L 8730 Richmond Av Manas ---------- 368-3912
Thurston Y 15851 Hunton Ln Hymkt ---------- 754-8071
William 8518 White Pine Dr Manas ---------- 335-5174
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2700 Potomac Mills Cir Wdbg ---------- 494-1376
14510 Jeff Davis Hwy Wdbg ---------- 491-8765
8401 Centreville Rd Manas ---------- 369-3304
FRIENDS Of Historical Resources Inc
Manassas ---------- 330-6439
FRIENDS Of The Animal Shelter Aide ---------- 327-4530
FRIENDSHIP Title Agency Inc
12 Betts Hill Rd Staffrd ---------- 659-5648
FRIES Garage 11319 Dumfries Rd Manas ---------- 368-7776
FRIES J S 14524 Bisbee Ct Wdbg ---------- 490-0301
Jim & Diane 9835 Evans Ford Rd Manas ---------- 361-3905
Joel 36 Settlers Way Staffrd ---------- 659-8145
John 10716 Dumfries Rd Manas ---------- 368-8860
Joseph B 4029 Greenville Dr Hymkt ---------- 754-0605
Larry & Carol
8711 Bradley Forest Rd Manas ---------- 361-7721
Stafford ---------- 720-3191
Terry E Manassas ---------- 330-6534

FRIES R S 8025 McLean Manas ---------- 368-2875
Ralph R MAJ 37 Walker Way Staffrd ---------- 659-5736
Sandy 208 Holden Dr Manas ---------- 361-4247
FRIESZ Barbara 12160 Cardamom Dr Wdbg ---------- 491-3496
FRIETSCH David A 8024 Gracie Dr Manas ---------- 791-3924
John C 8402 Yorkshire Ln Manas ---------- 368-6276
FRILOT James M 10128 Candy Ct Manas ---------- 330-8992
FRINO John
11907 Covestone Hill Cir Manas ---------- 335-1455
FRISBIE Robert & Susan
12622 Kingsman Rd D Cty ---------- 590-9269
FRISTOE M P Dumfries ---------- 441-1496
FRITSCH John R 9425 Windy Hill Rd Nokesvl ---------- 791-5995
FRITSCHE Robert
16207 Sheffield Dr Dumfries ---------- 670-3008
FRITSCHER John & Mary
Qtrs 2978-B MCCDC Quant ---------- 221-5426
FRITSCHIE Bernadette A atty
9250 Mosby St Manas ---------- 369-4738
9250 Mosby St Manas ---------- 690-2245
FRITTER Ira M Stafford ---------- 659-2082
J 115 Manassas Dr Manas Pk ---------- 361-4437
Lindbergh A Stafford ---------- 659-4956
Lloyd H Stafford ---------- 659-2043
Steve P 12904 Vint Hill Rd Nokesvl ---------- 754-2739
FRITTS Charles L 8107 Mace Ct Manas ---------- 361-4494
Greg 8902 Sweetbriar St Manas ---------- 330-9004
Joseph W & Evelyn
12870 Nokes Rd Manas ---------- 369-6246
Louis S Rt 1 Chantilly ---------- 327-4478
FRITZ Don & Patty
8317 Argent Cir Fairfx Sta ---------- 690-2020
Donald 11786 Target Ct Wdbg ---------- 590-3780
Frank M 8234 English Oak Ct Manas ---------- 369-4000
Gregory P & Lisa
8138 Weatherwood Ct Manas ---------- 330-2858
Harold W Stafford ---------- 659-7388
Robert W
11080 Nevwood Dr Manas ---------- 369-5594
11080 Nevwood Dr Manas ---------- 690-6594
Robert W Lorton ---------- 690-6594
Robert W Manassas ---------- 368-4684
FRITZINGER Karl 4123 Guilford Ln D Cty ---------- 670-4794
FRITZMAN Dewey D Chantilly ---------- 327-4716
FRIZZLE Norman A
9902 Brownview Ln Manas ---------- 368-4278
FROCK D Woodbridge ---------- 590-9191
Frank 15224 Cloverdale Rd D Cty ---------- 680-9700
John 13 Susan St Staffrd ---------- 720-3673
P A Sterling ---------- 327-2205
FROEHLICH Rick & Carol
8303 Newcombe Ct Lorton ---------- 690-4255
Steven E 4449 Timber Ridge Dr D Cty ---------- 670-9723
FROELICH Bill J 10 Triumph Ln Staffrd ---------- 441-0532
FROG Pond Inc 12805 Aden Rd Nokesvl ---------- 594-2088
FROGALE William C Real Estate Corp
14171 John Marshall Hwy Gainesvl ---------- 754-2223
FROGG Alvin 1365 Longview Dr Wdbg ---------- 491-1589
FROGGETT Stephen J
11652 Henslow Ln Wdbg ---------- 590-5725
FROM Roy & Doris
14457 Del Mar Dr D Cty ---------- 670-6172
FROMAN Douglas J
5525 Logmill Rd Hymkt ---------- 754-4553
Robert L 8108 Ox Rd Fairfx Sta ---------- 690-1341
FROMER Gary & Mary
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4900 Tallowwood Dr Dumfries ---------- 680-4235
4900 Tallowwood Dr Dumfries ---------- 680-7126
FROMMER Brian E
3708 Forestdale Av D Cty ---------- 670-7630
FROMUTH Ben
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FRONEY Bert 18504 Triangle St Trngl ---------- 221-9716
FRONEY Karen M 8450 McGrath Rd Manas ---------- 369-3774
FRONTIER Log Home East
---------- 590-6794
FRONTIERO A 12450 Eden Ln Wdbg ---------- 590-6794
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9570 Kinsey Dr Manas ---------- 330-7969

FROST Bill 10311 Pen Dr Manas ---------- 330-8332
C Woodbridge ---------- 491-5132
David & Lori 14614 Danville Rd Wdbg ---------- 878-2490
Debbie 14883 Barkham Ct D Cty ---------- 680-5878
E 12652 Dara Dr Wdbg ---------- 491-7743
Ellen Young 3917 Forge Dr D Cty ---------- 878-7347
George Jr 1005 Santa Maria Dr Staffrd ---------- 720-2872
George & Dawn
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John E 14023 Springbrook Ct D Cty ---------- 590-6504
K S & T L 14441 Belvoir Dr D Cty ---------- 878-7906
L A 8958 Hooes Rd Lorton ---------- 690-5888
Michael L 9655 Richmond St Manas ---------- 368-5802
Pamela C 14873 Carlsbad Rd D Cty ---------- 590-5835
Richard D 12321 Colby Dr Wdbg ---------- 490-4951
Ronald & Ellen 13054 Michie Ct Wdbg ---------- 494-4202
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9250 Mosby St Manas ---------- 690-2245
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FROYD Bernice L Woodbridge ---------- 494-0837
F H 8878 Meadowview Ln Manas ---------- 368-4885
FRUCHTERMAN Richard & Barbara
11650 Temple Ln Manas ---------- 791-6534
FRUEHAUF Richard K
1676 Loudoun Dr Hymkt ---------- 754-0239
FRUEHWALD Robert
9270 Blueberry Av Manas ---------- 369-2835
FRUIT Robert W
18247 Irongate Way Manas ---------- 361-1912
FRUM D S 2105 James Madison Hwy Hymkt ---------- 754-4808
L M Manassas ---------- 330-2822
FRY C A Haymarket ---------- 754-8513
Charles C 1111 Spain Dr Staffrd ---------- 659-6048
Don & Kay 7307 Forrester Ln Manas ---------- 368-1766
Gary & Martha 2387 Longview Dr Wdbg ---------- 494-5713
James J Manassas ---------- 368-4674
Paul X The Plains ---------- 754-1218
R 15240 Edgehill Dr Dumfries ---------- 680-4997
FRY Ryan & Rebecca 9425 Ox Rd Lorton ---------- 690-2553
FRY Sally & Terry
14835 Elmwood Dr Wdbg ---------- 670-4857
FRYE A K 7413 Boundary Av Manas ---------- 369-1540
Albert E
3655 Thomasson Crossing Dr Trngl ---------- 221-6900
David L & Marci M
9020 Westchester Dr Manas ---------- 335-2412
E & L 8203 Hood Rd Manas ---------- 369-4449
Earl G 15205 Cardinal Dr D Cty ---------- 670-2400
Floyd C Sr 43 Norman Rd Staffrd ---------- 659-8946
Floyd & Debra
149 Manassas Dr Manas Pk ---------- 361-7530
George 14976 Darbydale Av D Cty ---------- 670-3734
George L Jr Widewater Beach Staffrd ---------- 659-8826
George L Jr 15205 Cardinal Dr Trngl ---------- 221-4837
Gregory W 106 Sheldon St Manas ---------- 369-4244
Jerron Rt 2 Aldie ---------- 327-4704
John J 2087 Pilgrim Dr Wdbg ---------- 494-7318
Julie E 14185 Kristin Ct Wdbg ---------- 490-8328
Kevin & Jeanette 18105 Purdis Dr Trngl ---------- 441-1937
L A Stafford ---------- 659-8394
Lois M 13715 Mayfair Ct D Cty ---------- 590-1712
Nicki 13715 Mayfair Ct D Cty ---------- 590-6556
Norman J 1426 Irons St Wdbg ---------- 491-0373
Randus R 64 Shore Dr Staffrd ---------- 659-4806
Robert W
2640 Omisol Rd Wdbg ---------- 491-6580
2640 Omisol Rd Wdbg ---------- 643-1240
Ruth 12800 Harbor Dr Wdbg ---------- 491-8501
S 11053 Canfield Ct Manas ---------- 368-8085
William L Jr
8120 Westerwood Ct Manas ---------- 330-9000
FRYER L Woodbridge ---------- 590-4773
R A Woodbridge ---------- 490-6319

FRUIT IN PHONE BOOK

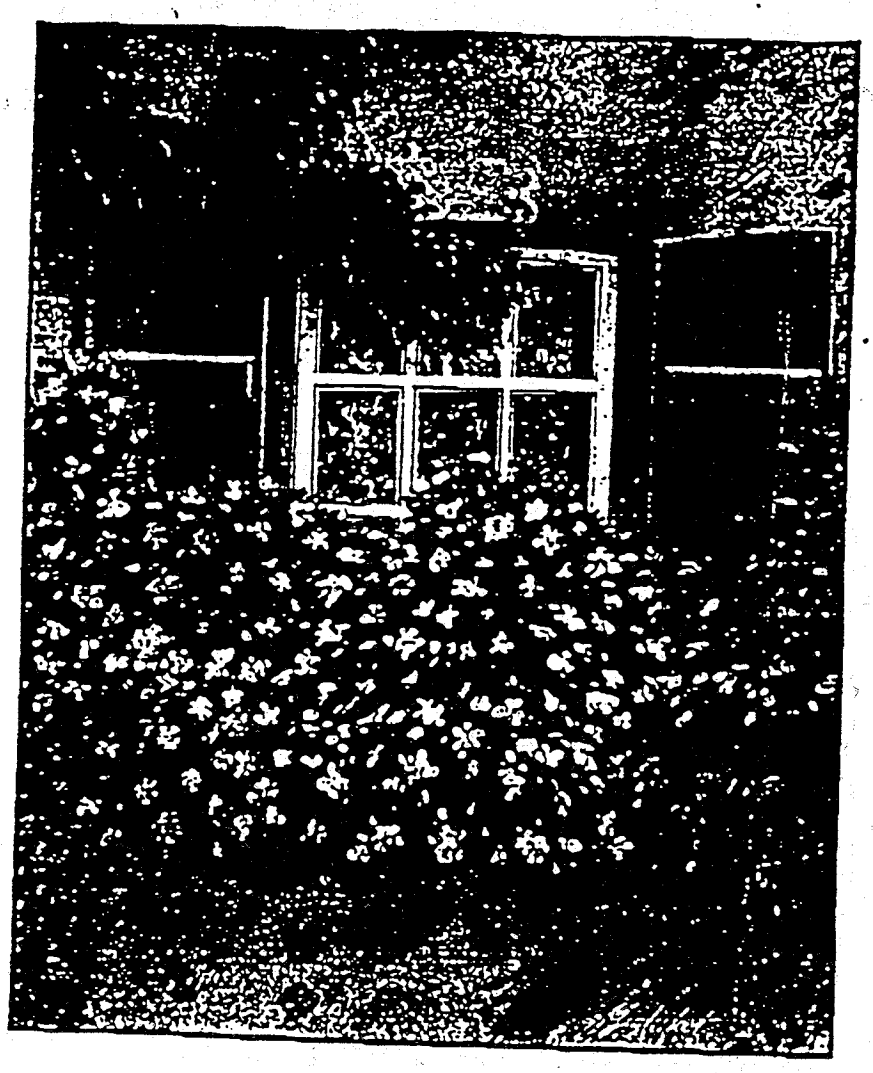
7

Petitioner Exhibit 2

YOUR OFFICIAL TELEPHONE DIRECTORY

Prince William County, VA

GTE



November '93

Arcola
Dale City
Dulles
Haymarket
Independent Hill
Lorton
Manassas
Manassas Park
Nokesville
Quantico
Triangle
Dumfries
Woodbridge–Occoquan

Including Listings for Stafford

1993/94

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AREA CODE 703
GTE VIRGINIA

SUBPOENA REQUEST

3031

Va. Habeas Order

FRITTER Ira M Stafford ---------- 659-2082
J 115 Manassas Dr Manas Pk ---------- 361-4417
Linda 236 Winsor's Run Stafford ---------- 659-0930
Lindbergh A Stafford ---------- 659-4956
Lloyd H Stafford ---------- 659-2043
Steve P 12904 Vint Hill Rd Nokesvl ---------- 754-2739
FRITTS Charles L 8107 Uleta Ct Manas ---------- 361-4404
Joseph W & Evelyn
11870 Hents Rd Manas ---------- 369-6246
FRITZ Christopher R
9756 Bordeaux Pl Wdbg ---------- 491-8289
D 18866 Crossroads Ct Trngl ---------- 221-7137
Don & Patty 8317 Argent Cir Fairfx Sta ---------- 690-2029
Frank M 9324 English Oak Ct Manas ---------- 369-4000
Harold W Stafford ---------- 659-7288
R J 12013 Falling Creek Dr ---------- 791-2988
FRITZINGER Karl 4123 Guilford Ln D Cty ---------- 670-4794
FRITZMAN Dewey D Chantilly ---------- 327-4716
FRIZZLE Norman A
9902 Greenview La Manas ---------- 368-4278
FROCK Frank 15224 Cloverdale Rd D Cty ---------- 680-9700
Kimberly K 13 Sussex La Stafford ---------- 659-0831
P A Sterling ---------- 327-2285
FROEHLICH Rick & Carol
8300 Newbourne Ct Lorton ---------- 690-4255
FROELICH Bill J Stafford ---------- 441-0531
FROG Pond Inc ---------- 594-2058
FROGALE William C Real Estate Corp
14171 John Marshall Hwy Gainsvl ---------- 754-2223
FROGG Alvin 1365 Longview Dr Wdbg ---------- 491-1589
FROGGETT Stephen J
11652 Hewitter La Wdbg ---------- 590-5725
FROHLING Ronald & Denise Manassas ---------- 368-0918
FROLING Gary 2217 Hampton Dr Stafford ---------- 720-9402
FROMAN Robert L 8108 Ox Rd Fairfx Sta ---------- 690-1341
FROMER Gary D & Mary V
9048 Old Hickory Ct ---------- 330-5501
FROMHARTZ Paul A
4900 Tallowood Dr Dumfries ---------- 680-4235
4900 Tallowood Dr Dumfries ---------- 680-7126
FROMM K L Manassas ---------- 369-0398
FROMME Ruth M 11517 Smithfield Rd ---------- 330-7112
FROMUTH Ben
8802 Newington Commons Rd Lorton ---------- 690-8439
FRONDA Mildred B
9707 Arlington Av Manas ---------- 330-9652
FRONEY Burt B 310 Washington St ---------- 221-4716
FRONSTIN Wendy M
12375 Midsummer La Wdbg ---------- 730-1528
FROSCH Kenneth & Julie
9520 Harvest Pl Manas ---------- 330-7969
FROST Bill 10311 Poe Dr Manas ---------- 330-8332
D W 45 Courage Ln ---------- 441-0724
E 12652 Dare Dr Wdbg ---------- 491-7741
Ellen Young 3917 Forge Dr D Cty ---------- 878-7347
Evelyn 10229 Farnborough Ct ---------- 330-4812
George & Dawn
3960 Sunnybrook Ct Wdbg ---------- 590-4501
K S & T L 19441 Seaboard Dr D Cty ---------- 878-7966
L A 8950 Hooes Rd Lorton ---------- 690-5880
FROST Land Surveys PC
655 Courthouse Rd Stafford ---------- 720-1234
FROST M J 2978 Seminole Rd Wdbg ---------- 491-0158
Michael L 9655 Richmond St Manas ---------- 368-5802
Paula C 14073 Carlsbad Rd D Cty ---------- 590-5835
Robert 8913 Virginia Av Manas ---------- 369-3341
Ronald & Ellen 13056 Mobile Ct Wdbg ---------- 494-4382
S 9572 Mimosa Dr ---------- 369-4083
FROSTICK Randolph D atty
9300 Grant Ave Manas ---------- 369-4738
9250 Mosby St Manas ---------- 690-2245
FROSTMAN Jerome T
4516 Blue Jay Ct D Cty ---------- 680-4505
FROWEN Gary 8704 Jackson Av Manas ---------- 368-1417
Gary M & Stacey 9200 Caspian Way ---------- 330-9093
FROWERT Mary Jane C
5166 Hevering Way ---------- 878-4569
FROYD F H 8978 Meadowview La Manas ---------- 368-4885
FRUCHTERMAN Richard
11650 Temple Loop ---------- 791-6532
FRUEHAUF Richard R
1676 Loudoun Dr Hymkt ---------- 754-0239
FRUEHWALD Robert

FRUME Albert & Yvonne
1803 Wagon Wheel La ---------- 590-6723
Roland 4214 Devonwood Way ---------- 590-5180
FRUIT Robert W 8127 Hillcrest Dr Manas ---------- 361-1912 X
FRUM D E 2105 James Madison Hwy Hymkt ---------- 754-4806
FRUMAN S D 11027 Edgepark Cr Manas ---------- 330-0615
FRY Barbara 9052 Reynolds Pl Manas ---------- 368-9205
C A Haymarket ---------- 754-8523
Charles C 1111 Semin Dr Stafford ---------- 659-6948
Dale & Marlise 14785 Stratford Dr ---------- 670-6830
Don & Kay 7357 Forrester La Manas ---------- 368-1766
Gary & Martha 2387 Longview Dr Wdbg ---------- 494-8723
James J Manassas ---------- 368-4076
John Barry 9409 Braymore Cr ---------- 680-2499
Michael 15509 Haymarket Dr ---------- 754-9496
Paul R The Plains ---------- 754-1118
R 15348 Edgehill Dr Dumfries ---------- 680-6997
R A 6409 Steeple Chase Ln ---------- 330-7522
Richard & Kelly 7604 Roxbury Ct Manas ---------- 361-3901
Rick Jr 8409 Lazy Oak Ct ---------- 690-2571
FRY Ryan & Rebecca 9425 Ox Rd Lorton ---------- 690-2353
FRY Sarah & William Manassas ---------- 791-6100
Susan L Manassas ---------- 368-1740
FRYE A K 7403 Boundary Av Manas ---------- 369-1540
Albert E
3655 Thornerose Crossing Dr Trngl ---------- 221-5980
Carol 7770 Black Horse Ct ---------- 335-5396
David L & Marci M
9010 Westchester Dr Manas ---------- 335-2613
Earl G 15205 Cardinal Dr D Cty ---------- 670-2400
FRYE Fence Co 9010 Westchester Dr ---------- 257-7169
FRYE Floyd & Debra
149 Manassas Dr Manas Pk ---------- 361-7530
George 14776 Dartsdale Av D Cty ---------- 670-3724
George L Jr 15205 Cardinal Dr D Cty ---------- 221-4837
George L Jr Widewater Beach Stafford ---------- 659-2238
J Y 287 Carriage Woods Dr Stafford ---------- 720-1288
James L 16003 Carroll Av ---------- 590-7548
Jarron Rt 1 Aldie ---------- 327-4904
John 2702 Harwick Ct ---------- 494-7518
L A Stafford ---------- 659-8394
Norman J 1426 Island St Wdbg ---------- 491-4373
Reedus R 64 Shore Dr Stafford ---------- 659-4066
Robert W
2640 Omisol Rd Wdbg ---------- 491-6580
2640 Omisol Rd Wdbg ---------- 643-1280
Ruth 12800 Harbor Dr Wdbg ---------- 491-8501
S 11053 Cornfield Ct Manas ---------- 368-8089
Stephen & Gwendolyn
7531 Albemarle Dr Manas ---------- 361-5065
FRYER Eric ---------- 491-3997
FRYETT Michael & Judy
10358 Strawflower Ln ---------- 335-2887
N J 9200 Cassena Way Manas ---------- 330-5870
FRYMYER Arthur G
6908 Harvey Rd Ind Hill ---------- 791-3828
FU Chu-Ming 9425 Bainbridge Ct Manas ---------- 361-7998
FUA Placido R 2571 Dovehill Ct Wdbg ---------- 490-1484
FUCCI August & Karen
11341 Kessler Pl Manas ---------- 369-0869
FUCELLO Joe & Debbie
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Joseph 2982 Fox Tail Ct Wdbg ---------- 494-3516
FUCHS Doyle 1009 Columbus Dr Stafford ---------- 659-0451
J L Woodbridge ---------- 590-1836
Judith L 185 Carnaby St Stafford ---------- 720-5328
Michael S Manassas ---------- 361-3497
Paul 4320 Kenwood Dr D Cty ---------- 590-3105
Ronald 9623 Clover Hill Rd Manas ---------- 361-4349
Theodore & Jeanette (J)
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Troy V 4320 Kenwood Dr D Cty ---------- 590-3218
FUDA Frank A 14201 Vint Hill Rd Hymkt ---------- 754-0709
FUDGE Elery D III 14315 Brook Dr D Cty ---------- 670-9097
FUDROW Frank Manassas ---------- 369-1274
FUEL Oil 13300 Occoquan Rd Wdbg ---------- 494-2855
FUELLENBACH Joseph & Donna
2178 Horseman Dr Stafford ---------- 659-4322
FUELLNER David T 5805 Sudley Rd Manas ---------- 754-0392
FUENTES Adolfo 3132 Yale Ct Wdbg ---------- 491-1463

FUENTES J & A
10221 Winged Elm Cir Manas ---------- 330-5646
Joel R 8601 Lines Dr Manas ---------- 368-6719
John 18542 Hercules Ln ---------- 680-2072
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Oscar Woodbridge ---------- 491-1271
R C 13808 Ragsdan Rd D Cty ---------- 878-7709
Robby 1150 Eisenhower Cir Wdbg ---------- 491-9225
FUERST Joel L 12131 Richland Dr Catharp ---------- 754-9730
Randall C 12179 Richland Dr Catharp ---------- 754-0531
FUGATE Jim R 300 Duke St Dumfries ---------- 221-3516
Oral & Freda 15538 Cardinal Dr Wdbg ---------- 670-8484
S D Dale Cty ---------- 590-5750
T 1329 Davis Reach Rd ---------- 494-0608
FUGER William & Janice
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FUGETT John & Teresa
1342 Columbus Dr Stafford ---------- 720-2584
FUGITT Paul E 12250 Pond Run Dr ---------- 590-6357
FUHRMAN Paul T 12132 Winona Dr Wdbg ---------- 494-1481
FUJI Express Potomac Mills Mall Wdbg ---------- 494-3856
FUKUSAKI Norman T & Janice
2611 Deepford Dr Wdbg ---------- 494-3720
FULBRIGHT Roy A 7915 Ashland Av Manas ---------- 361-8683
FULCHER Carlile 1275 Potomac View Dr ---------- 491-4364
Deborah 14388 Westminster Ln D Cty ---------- 590-2393
Jamie 14388 Westminster Ln D Cty ---------- 670-9671
Joseph M Arcola ---------- 327-2594
K Woodbridge ---------- 491-5223
Leslie 13829 Spriggs Rd Manas ---------- 590-9630
Moses A 15121 Cloverdale Rd Wdbg ---------- 670-4796
Paul R 1 Leesburg ---------- 327-4731
Thos F 9921 Peregrosum Rd ---------- 257-7832
FULCHINO R A 9840 Hampton Rd Fairfx Sta ---------- 690-2734
FULCOMER Michael
1386 Lapsate Av Wdbg ---------- 494-2902
FULFORD Carl W 18518 Cloan Rd Trngl ---------- 221-2784
FULFORD Enterprises
12208 Craven Ct Wdbg ---------- 490-8453
FULFORD Jeff P 10861 Gainard Dr ---------- 361-5468
Karen 5108 Spring Branch Blvd ---------- 670-8192
Michelle B 2491 Paxton St Wdbg ---------- 491-9754
Vivienne 15884 Beaver Dam Rd Dumfries ---------- 670-3694
FULGENCIO Nicky & Tina Dumfries ---------- 221-3815
FULK Anthony C 4204 Sunset Ter Sprngfld ---------- 690-4890
FULKERSON Elmer R
236 Possum Point Rd Dumfries ---------- 221-7214
Robert & Cheri 1332 Longview Dr ---------- 490-6499
FULL Circle Design 1127 Aosta Dr ---------- 659-3444
FULLEM Jas J 3819 Findley Rd D Cty ---------- 670-3781
James J E Dale City ---------- 878-7504
FULLEN M Paul & Carolyn
9085 Flint Rock Rd Manas ---------- 330-8450
FULLER Allen E Stafford ----------
Brenda L 405 Rosemont Rd Stafford ----------
FULLER Brush Products ----------
FULLER D Woodbridge ----------
D F Dale City ----------
E Woodbridge ----------
E Woodbridge ----------
Edward & Donna 4698 Abbott Ct ----------
Elaine F Manassas ----------
F R 2948 Longview Dr Wdbg ----------
G L & B F 2946 Brunett Dr ----------
James D 8805 Peabody St Manas ----------
James D 14025 Walton Dr Manas ----------
James R 9712 Sudley Manor Dr Manas
Jimmy W & Beverly
963 Garrisonville Rd Stafford ----------
John B 1268 Gainsborough Cir Wdbg ----------
K 1830 Sugar Hill Dr Wdbg ----------
N A 3861 Ophelia Ct Wdbg ----------
Norman 10857 Gambrill Dr ---------- 369-0879
Paul 8598 Shannon La Manas ---------- 335-2274
R W 14725 Embrey Turn D Cty ---------- 590-8549
Richard C 4235 Berwick Pl Wdbg ---------- 590-8543
Rod 14338 Kimbdale Av ---------- 878-9375

1993

FRUIT IN PHONE BOOK

9

I, Diana T. Hyman, of Gainesville, Virginia, do hereby state the following:

1 I was a juror in the 1993 Capital murder trial of Carl Chichester.

2. I have now been presented with evidence that was never told to jurors at the time of trial. This evidence included the fact that there were initially two witness who stated that the shot was fired from the employee side of the counter at the Little Ceasars restaurant.

3. In light of this new evidence, I would not have voted to convict Mr. Chichester of capital murder because I have reasonable doubts as to the identity of the shooter.

4. I ask the Governor to please reevaluate the case in light of this evidence that was never presented to us. I no longer have faith in my verdict. I do not believe the verdict is correct given this evidence.

Diana T. Hyman

Sworn to before me this 28th day of March, 1999.

Notary Public

2/3/1...

I, Camille Houston, of Dale City, Virginia, do hereby state the following:

1. I was a juror in the 1993 capital murder trial of Carl Chichester.

2. I have learned of new evidence that I did not hear at the time of the trial.

3. If I had known this evidence at the time of trial, I would not have voted to convict Mr. Chichester of capital murder.

4. This new evidence includes the fact that William Fruit, an employee at the Little Ceasars Restaurant, believed that the man who fired the shot was on the employee side of the counter.

5. I have also learned that Patricia Eckert, who testified at trial that ~~e~~ she could not say who fired the shot, initially told police that it was the man on the employee side of the counter that fired the shot.

6. I don't understand why the jurors were not presented with this evidence at the time of trial

7. My decision in this case was a very difficult one. I thought the case was a very close call. Given just the evidence of William Fruit, I would have voted not to convict Chichester of capital murder.

8. If this execution is to be carried out in my name, based on my verdict, then Mr. Chichester should not be executed.

Camille Houston

Camille Houston

Sworn to before me this 27th day of March, 199

Jennifer Givens

Notary Public

My commission expires: 7/31/01

AFFIDAVIT

Richard A. Conway, first being duly sworn, states as follows:

1. I am an Assistant Commonwealth's Attorney for Prince William County. In 1993, the Commonwealth's Attorney, Paul Ebert, and I prosecuted Carl Chichester for the capital murder of Timothy Rigney during the commission of armed robbery at Little Caesar's Restaurant, and also for the related crimes of robbery and the use of a firearm. The Chichester trial commenced on September 13, 1993.

2. I also prosecuted Sheldon McDowell, Chichester's accomplice, however, McDowell was prosecuted for first degree murder as a principal in the second degree. The McDowell case was tried in February, 1993, and involved the same witnesses who testified several months later in Chichester's trial.

3. One of the witnesses involved in the cases was a teenager, William Fruit, who was an employee, working at Little Caesar's on the night of the murder/robbery. Fruit gave a statement to the police after the crimes occurred in which he stated that he believed the triggerman had jumped over the counter. I provided this information to the defense before trial in my written answer to the discovery motion.

4. Fruit's parents were very protective of their son and extremely reluctant to have him involved in the case because he had been emotionally traumatized by the event. In preparation for the first trial in February, 1993, I requested that William Fruit be subpoenaed to appear as a witness, however, the subpoena was returned unserved because the Sheriff's Office was unable to locate him. (Enclosure A, certified copy of returned subpoena). Fruit

apparently had moved away, we were unable to find him, and he did not appear as a witness at either trial.

Richard A. Conway

Subscribed and sworn to before me, a Notary Public in and for the County of Prince William, this 20th day of February, 1996.

Notary Public

My commission expires: November 30, 1997

Petitioner Exhibit 3

BK1897 PG1702

53960

THIS DEED, made this 26th day of June, 1991, by and between Robert William FRUIT and Gloria J. FRUIT, his wife, parties of the first part, and Wayne Marvin SMITH and Sun C. SMITH, his wife, parties of the second part;

WITNESSETH: That for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the said parties of the first part do hereby grant, bargain, sell and convey, with General warranty, unto the said parties of the second part, as tenants by the entireties with the full common law right of survivorship, all that certain lot or parcel of land situate, lying and being in the Prince William County, Virginia, and more particularly described as follows:

All that certain lot, piece or parcel of land lying and being in Prince William County, Virginia, and designated as Lot One Hundred Forty-one (141), of the subdivision dedicated as Irongate, Section Two-B (2-B), shown on plat thereof recorded with Deed of Dedication in the Clerk's Office of Prince William County, Virginia, in Deed Book 598, at page 483.

And Being the same property acquired by Robert William Fruit and Gloria J. Fruit by Deed recorded in Deed Book 728, page 807 among the land records of Prince William County, Virginia.

The above described land is conveyed subject to all easements, conditions, covenants, restrictions, and rights of way of record legally affecting title to same.

The parties of the first part covenant that they have the right to convey the above described land to the said parties of the second part; that the said parties of the second part shall have quiet possession of the said land, free from all encumbrances, and that they, the said parties of the first part, will execute such further assurances of the said land as may be requisite.

This is to certify that the tax imposed by Section 58.1-802(A) has been paid
Consideration $85,000.00
Tax $85.00

PROFESSIONAL CLOSING SERVICES, A PROFESSIONAL LAW CORPORATION 1951 ASSOCIATES COURT MANASSAS, VIRGINIA 22110

Return to: Candus Hoo
10347 Irongate Loop
Manassas VA 22110
Consideration: $85,000.00

WITNESS the following signatures and seals:

Robert William Fruit (SEAL)

Gloria J. Fruit (SEAL)

STATE OF VIRGINIA

COUNTY OF PRINCE WILLIAM, to-wit:

The foregoing instrument was acknowledged before me this 26th day of June, 1991, by Robert William Fruit and Gloria J. Fruit.

Notary Public

My commission expires: 7/28/94

2

92 JUN 29 PM 1:36

PRINCE WILLIAM CO., VA

TESTE

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IN THE

Supreme Court of Virginia

RECORD NO. 940130
CONS. W/ 940131

CARL HAMILTON CHICHESTER,

Appellant,

V.

COMMONWEALTH OF VIRGINIA,

Appellee.

BRIEF OF APPELLANT

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SUBJECT INDEX

CITATION

Barefoot v. Estelle	463 U.S. 880 (1983)
Barnes v. Commonwealth	234 Va. 130; 360 S.E.2d 196 (1987)
Bellefield v. Commonwealth	215 Va. 303; 208 S.E. 2d 771 (1974)
Bennett v. Commonwealth	236 Va 472; 347 S.E. 2d 318 (1988)
Brady v. Maryland	375 U.S. 83 (1962)
Brown v. Ohio	432 U.S. 161 (1977)
California v. Brown	479 U.S. 538 (1987)
California v. Trombella	467 U.S. 479 (1984)
Curtis v. Commonwealth	3 Va. app 636; 352 S.E. 2d 536 (1987)
Dorantes v. Commonwealth	222 Va. 383; 281 S.E.2d 823 (1981)
Eddings v. Oklahoma	455 U.S. 104 (1981)
Edmonds v. Commonwealth	229 Va. 303; 329 S.E. 2d 807 (1985)
Fisher v. Commonwealth	236 Va. 403; 374 S.E. 2d 46 (1988)
Foster v. Commonwealth	5 Va. app 316; 362 S.E. 2d 745 (1987)
Francis v. Franklin	471 U.S. 307 (1985)
Furman v. Georgia	408 U.S. 238 (1972)
Giglio v. U. S.	405 U.S. 150 (1972)
Giles V. Maryland	386 U.S. 66 (1967)
Godfrey v. Georgia	446 U.S. 420 (1980)
Godwin v. Commonwealth	6 Va. app. 118; 367 S.E. 2d 520 (1988)
Gray v. Commonwealth	233 Va. 313; 356 S.E. 2d 157 (1987)

Gregg v. Georgia	428 U.S. 153 (1976)
Hawks v. Commonwealth	228 Va 244; 321 S.E. 2d 650 (1984)
Henderson v. Commonwealth	5 Va. app 125; 360 S.E. 2d 876 (1987)
Hitchcock v. Dugger	481 U.S. 393 (1987)
Hoke v. Commonwealth	236 Va 472; 374 S.E. 2d 66 (1989)
Johnson v. Commonwealth	3 Va. app 444; 350 S.E. 2d 673 (1986)
Johnson v. Mississippi	105 S. Ct. 198 (1988)
Kirkpatrick v. Commonwealth	211 Va. 269; 176 SE 2d 802 (1970)
La Farce v. Commonwealth	14 Va. app 588; 419 S.E. 2d 261 (1992)
Locket v. Ohio	438 U.S. 586 (1978)
Lovely v. U.S.	169 F2d 386 (1948)
Martin v. Commonwealth	221 Va. 436; 271 SE 2d 123 (1980)
Maryland v. Carwright	108 S. Ct. 1853 (1988)
Meadows v. Commonwealth	9 Va. app 243; 385 S.E. 2d 906 (1989)
Mills v. Maryland	108 S. Ct. 1860 (1988)
Minor v. Commonwealth	213 Va 278; 191 S.E 2d 825 (1972)
Murray v. Gearratani	109 S. Ct. 2765 (1989)
Parker v. Commonwealth	14 Va. app. 592; 421 S.E. 2d 450 (1992)
Praffit v. Florida	428 U.S. 424 (1976)
Pulley v. Harris	104 S. Ct. 871 (1984)
Roberts v. Louisiana	428 U.S. 325 (1976)
Rider v. Commonwealth	8 Va app. 595; 383 S.F. 2d 25 (1989)

Virginia Code Section 19.2-68 1950 as amended

Virginia Code Section 19.2 264.2-5 1950 as amended

Jury Selection Procedures (Ballinger 1977)

ASSIGNMENT OF ERRORS

1. The Sentence of death and sentences of imprisonment imposed herein were imposed under the influence of passion, prejudice, and were arbitrary.

2. The sentence of death, and sentences of imprisonment, imposed herein were excessive or disproportionate to the penalty imposed in similar cases.

3. That the trial court committed reversible error in permitting the introduction of evidence, both testimonial and actual, of and from prior adjudications of guilt; to wit; Joe's Pizza.

4. That the trial court committed reversible error in permitting the introduction of evidence, both testimonial and actual, of and from prior adjudicated and unadjudicated crimes/offenses, in addition to Joe's Pizza.

5. That the trial court committed reversible error in permitting the introduction of evidence, both testimonial and actual, of Appellant's possession of a weapon not used in the crime at issue: to; Little Caesar's Pizza.

6. That the trial court committed reversible error in permitting the introduction of evidence, both testimonial and actual, which was irrelevant to the crimes allegedly committed in this case.

7. That the trial court committed reversible error in permitting the introduction of Appellant's plea of guilt, and

evidence of his guilt, of the Joe's Pizza crimes after the Commonwealth agreed with Appellant's prior counsel not to introduce evidence of Appellant's guilt in the trial of the Little Caesar's matter except under certain circumstances. Those circumstances did not arise in this matter.

8. That the Commonwealth's Attorneys were guilty of prosecutorial misconduct in presenting evidence of a prior crime: to wit; Joe's Pizza, after agreeing not to do so with Appellant's previous counsel.

9. That there was insufficient evidence to sustain a conviction in this matter beyond a reasonable doubt and that the trial court committed reversible error in failing to set aside jury verdict.

10. That the trial court committed reversible error in failing to grant Appellant an evidentiary hearing, and to otherwise accept evidence, on the issue of the constitutionality of imposition of the death penalty be electrocution.

11. That death by electrocution is cruel and unusual punishment and violative of the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution and pursuant to Article I Section 8 of the Virginia Constitution.

12. That the death penalty is cruel and unusual punishment and violative of the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution and pursuant to

Article I Section 8 of the Virginia Constitution.

13. That the death penalty as imposed by Virginia, and all statutory authority for the imposition of the death penalty and the trial of death penalty cases in Virginia, are violative of the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution and pursuant to Article I Section 8 of the Virginia Constitution.

14. That the trial court committed reversible error in failing to grant Appellant's motions for continuance.

15. That the trial court committed reversible error in failing to grant Appellant's requests for appointment of an independent investigator.

16. That the trial court committed reversible error by excluding two blacks (i.e. African American) as jurors.

17. That the jury panel did not contain sufficient blacks (i.e. African Americans).

18. That the trial court committed reversible error in not permitting Appellant to ask all of his proffered voir dire questions and to ask many of those questions in the form so proffered.

19. That the trial court committed reversible error in failing to permit individual voir dire.

20. That the trial court committed reversible error in excluding jurors who would not vote for the death penalty.

21. That the trial court committed reversible error in failing to change venue.

22. That the trial court committed reversible error in failing to sequester the jurors.

23. That the trial court committed reversible error in failing to permit additional preemptory challenges.

24. That the trial court committed reversible error in permitting the introduction of inflammatory photographs.

25. That the trial court committed reversible error in failing to grant each of Appellant's mistrial motions.

26. That certain members of the jury were prejudiced toward a verdict of guilt and did not deliberate presuming Appellant's innocence.

27. That the trial court committed reversible error in failing to sustain each and every one of Appellant's objections and motions.

IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

CARL HAMILTON CHICHESTER,

APPELLANT,

v.

COMMONWEALTH OF VIRGINIA

APPELLEE.

STATEMENT OF FACTS

On the 16th day of August 1991 in the County of Prince William, two armed men wearing ski masks entered Little Caesar's Pizzeria in the Manaport Shopping Center between 10:30 p.m. and 11:00 p.m.. During the commission of the armed robbery one of the perpetrators shot to death (30) year old Timothy A. Rigney the store's manager. The shooting took place in front of two employees and two customers. Then both robbers fled the Pizzeria on foot and turned right going through a breeze way out to a side street. At the approximate time of the robbery Jack Gill Burdette was crossing the side street toward two men who were running from the Manaport shopping center in his direction. Neither man was wearing a mask nor were they observed carrying a gun. The two passed within (10) feet of Burdette and he recognized one as being Carl H. Chichester a person that Burdette had previously dealt with. Burdette advised the Prince William

County Police of the identification of Chichester and after extensive police investigation, it was determined the other runner was believed to be Sheldon M. McDowell. On the 1st of March, 1993 Carl Chichester was indicted in Prince William County for armed robbery, use of a firearm and capital murder. Sheldon McDowell who had been indicted earlier was tried on the 22nd day of February 1993 to the reduced charge of 1st degree murder and found guilty. Carl Chichester was tried on the 14th day of September, 1993 in the Circuit Court for Prince William County, found guilty of capital murder and sentenced to death.

During the police investigation and at the time of Chichester's arrest an automatic pistol was found in his possession, however through ballistic's test the gun that Chichester was found in possession of at the time of his arrest was not the gun that fired the projectile that killed Timothy A. Rigney on the 16th of August 1991 in Little Caesar's Pizzeria. The gun that fired the projectile that killed Timothy A. Rigney was never recovered, although Richard Fairfax, (6 time convicted felon) testified at Chichester's trial that he went to Maryland one night and sold a gun for Chichester but did not really know the caliber of the gun that was sold. During Chichester's trial, Chichester never took the stand to testify and explain any charges and or evidential testimony that the Commonwealth presented.

ARGUMENT

I

The sentence of death and sentences of imprisonment imposed were imposed under the influence of passion, prejudiced.

During the trial of Chichester in the shooting death of Timothy A. Rigney, Rigney's mother and other family members were setting just next to the jury box and in plain view of the entire jury for no other than influencing the jury with passion.

During the empanelment of the jury the Commonwealth Attorney was allowed to strike two members of the jury panel, who were black, for no apparent reason other than the defendant being black. Such action by the Commonwealth Attorney was for no other reason other than prejudice, because the defendant was black

II

The sentence of death; and sentences of imprisonment imposed were excessive or disproportionate to the penalty imposed in similar cases.

Although there was no conclusive evidence that Sheldon McDowell the co-defendant did or didn't fire the murder weapon, especially in light of the fact that the murder weapon was never found and the gun in Chichester's possession at the time of his arrest was scientifically proven not to be the murder weapon, McDowell's charge was reduced to first degree murder. The reduction of McDowells charge prevented him from receiving a

death sentence. On the other hand Chichester's charge remained at capital murder and armed robbery,, thus allowing Chichester to receive life, as well as death, even though no reliable evidence known to the Commonwealth could link Chichester with the murder weapon, other than speculation.

III

The trial court committed reversible error in permitting the introduction of evidence both testimonial and actual, of and from prior adjudications of guilt to-wit; Joe's Pizza. On several occasions Officer Sowards was allowed to testify and comment on Chichester's prior involvement in Joe's Pizza's robbery and what transpired during the Joe's Pizza's trial of Chichester, (Vol. VI p. 1933-1940 and Vol V p. 1737-1750) even though by a previous plea agreement the Commonwealth Attorney agreed not to do so, except for relevance and impeachment. (Vol I p.2) At no time whatsoever did Carl Chichester take the stand and testify. The Commonwealth will argue that the defence actually brought out through cross examination of Officers Sowards, Chichester's involvement in Joe's Pizzeria robbery. However, the Commonwealth initiated the testimony of prior criminal robberies (Vol. VII p. 1993-40) and defence counsel must make ever effort to mitigate such testimony. This evidence was allowed even though Chichester had a plea agreement that the Commonwealth would not use other criminal activity, as incentive for Chichester's pleas to Joe's Pizza (Vol I p. 2).

IV

The trial court committed reversible error in permitting the introduction of evidence, both testimonial and actual, of and from prior adjudicated and unadjudicated crimes/offenses in addition to Joe's Pizza. Even though agreed by the Commonwealth (Vol I p. 2) that prior crimes would not be entered through testimony at any subsequent trial, it was so done and the trial Judge allowed it over objection. This evidence was allowed in spite of the fact that Chichester had not testified prior to the introduction of such evidence nor did Chichester even testify in the trial.

V

The trial court committed reversible error in permitting the introduction of evidence, both testimonial and actual, of Appellant's possession of a weapon not used in the crime at issue: to-wit; Little Caesar's Pizza.

When Chichester was arrested on the 7th day of January 1992, he was found in possession of a hand gun that neither matched the hand gun in appearance or caliber of the hand gun used in the murder of Timothy A. Rigney. The only usefulness of that evidence was to prejudice the jury against Chichester.

VI

The trial court committed reversible error in permitting the introduction of evidence, both testimonial and actual, which was irrelevant to the crimes allegedly committed in

this case. Prince William County Police Officer Sindy Leo was allowed to testify about arrests in 1990 that she participated in, of Carl Chichester for crimes that only had the effect of prejudicing the jury, (Vol. VI p. 1931) the crime had no relation or relevance to the murder charge. Officer's arrest of Chichester couldn't even show the mode of operation in any way to the Little Caesar's Pizza crime.

VII

The trial court committed reversible error in permitting the introduction of Appellant's plea of guilt, and evidence of his guilt, of the Joe's Pizza crimes after the Commonwealth agreed with Appellant's prior counsel not to introduce evidence of Appellant's prior crimes at any subsequent trials, except under certain circumstances. The only similar circumstances of the two robberies that they both were committed by two individuals, who were masked wearing dark clothing. That evidence would have the same similarity of just about 100% of all robberies throughout the Nation let alone Virginia.

VIII

The Commonwealth's Attorneys were guilty of prosecutorial misconduct in presenting evidence of a prior crime; after agreeing not to do so with Appellant's previous counsel (Vol. I p. 2). When the prosecutor induces one to plea guilty to a crime by assuring him that the guilty pleas will not be used against him in subsequent trials, then the Commonwealth

disregards his promise, that in the belief of the defence is prosecutorial misconduct. (Vol. VI p. 2105-2113).

IX

There was insufficient evidence to sustain a conviction in this matter beyond a reasonable doubt and that the trial court committed reversible error in failing to set aside the jury verdict. At no time during the Little Caesar's Pizza trial was Carl Chichester ever identified as the perpetrator of the murder.

X

The trial court committed reversible error in failing to grant Appellant an evidentiary hearing, and to accept evidence on the issue of the constitutionality of imposition of the death penalty by electrocution. It is the Appellant's position that death by electrocution is cruel and unusual punishment, in fact some states have already so decided, and Virginia is starting to re-evaluate the harshness of death by electrocution by allowing the condemned to choose between electrocution and lethal injection.

XI

Death by electrocution is cruel and unusual punish and violative of the Fourth, Fifth, Eighth and Fourteen Amendment to the Constitution, as well as Article I Section 8 of the Constitution of Virginia.

No person shall be compelled in any criminal case to be a witness against himself nor be deprived of life, liberty or

property, without due process of law, nor cruel and unusual punishment inflicted.

It is believed by the Appellant that the testimony of Officer Sowards, (Vol V p. 1737-50 and Vol VI p.1933-40) and the testimony of Officer Sindy Leo (Vol VI p. 1931) was violation of due process, as well as the sentencing the Appellant to death violates his Constitutional right of due process, as well as receiving cruel and unusual punishment. The testimony of officer Sowards and Leo as given is tantamount to the Appellant being forced to give testimony against himself in violation of his constitutional right as stated in the United States Constitution.

XII

The death penalty is cruel and unusual punishment and violative of the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution and the Virginia Constitution's Article I Section 8.

The prolonged pain of death by electrocution as Appellant was sentenced under the laws of Virginia is inhuman, and therefore, cruel and unusual.

XIII

The death penalty as imposed by Virginia, and all statutory authority for the imposition of the death penalty and the trial of death penalty cases in Virginia are violative of the Fourth, Fifth, Eighth and Fourteenth Amendment to the United States Constitution, and to Article I Section 8 of the Virginia

Constitution.

It is believed by your Appellant that his trial violated the Virginia and United States Constitutions due process clause, when the trial Judge allowed into evidence that which allowed Appellant to be found guilty and sentenced to death by electrocution.

XIV

The trial court committed reversible error in failing to grant Appellant's motion for continuance. Also by not granting the appointment of an investigator. Appellant needed more time to investigate his case and the denial of a continuance did not allow the needed time to find persons whose names had been submitted to the court, as possible perpetrators of the crime for which Appellant was accused.

XV

The trial court committed reversible error in failing to grant Appellant's requests for appointment of an independent investigator.

Appellant through the work of his two representatives counsels discovered the names of persons who had made statements to reliable citizens (Vol I p.249-254) that they had committed the crime for which Appellant was charged. Time being of the essence appellant motion for a continuance (Vol I p. 357) and Vol. 1 p. 247), to allow time for those individuals to be found, with the help of an investigators. Both motion were denied by

the court in violation of due process, and Appellant's Constitutional rights of a fair and impartial trial were violated.

XVI

The trial court committed reversible error by excluding two blacks (i.e. African Americans) as jurors.

The trial court allowed the Commonwealth to strike two blacks for apparently no reason whatsoever other than they were black and the Appellant is also black.

XVII

The jury panel did not contain sufficient blacks for the Appellant who is black to receive a fair trial representative of the percentages of the number of black residing in the community.

Appellant only had three blacks on the entire panel and two of which were struck by the Commonwealth for no reason other than being black, (Vol 1 p.360). The other one was a young black lady. The total panel of prospective jurors was fifty. The (3) blacks on the panel of fifty represented only (6%) of the total panel and only one black on the jury selection of fourteen, (two being emergency spares), the jury selection was represented by only 7.1% of black persons. Neither 6% or 7.1% represent the proper percentage of blacks residing in the County of Prince William nor in the State of Virginia. With the total population of the United States being 12% black, Appellant did not have a

fair representation of blacks on the jury panel nor the selected jury for Appellant to receive a fair trial by a proper representative of his peers.

XVIII

The trial court committed reversible error in not permitting Appellant to ask all of his proffered voir dire questions and to ask many of those questions in the form so proffered.

Appellant believed in order to receive a fair trial that he should be allowed to ask as many voir dire questions as he would like as long as the questions are relevate to the proper discovery of attitudes, back grounds and beliefs of perspective jurors as maybe germane to the crime as charged.

XIX

The trial court committed reversible error in failing to permit individual voir dire. Appellant believes, given the nature of his charge, and based on the type of punishment he could receive, voir diring prospective jurors in groups, regardless how small, has the tendency of panel members not giving answers they believe, but to give answers that their perspective panel members would agree.

XX

The trial court committed reversible error in excluding juror's who would not vote for the death penalty.

Appellant believes by the court excluding prospective jurors who did say they could not vote for the death penalty especially in front of other prospective jurors, gave the impression to other perspective jurors, that should they find the accused guilty they would have no other choice but to sentence him to death.

XXI

The trial court committed reversible error in failing to change venue.

Appellant believe that because of the local media coverage this case received, it was impossible and highly improbable that without a change of venue, Appellant did not nor could he have received a fair trial from a jury who was totally uninformed or opinionated about the murder at Little Caesar's Pizzeria.

XXII

The trial court committed reversible error in failing to sequester the jurors.

Appellant believed that with a trial of this magnitude and media publicity, that a murder trial receives, the only safe way to receive a fair trial is for the juror's to be sequester thus preventing outside influence imposed upon the them.

XXIII

The trial court committed reversible error in failing

to permit additional preemptory challenges.

Appellant believes that since the trial was begun with a prospective fifty juror panel (Vol I p.228), he should be allowed the percentage of preemptory challenges based on the number of jurors in the juror panel, especially when he would be allowed (4) preemptory challenges with a twenty juror panel.

XXIV

The trial court committed reversible error in permitting the introduction of inflammatory photographs.

Appellant believes gory colored photographs has no real value other than infuriating the juror so they will be prejudice against the defendant.

XXV

The trial court committed reversible error in failing to grant each of Appellant's mistrial motions.

Appellant believes the trial court should not have allowed any evidence of prior arrests of Appellant nor evidence of prior pleas when the Appellant had entered into previous agreements that such evidence would not be admitted. The court therefore should have granted the motion for a mistrial.

XXVI

Certain members of the jury were prejudiced toward a verdict of guilt and did not deliberate presuming appellants innocence.

Appellant does not believe a jury of any even make-up could review the evidence of his trial as quickly as they did in rendering a decision.

XXVII

The trial court committed reversible error in failing to sustain each and everyone of Appellant's objections and motions.

Appellant believes each and every one of his motions should have been granted especially in light of the seriousness of his trial, and none of his motions were frivolous. Appellant further believes that all of his objections were well founded and for the court to deny them as was done in open court, he was prejudiced in front of the jury.

SUMMARY

Your Appellant petitions this court to reverse the decision of the Circuit Court for Prince William County and thereby granting him a new trial. Appellant believes that among the many errors as cited in this petition the most damaging was the allowing into testimonial and exhibited evidence from prior charges, especially after the Commonwealth Attorney had agreed in writing that he would not. The free will allowing of other evidence only prejudiced the jury against Appellant. Especially since the gun that was admitted into evidence could not have been the gun that fired the shot that killed the murder victim in this case. The murder weapon was never found and only speculative testimony from a (6) time convicted felon, who was getting favorable treatment by the Commonwealth, gave any evidence that there was another gun. The testimony of the other gun by the (6) time convicted felon was not positive of the caliber. Appellant believes that speculative testimony such as given by the (6) time convicted felon concerning the gun should not have been allowed.

Appellant believes that he did not receive a fair trial by the trial court, when he was not allowed the appointment of an investigator to help in locating the two persons who were over heard by a concern citizen stating that one of them had committed the crime for which Appellant was charged. Under the discovery as granted by the trial court nothing was ever mentioned by the Commonwealth's answers about the persons who

had made statements that they had committed the crime for which Appellant was charged. The Commonwealth never made mention of any statements made, nor who made them, even though a search warrant was obtained by the Prince William County police concerning the statements made. When it was discovered that the person who made the statements had moved from the known residence nothing further was pursued by the police nor was any mention ever made by the Commonwealth through discovery about someone having stated that he had committed the murder for which the Appellant was charged.

Appellant further believes he did not nor could he have, received a fair trial from his peers when it is mathematically proven that Appellant did not receive a trial by his peers. There was only one black on the jury and only three blacks among the panel. With everything as presented by Appellant in his appeal brief, it is believed that Appellant not only did not receive a fair and impartial trial, but it was impossible for a fair and impartial trial under the circumstances he was tried.

It is therefore, prayed by your Appellant that the decision of the Prince William Circuit Court be reversed and his case be remanded back to the Circuit Court of Prince William County for a new trial with the granting of an investigator and exclusion of prior criminal activity as set out in the agreement of the Commonwealth Attorney, unless it is shown that the

introduction of such complies with the law of the State Virginia and the United States Constitution.

Respectfully submitted,

CARL HAMILTON CHICHESTER
By Counsel

R. Randolph Willoughby, Esquire
Bryant A Webb, Esquire

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Attorney at Law
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Manassas, Virginia 22110
(703) 361-2142

Bryant A. Webb
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4300 Ridgewood Center Drive
Woodbridge, Virginia 22192
(703) 570-7600

CERTIFICATE OF SERVICE

I hereby certify that Rule 5:26 has been complied with by filing 20 copies of the foregoing Brief of Appellant and Joint Appendix with the Clerk of the Supreme Court and that I have hand delivered 3 copies of the same to Kathryn P. Baldwin, Assistant Attorney General, 101 North Eighth Street, Richmond, Virginia 23219, this 8th day of March, 1994.

R. Randolph Willoughby
Attorney at Law
9259 Center Stret
Manassas, Virginia 22110
(703) 361-2142