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Simple Justice – A Changing Eyewitness Account

November 24, 2014 Justice Project UW Tacoma Justice Project No comments



A chance encounter with an eyewitness provided the break in a month-old murder investigation of a Fort Lewis soldier in 2006. But with two traumatic brain injuries and addiction to alcohol and marijuana, could his story be trusted? A UWT Justice Project investigation found significant questions about the eyewitness account.

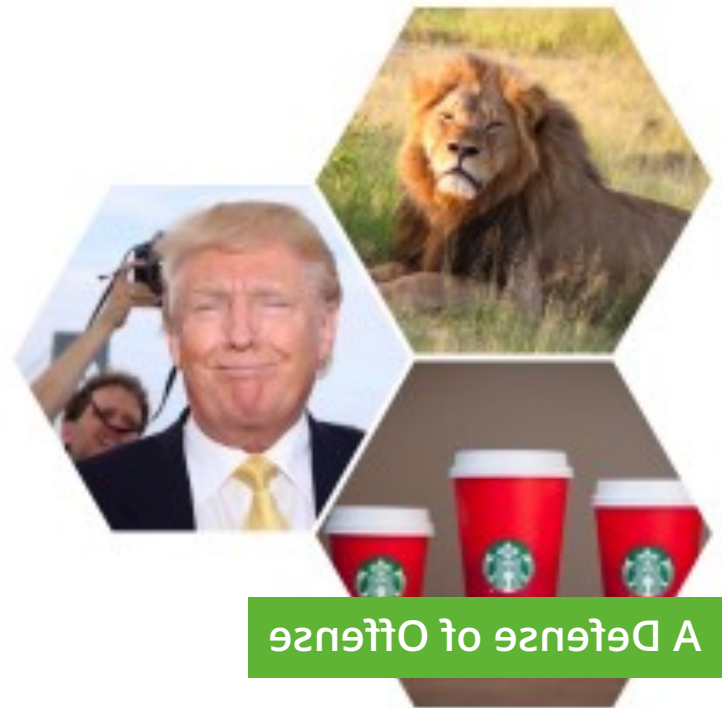
By Chelsea Vitone, Danielle Burch, Joanna Sappenfield, Brittany Hale, Eva Revear

When Detective John Ringer searched a teen’s room in Tacoma’s Hilltop on the morning of Oct. 5, 2006, he found more than outlined in the search warrant: He got a break in an unrelated month-old homicide case.

During the search, the girl’s mother told Ringer, “you know, the guy on the front porch said he witnessed a homicide here a short time ago,” according to Ringer’s testimony. He briefly interviewed Jelvis Sherman, the woman’s brother-in-law, and summoned Tacoma Police Department homicide detectives Brian Vold and Bob Yerbury. The pair had spent the previous month investigating the death of Fort Lewis soldier Julius Williams at Bryant Elementary School, just a block from the home where Sherman was staying.

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Five days later, Irvin Carter Jr. was arrested for the murder of Williams, his friend. Two years and two trials later, he was convicted of first degree murder in part based on Sherman’s testimony. He is at Stafford Creek Correctional Facility near Aberdeen, serving out a nearly 40-year sentence.

A five-month investigation by the UWT Justice Project raises questions about Sherman’s testimony. He has changed key details of his story each time he’s told it, including in recent interviews with the UWT Justice Project. In the two years prior to witnessing the murder, Sherman suffered two traumatic brain injuries, which left him with a compromised ability to process and retain information, according to his testimony and medical records. Sherman was addicted to alcohol and reliant on marijuana, which he was using at the time he witnessed the murder, and was also taking prescription methadone—synthetic heroin. The murder occurred at night in an area where only a few ornamental streetlights dotted one side of the street: Sherman estimates he was 25 yards away, according to trial transcripts. He was the only eyewitness to identify Carter: Another witness who was in the neighborhood that night offered a different version of events, including different suspects.

Sherman now says he feels like the police were “bullshitting” him. When asked in a recent phone interview with UWT Justice Project reporters about his interview with police, Sherman said it was “a trip-and-a-half. I called them and they came and picked me up and we met and we were talking and they put words in my mouth. They tried to tell me what I saw. I said, ‘hold on, man. You want my input in this or not?’” He also said that in the photo lineup he was shown, only one man fit the description he provided police: Carter.

Sherman’s credibility is key to the case, since authorities did not recover a murder weapon. Police linked a bullet from a shooting in which Carter was the victim to two bullets recovered from Williams’ body.

THE TURNING POINT IN THE INVESTIGATION

At the time of Sherman’s police interview a month after the murder, Vold and Yerbury were already looking at Carter as a suspect. Williams’ girlfriend said she saw the two together at 9 p.m. and Williams changed his plans with her and left with Carter, but other tips led nowhere. Police hadn’t secured a warrant—until they found Sherman.

His initial police interview took place in two parts: During the first hour, detectives spoke to him without recording anything while they questioned him. The second portion was recorded and included direct questions from detectives along with Sherman’s responses.

During the taped portion, he told police he was out looking for beer and found a blunt in his pocket. He stopped to light the marijuana-stuffed cigar under a tree when he noticed movement across the street, in front of Bryant Elementary School.



Sherman said at one point that he was standing at the corner of South 7th and South Grant Ave., looking east toward Bryant Elementary School when Williams’ was murdered. Williams’ body was found across the street on the sidewalk in front of the school. He was an estimated 25 yards away, it was dark at the time of the murder, the school’s lights were off and there were only ornamental streetlights dotting one side of the street. Sherman later said he witnessed the murder from a different location. (See map below)

Photo by Chelsea Vitone

ripped on the left side.”

He quoted a verbal disagreement between the shooter and Williams, remembering the shooter saying “Where’s my money? I want my money. Why are you out here this late?” Sherman said Williams seemed defiant, asking the shooter, “What are you going to do? Pop me?”

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Sherman said he heard four gunshots but had already headed back to his brother’s house and didn’t see the gun being fired.

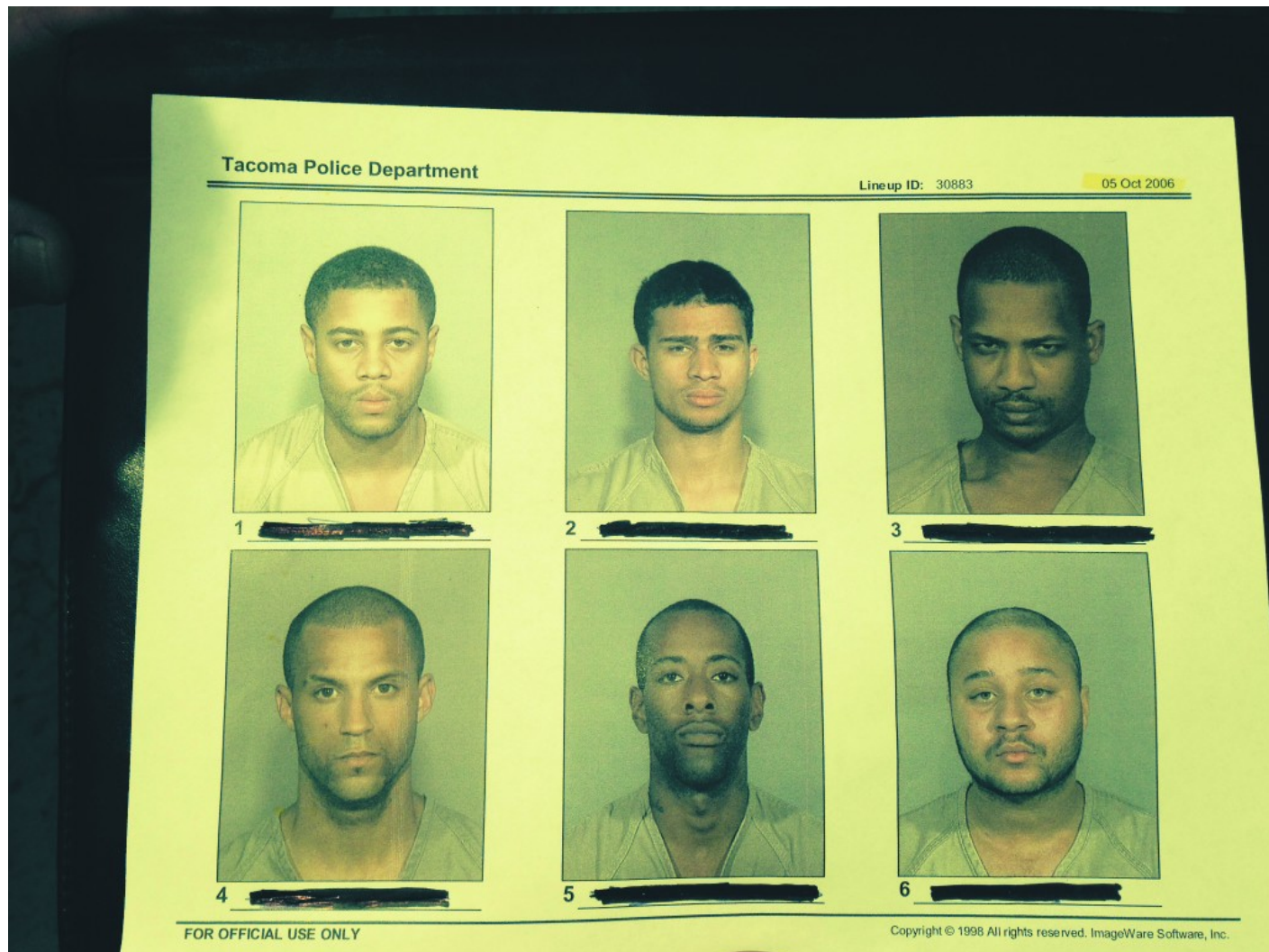


Photo Courtesy of Washington State DOC

According to police records, once Sherman provided a taped statement, he was shown a set of six photos in a lineup, which included Carter. Sherman hovered between two photos. Pointing at Carter, he finally said, “this is him” then moved back to the photo in the top right and said, “face too thin.” He paused, then eventually pointed back at Carter’s photo and told police, “he’s the one who did the shooting.”

While Sherman provided a clear description for police and a positive ID of the shooter, he also told police about the two severe injuries in the two years prior to the murder that caused significant damage to his brain and body.

SHERMAN’S BRAIN INJURIES

The first time Sherman was hit by a car, he was dragged 35 yards, and thrown under a car on jacks, which collapsed and crushed his “whole left side” according to his testimony. He was taken to Harborview Medical Center on May 20, 2004, and his medical records, obtained by the UWT Justice Project with Sherman’s permission, describe dramatic measures taken to piece him back together. In a coma, Sherman required screws to be installed along his right side in his ribs and leg. He said in interviews his recovery was long and painful, forcing him to relearn even the most basic functions such as reading, writing, speaking and walking.

Sherman was back at Harborview after being struck by a high-speed vehicle, this time while crossing the street in his wheelchair. Again, he sustained a serious head injury.

Sherman was prescribed Vicodin and Methadone, the synthetic form of heroin, for his pain. He often abused the prescription medications, according to his records. He said he self-medicated with alcohol and a powerful form of marijuana called “purple haze.” He also tested positive for methamphetamines and cocaine on at least three occasions, according his medical record, and told the UWT Justice Project that he traded crack cocaine for beer. During the time Sherman said he witnessed the murder, he was drinking so much that he nicknamed himself the “Budweiser King” and was in Tacoma to stay with his brother for one of the periodic informal interventions his family members staged.

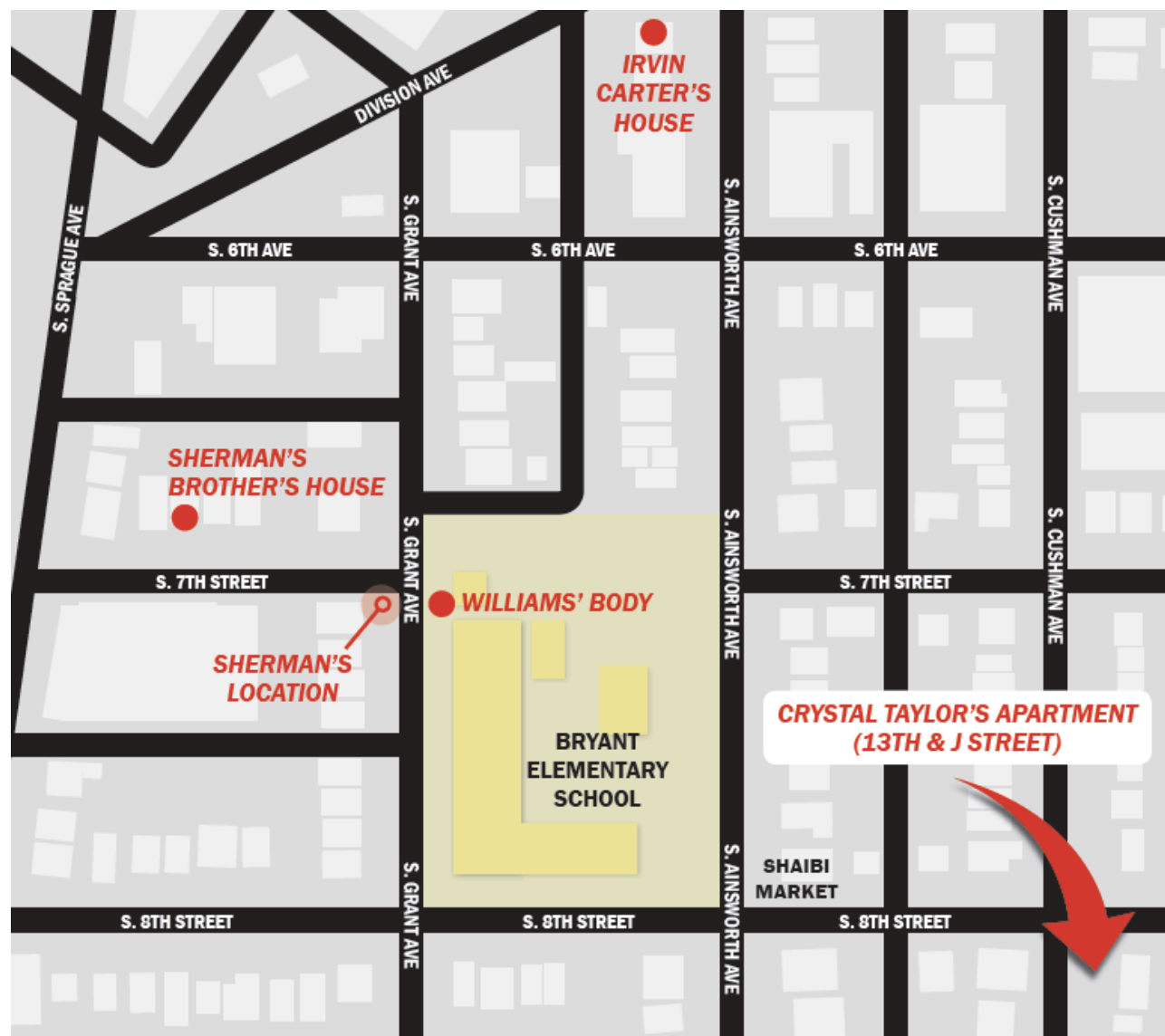
ANOTHER EYEWITNESS

Anthony Lyons, a transient crack addict picked up by police near the scene of the crime, said he was also a witness and his account differs from Sherman’s. But Lyons couldn’t testify in Carter’s defense in the first trial—because he was also on trial as a co-defendant.

Sherman had picked Lyons out of a lineup as the “lookout” in March 2007, six months after the murder. He was charged as a co-defendant with Carter and the trial began in the spring of 2008. Because Lyons was also on trial, he wasn’t called as a witness in Carter’s defense. That trial ended with Lyons found not guilty and the jury unable to make a unanimous decision about Carter’s guilt. The state decided to retry Carter on the same evidence. This time, however, Lyons was not facing charges and was called to testify.

Lyons told the court he spent all day in the neighborhood near 8th and Grant looking for crack. He said he didn't see Sherman at any point, but did see Julius Williams and men who went by the street names A-1, Ice, Yukon Jack, Alabama, E-mac, Akeem, Zuwambe and Rico-Chuckie. He said the shooter wore "a navy blue shirt, hat, jeans, some Jordans," similar to Sherman's description of a shooter wearing Nike Air Jordan shoes and dark clothing. But he identified the shooter as a man he knew as A-1, who was dark skinned and had a medium build, which does not match Carter's heavier build and lighter skin.

According to Lyons, there were five, not four, people standing in front of the school that night. "They was fussing," he said, and then one of them produced a gun. Lyons said it was "handed off to A-1" and at that point he left the area, retreating to a retaining wall across from a known drug house on 8th street. About 15 minutes later he said he heard gun shots.



Map by Danielle Burch

Lyons was stopped shortly afterward by officers who were patrolling the Hilltop in an unmarked SUV, responding to a "shots fired" call from police dispatch. Coming across Lyons at 8th and Grant he was questioned about his business in the area and subsequently arrested for possession of a crack pipe.

At trial, public defender Clarence Henderson asked Lyons to recall all the people he saw that night: "Now, Mr. Lyons, out of all the people that we've discussed that you saw out there that night, was any one of them Irvin Carter?" Lyons replied, "No."

ISSUES WITH EYEWITNESS

IDENTIFICATION

Up to 75 percent of wrongful convictions that are overturned through DNA exoneration include an eyewitness identification, according to Stephen Ross, who has a doctorate in psychology and is the director of UWT's Center for Applied Social Cognition Research as well as an assistant professor. Ross specializes in eyewitness memory and identification issues and has served as a consultant on criminal and civil cases on the subject.

Ross said Sherman could have been evaluated by a clinical psychologist prior to trial, if requested by the defense attorney. Clinical psychologists could administer tests to determine Sherman's ability to process, retain and understand information, as well as his "suggestibility"—or how easily his memories can be influenced. No such tests were presented at trial for Sherman.

Defense attorneys can also call on eyewitness experts like Ross to testify at trial and provide scientific research and insight into issues of mistaken identification. Mary Kay High, chief deputy of the public defender's office in Pierce County and the lawyer who represented Carter, said she didn't think it was necessary because she felt Sherman's testimony was not reliable.

"He was so obviously impaired, so distorted...I thought he was so obviously unreliable," High said. She added that such experts must be approved by the judge, and she didn't think that would have occurred in this case because the judge is a former prosecutor.

Ross said Sherman's ability to recall information is only a small slice of the potential issues with

this case. He cited Sherman’s level of intoxication, distance from the crime, darkness and delay between when Sherman witnessed the crime and when he talked to police as factors that could contribute to an incorrect identification. Ross, who was not a consultant on this case and did not examine all of the evidence, also said the photo lineup could be problematic: If, as Sherman said, the only person in the lineup to match his description of the shooter is Carter, the lineup could be considered statistically biased.

Ross said memory is as easily contaminated as a piece of physical evidence. “You have one opportunity to collect it correctly, and if you screw it up and contaminate, it is not reliable.”

SHERMAN’S RECOLLECTION NOW

Sherman told UWT Justice Project reporters in that interview and an interview this summer at Washington Corrections Center, where he’s serving time for third degree rape, that an attractive black woman was present just before the murder, something he never shared with police. “She was hot. Her hair was like...in braids” and she wore capri pants.

When asked if anyone else witnessed the murder, Sherman said there were others: “Two smokers — two crack smokers. One dude digging in his pockets, middle 20s to early 30s. When they heard the shooting, they took off to the east.”

He said he didn’t mention other witnesses to police because nobody asked “’til you brought that up right now. See, thanks for bringing that up.”

While the details of Sherman’s story have changed significantly, both the lead detective and the prosecutor say they are sure of Carter’s guilt.

“I have no doubt in my mind that Carter pulled the trigger,” Detective Vold said.

Tim Jones, one of the prosecutors who sealed the conviction, said the same. “Carter’s story doesn’t make sense...if you’re talking to Carter or his mother, you can’t believe them. Every word that comes out of their mouths is a lie.”

Carter, meanwhile, told the UWT Justice Project in a phone interview earlier this month that he is innocent but accepts his fate. “I gotta live the life that’s been chose for me right now,” he said. “If this is meant to be, then so be it.”

He said Sherman “knows full well in his heart” that Carter didn’t shoot his friend. “They gotta answer to a higher power just like I do. I know who I’m answering to,” he said.

This is the third and final story in a series on the murder of Julius Williams and the subsequent conviction of Irvin Carter Jr. To read the full series, visit thetacomaledger.com.

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