

IN THE PHILADELPHIA COUNTY COURT OF COMMON PLEAS  
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA, :  
 :  
 Respondent, :  
 :  
 v. : CP-51-CR-0306311-2002  
 :  
 JOSEPH TERMAINE HICKS a/k/a :  
 JERMAINE WEEKS, :  
 :  
 Petitioner. :

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JOINT STIPULATIONS OF FACT OF PETITIONER JOSEPH TERMAINE HICKS<sup>1</sup>  
AND RESPONDENT COMMONWEALTH OF PENNSYLVANIA

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LAWRENCE S. KRASNER, the District Attorney of Philadelphia County, by his assistant, Patricia Cummings, and Petitioner Joseph Termaine Hicks a/k/a Jermaine Weeks, by and through his attorneys, Vanessa Potkin of The Innocence Project and Susan Lin of Kairys, Rudovsky, Messing, Feinberg & Lin LLP, jointly move this Court to adopt and accept the

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<sup>1</sup> These stipulations of fact are submitted by the Commonwealth and are being filed as joint stipulations by agreement of the Parties as evidenced by the signatures of Hicks’s counsel and counsel for the District Attorney. “A stipulation is a declaration that the fact agreed upon is proven.” *Commonwealth v. Rizzuto*, 777 A.2d 1068, 1088 (Pa. 2001), *abrogated on other grounds by Commonwealth v. Freeman*, 827 A.2d 385 (Pa. 2012). “Parties may by stipulation resolve questions of fact or limit the issues, and, if the stipulations do not affect the jurisdiction of the court or the due order of the business and convenience of the court they become the law of the case.” *Id.* at 73 (quoting *Parsonese v. Midland National Ins. Co.*, 550 Pa. 423, 706 A.2d 814, 815 (Pa. 1998) (citations omitted in original), *abrogated on other grounds by Sveen v. Melin*, 138 S. Ct. 1815 (2018)).

following stipulations of fact derived from the record and the post-conviction investigation in this case.

***The Attack and Rape of W.L.***

1. On November 27, 2001, shortly before 5:00 a.m., W.L. was on her way to work in South Philadelphia. As she walked down Mifflin Street, near St. Agnes Hospital, and approached 15th St., a man grabbed her from behind and pointed a gun at her.

2. The assailant dragged W.L. in the hospital's loading dock area.

3. W.L. screamed as the man dragged, punched, and beat her repeatedly in the head and face with his fist and a gun.

4. W.L. recounted the man, "beat me until I couldn't scream anymore."

5. W.L. suffered blood loss.

6. The man pulled down her pants and sexually assaulted her.

7. She later reported that she never saw the man's face because it was dark and she was terrified and confused.

8. Three neighbors heard W.L.'s screams and called the police.

9. Justin Votta and his girlfriend Megan Nelson heard W.L. screaming for help from their home across the street from the loading area, on the third floor of 1902 S. 15th St.

10. Votta called 911 at 5:01 a.m. and, in real-time, described seeing the assailant, a man in a black jacket with a grayish hood on his head, dragging the victim behind a dumpster "like in St. Agnes delivery lot."

11. Votta could not see the perpetrator's face because the gray hood was covering the man's head and obscuring his face. In fact, he told the 911 operator he could not tell whether the man was white or black.

12. Joe Christinzio, who lived on the first floor of 1910 South 15th St., also called 911. However, he heard someone holler “we got it” so he hung up and ran outside.

13. Christinzo heard someone screaming and saw two people by the loading dock, an area that he described as “real dark” at that time. However, he reported seeing a woman on the ground being picked up and brought to the loading dock, but he could not provide the race of either person or a description of their clothing.

***The Police Arrive, and Hicks is Shot***

14. Responding to the radio calls of a rape in progress behind St. Agnes Hospital, several Philadelphia Police Department officers arrived at the scene in quick succession.

15. The flash information they had described the perpetrator as a male in a gray hooded sweatshirt and black jacket.

16. Officers Martin Vinson and Dennis Zungolo were first to respond. At 5:06 a.m., they informed dispatch that they were on location.

17. They parked their emergency patrol wagon near the emergency entrance at the front of St. Agnes hospital so the perpetrator would not hear the “diesel-powered” wagon and walked around on foot to the back by the loading dock.

18. Hicks, who lived in the neighborhood, testified at trial that he was returning home from the store when he heard the victim screaming for help, so he went to check things out. He discovered the victim on the ground and reached for his cell phone to call the police when the police suddenly arrived at the scene and shot him in the back.

19. When Officer Vinson encountered Hicks in the dark corridor where W.L. had been attacked, he shot Hicks three times.

20. Hicks and W.L. were both taken to Jefferson Hospital.

21. Hicks underwent emergency surgery for three bullet wounds. One bullet entered the back of Hicks' right arm, exited the front, and went into his side; it was removed from his chest. Two other bullet fragments were collected at the hospital.

22. W.L. was treated for the lacerations to her head and face, and a rape kit was collected.

***The Gun Collected at the Scene Belongs to a Philadelphia Police Officer***

23. When Officer Vinson radioed in the shooting to dispatch, he stated: "I tried to get the [] male to uh, you know put his hands where I could see them," and that "he was reaching for something, and I couldn't see it."

24. Meanwhile, Officer Robert Ellis responded to the scene with his partner Officer Duane Watson.

25. According to Officer Ellis, Officer Vinson told him, "Get the gun, get the gun. It should be in his pocket."

26. Officer Ellis testified he recovered a .38 caliber Taurus from Hicks' right pocket.

27. Police later reported that the weapon was registered to an active Philadelphia Police Department Officer, Valerie Brown—according to Officer Brown, she bought the gun twelve years earlier from Corporal C. Anthony Santner, a retired PPD officer.

28. According to Officer Brown, she kept the gun stored in a closet in her basement, and she had "no idea" the weapon was taken from her house. Thus, she had never reported it missing.

29. Police were unable to establish any connection between Officer Brown and Hicks.

### ***No Gray Hoodie or Gray Hat Collected as Evidence***

30. No hoodie or hat was recovered from Hicks' belongings at the hospital, nor was a hoodie or hat found at the crime scene.

31. Detective Mark Webb of the Special Victim's Unit—who led the investigation—and Detective James Campbell confirmed that the PPD immediately placed all of Hicks' belongings from the hospital on a PPD property receipt the day of the crime.

32. The police property receipts identified Hicks' clothing as follows: black leather jacket, a red and black polo shirt, white t-shirt, gray sweatpants, yellow boxers, white socks, and Timberland boots.

33. A cell phone and a wristwatch were later found in the pocket of the gray sweatpants collected as part of Hicks' belongings received from the hospital.

### ***Overview of The Trial***

34. W.L. never identified Hicks as the man who attacked and raped her. The Commonwealth stipulated during the beginning of the trial that there were no civilian witnesses who could identify Hicks as W.L.'s assailant.

35. Through a Cantonese interpreter, W.L. recounted what she could recall about her attack, testifying that she was grabbed from behind and beaten in the face. She was terrified, "confused," and she did not see the assailant's face at any point.

36. W.L. incurred trauma to her head, suffering from "continuous headaches" after she left the hospital.

37. During both the preliminary hearing and at trial, W.L. testified that she believed her assailant was still on top of her when police arrived at the scene.

38. W.L. thought police arrived when the man stopped raping her because when the attack ended, “there were spotlights, and there were cars around.”

39. In the absence of a victim identification, the prosecution relied exclusively on Officer Vinson’s testimony and other officers at the scene.

40. The crux of Officer Vinson’s testimony was that he saw Hicks assaulting the victim when he arrived at the scene and shot Hicks because Hicks twice pointed a gun at him.

41. Officer Vinson specified that he saw Hicks pull the gun from his pocket and put the gun back into his pocket after Officer Vinson shot him.

42. On November 8, 2002, Hicks was convicted after a jury trial of rape, aggravated assault, possession of an instrument of crime, and terroristic threats.

#### ***The Commonwealth’s Theory of the Case***

43. To prove its theory of the case, the Commonwealth called 16 police officers to testify at trial—yet for reasons not expressed in the record, the Commonwealth did not call Officer Vinson’s partner or Officer Ellis’ partner.

44. Officer Vinson testified that he heard a faint moan and a muffled male voice saying, “shut up” when he entered the loading dock area behind the hospital. He walked over to the small corridor behind the dumpster, where he saw a silhouette of two people on the ground. He turned on his flashlight and saw a woman lying on the ground with a man on top of her; both had their pants down.

45. Officer Vinson testified that he ordered Hicks to “get up” off the victim several times, and Hicks stood up and pulled up his pants.

46. Officer Vinson even went further in his testimony, stating that he thought he saw Hicks “pulling his penis out of her vagina.”

47. Officer Vinson testified that after Hicks bent down and pulled up his pants, Officer Vinson ordered him to “put [his] hands up” and turn around to face the officers, but then redirected him to put his hands up against the wall.

48. Officer Vinson testified that he tried to “gain hand control of [Hicks’] hand,” but Hicks slapped Officer Vinson’s hand down. Officer Vinson backed up, tripped, and fell into Officer Zungolo’s arms. Officer Zungolo caught him and pushed him back up.

49. Hicks was turning and backing away when Officer Vinson repeatedly said, “Put your hands where I can see them.”

50. Officer Vinson testified he drew his weapon and pointed it at Hicks. After the fourth or fifth time Officer Vinson told Hicks to put his hands up, Hicks “lunge[d] around. I could see off the light a gun coming around toward me.”

51. Officer Vinson testified that he shot Hicks when Hicks was “almost” “fully facing” him.

52. Officer Vinson then said Hicks stepped back and raised the gun at him again when he shot him for the third time.

53. Officer Vinson reiterated at various points in his testimony that he shot Hicks because Hicks was “just about directly facing” Officer Vinson and had pointed a gun at him.

54. After shooting Hicks three times, Officer Vinson saw Hicks slouch over and put the gun he had pointed at Officer Vinson back in his pocket. Hicks then backed up into the rear of the alley before collapsing to the ground.

55. The Commonwealth also called Officer Michael Youse and his partner, Officer Frank Holmes, who arrived at the scene moments after Officers Vinson and Zungolo.

56. Officer Youse testified he saw Hicks standing “above” the victim. But neither Youse nor any officers other than Officers Vinson and Zungolo claimed to see Hicks on top of the victim.

57. The testimony of other officers and civilian witnesses contradicted Officers Vinson’s and Zungolo’s account that Hicks was on the victim when they got to the scene and their claim that they issued verbal commands for him to get off of her.

58. Officer Brian Smith testified that he heard Officers Vinson and Zungolo command Hicks to “get off of her,” but admitted on cross-examination that he had not included this information in his initial incident report or his statement to the Special Victims Unit. In his report and statement, Officer Smith only reported hearing the officers order Hicks to remove his hands from his pockets.

59. Officer Smith also testified that Hicks was wearing a gray hoodie when he got to the scene, and Officer Ellis testified that Hicks was wearing a gray top and a gray knit hat.

60. No gray hoodie, gray top, or gray knit hat was recorded or documented as being collected from Hicks at any point during the investigation.

61. Officers Youse and Holmes testified that the only words they heard were “let me see your hands,” several times, followed by the sound of three gunshots.

62. Their testimony was consistent with the civilian witnesses such as Votta, who similarly reported hearing someone say “Freeze” and “Put up your hands, put up your hands” before hearing shots fired.

63. At trial, the Commonwealth also presented the results of D.Q. Alpha DNA testing performed on Hicks’ clothing and the gun Officer Ellis claimed to have recovered from Hicks’ jacket pocket.



64. Blood from the barrel of the gun<sup>2</sup> was consistent with W.L.

65. Blood consistent with W.L. was also found on the front waistband of Hicks' boxer shorts and the right leg of Hicks' sweatpants.

66. Robert Dillard, a DNA analyst from the Philadelphia Crime Laboratory, testified that "without question," blood from W.L. could have innocently transferred onto Hicks' clothes *after* he was shot, as Hicks was lying in the narrow alley in which W.L. was also laying and profusely bleeding.

67. Dillard further testified there was no way of knowing how the blood came into contact with Hicks' clothing because it was hypothetically possible that (1) Hicks fell onto the ground where W.L.'s blood was, or (2) a responding officer touched W.L. before tending to the wounded Hicks.

68. Officer Ellis testified that he saw blood "all over the gun," and after noticing that he had blood on his hands, he continued "to search [Hicks] to see if he had any other weapons."

69. Officer Youse testified that after Hicks was shot, he assisted W.L. while Officer Vinson called in the shooting. W.L. was pulling up her pants and putting on her shoe; Officer Youse observed that she was bloody.

70. Officer Youse testified that he "pulled [W.L.] out of there" and handed her over to the officer who took her to the hospital.

71. According to Officer Youse, he then started to "secur[e] the scene."

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<sup>2</sup> The gun itself was destroyed on April 15, 2008 by court order.

### ***Hicks' Theory of Defense***

72. The defense argued that W.L. was mistaken about portions of her testimony because of her extreme fear, confusion, and injuries.

73. The defense also called Officer Vinson's partner Officer Zungolo as a witness to support its defensive theory at trial.

74. Like Officer Vinson, Officer Zungolo also provided different accounts of Hicks' actions between the initial investigation and trial.

75. Officer Zungolo initially told investigators that Officer Vinson fired his gun because Hicks had his hand in the pocket of his jacket and the officers feared that Hicks was about to pull a gun out, but testified at trial that Officer Vinson shot Hicks after Hicks thrust his arm out of his jacket pocket.

76. Officer Zungolo testified that because Officer Vinson was in front of him, he did not see Hicks' hand and what, if anything, he may have been holding.

77. Officer Zungolo further testified that after Hicks was shot and fell, he and Officer Ellis crouched down in front of Hicks' feet, lifted up Hicks' shirt, and began to administer first aid.

78. The defense argued Hicks innocently came upon the scene of the crime and was shot due to a misunderstanding when officers mistook his hand in his right jacket pocket as a threatening gesture.

79. Hicks himself testified that he arrived after the assailant had already fled the scene, and he approached the victim to check on her. He maintained that he did not attack W.L. and that he did not have a gun.

80. Hicks testified that around 4:30 a.m. on November 27, 2001, he walked his younger brother to a bus stop near Broad and Snyder Avenues.

81. Hicks went to a few stores in the area to purchase cigars before returning home.

82. As he was walking down Snyder Avenue on his way home, Hicks heard screams, first after he passed 16<sup>th</sup> Street and then again when he got to 15<sup>th</sup> Street.

83. Hicks went on to describe how he heard hollering and saw two men, one of whom was running from the area where W.L. was found.

84. Hicks headed in the direction where he saw the man run from, and when he reached the back of the hospital, it was the receiving area where he saw a white tennis shoe on the ground, not too far from a dumpster.

85. Walking closer, Hicks saw the silhouette of a person, W.L., on the ground. W.L.'s pants were below her knees, and her face was covered in blood.

86. Hicks asked whether she was okay, but she did not respond. He nudged her with his foot, and she did not move.

87. Hicks reached for his cell phone, which was in his jacket's right pocket, to call for help. At that point, he heard: "Freeze. Get your hands up."

88. Hicks testified that he was startled by the officers and explained to them, "I was trying to help her. I was getting ready to call you all." The officers ordered him to "Get your hands up. Don't move."

89. Hicks testified his hand was still on his cell phone inside his jacket pocket; he let it go, and while his hand was still in his pocket, he heard shots.

90. Hicks testified his back was facing the officers when they shot him.

91. Hicks fell to his knees and then on his face, with his right hand still in his pocket. His face hit the ground, chipping his front tooth.

92. According to Hicks, he heard Officer Vinson say something like “Damn” while he patted him down. Officer Vinson started crying and kept patting him down.

93. The defense did not present forensic evidence regarding the directionality of the bullets at trial.

94. A stipulation was read into the record from Dr. Murray Cohen, the emergency room doctor at Jefferson Hospital who operated on Hicks. He stated that it was “beyond his expertise” to determine whether the bullets entered Hicks’ body through the front or back of his body.

95. The defense also argued Hicks did not fit the description of the perpetrator, who the civilian witness described as wearing a gray hooded sweatshirt.

96. Defense counsel also argued that police officers fabricated a false story about recovering a gun from Hicks after they shot him and realized he was unarmed.

### ***Missing Surveillance Video***

97. Hicks was not sentenced until February 27, 2003, as the Court considered his Motion for Extraordinary Relief in the Form of Judgment of Acquittal, Arrest of Judgment, or New Trial.

98. Hicks’ motion was based on the newly produced surveillance footage that captured the receiving area of the hospital and the beginning of W.L.’s attack.

99. The surveillance video was viewed by Detectives Webb and Campbell at the hospital on the day of the crime. However, a legible copy of the video was not provided to Hicks’ counsel until more than one year later and significantly after Hicks’ trial was over.

100. The jury never saw the surveillance video.

101. Police attributed the delay to the incompatibility of the tape with available video playback equipment.

102. Even though the surveillance video was part of the evidence relied upon during the post-conviction motions hearing, both parties to the instant PCRA proceeding have been unsuccessful in their attempts to locate a copy of the video.

103. The footage consisted of still photos taken every several seconds and provided only a partial view of the crime scene.

104. All that remains of the surveillance footage are copies of still photos taken a few seconds apart.

105. The camera angle was aimed at the driveway entrance at the rear of the hospital only and did not extend wide enough to capture the full area behind the hospital, including the alleyway where the W.L. was found.

106. The still photos captured the beginning of the attack. The surveillance photo images are grainy and the lighting is poor. Whereas Votta reported to 911 that the man who attacked W.L. was wearing a gray hooded sweatshirt *with the hood up over his head*, the video shows a man with something on his head as he is dragging the victim behind the hospital.

107. The surveillance video provided an explanation never heard by the jury for why the victim believed the attack was still happening when police arrived at the scene. W.L. had testified this belief was based on the fact that the attack stopped when “there were spotlights, and there were cars around.”

108. The surveillance video showed that, while the attack was in progress, three minutes after the perpetrator dragged W.L. into the alley, a white delivery van, with its rear lights

and headlights illuminated, pulled into the loading dock area where W.L. was being attacked.

The van stayed parked for over 2 minutes, leaving just before the police arrived and shot Hicks.

109. On February 27, 2003, the Court of Common Pleas of Philadelphia County denied the motion and sentenced Hicks to 12 ½ to 25 years in prison.

### ***Post-Conviction DNA Testing***

110. Hicks maintained his innocence throughout the trial, and he has consistently sought relief from his wrongful conviction and sentence.

111. In his most recent efforts to prove his innocence, Hicks sought access to DNA testing of the evidence on November 16, 2015, when he filed a Petition for Post-Conviction DNA Testing. The Court granted that petition and testing proceeded by way of a March 3, 2017 DNA testing order.

112. DNA testing was performed by both the Philadelphia Crime Laboratory and a private DNA laboratory, Forensic Analytical Crime Laboratory.

113. Testing of the crime scene evidence—including W.L.’s pants, underwear, vaginal, and cervical swabs, and Hicks’ sweatpants—as well as all relevant reference and elimination samples, were completed on August 20, 2019.

114. DNA testing performed on the inside and outside waistband of W.L.’s underwear and the waistband of her pants identified male DNA.

115. Hicks sought this targeted testing given accounts that the perpetrator pulled W.L.’s underwear and pants down during the attack and because advances in DNA technology since trial made it possible to detect small amounts of “touch” DNA the perpetrator may have left behind when he touched the clothing.

116. Multiple rounds of DNA testing were performed on W.L.'s underwear and pants in an effort to identify DNA left behind by the assailant, using both conventional STR DNA testing and Y-STR testing, a form of the STR test that targets male DNA.

117. The Philadelphia Crime Laboratory's Y-STR male-specific DNA testing showed a result "consistent with originating from at least one male individual" from testing of the inside and outside waistband of W.L.'s underwear.

118. The genetic marker of a male (at the DYS438 locus) was detected on the waistband of W.L.'s underwear, and Hicks was conclusively excluded.

119. A further comparison, however, showed that W.L.'s husband shared this genetic marker.

120. Thus, the foreign DNA on W.L.'s underwear may be attributable to her husband or the assailant.

121. DNA testing of the waistband of W.L.'s pants yielded similar results.

122. DNA testing was also performed on a stain on W.L.'s pants on the top leg, below the front pocket, which had tested presumptively positive for blood at the time of trial.

123. The DNA testing of this stain showed male DNA belonging to Hicks.

124. There is no physical evidence that either proves or disproves Hicks was bleeding before he was shot. However, there is evidence that Hicks was bleeding profusely after the police shot him.

125. Given the testimony regarding the crime scene and how evidence was handled and collected in this case, Hicks' blood may have been transferred to W.L.'s pants after police arrived on the scene and shot Hicks.

126. At trial, the Commonwealth relied on the presence of W.L.'s blood on the "inside front upper panel" of Hicks' boxers and the outside front leg of Hicks' sweatpants to corroborate Officer Vinson's testimony that he saw Hicks attacking W.L. when he arrived at the scene.

127. The Commonwealth's theory was that W.L.'s blood transferred from the gun and his hands to his clothing when Hicks pulled up his pants.

128. The defense's trial argument that W.L.'s blood came to be on Hicks' clothing through police transfer is consistent with the new DNA test results—i.e., the blood may have been transferred after police shot Hicks and not as the result of any direct contact between Hicks and W.L. or the gun.

129. The presence of blood on the front of Hicks' boxers can also be attributed to transfer during a pat-down by Officer Ellis, who had blood on his hands.

130. Further undermining the officers' claim that Hicks possessed the gun recovered at the scene is the fact that, although the gun was bloody, no blood was ever detected in the inside of Hicks' pocket, where Officer Vinson testified Hicks placed the gun after the shooting and from where Officer Ellis testified he recovered it.

### ***New Pathology Evidence Establishing Hicks was Shot from the Back***

131. No forensic evidence was presented at Hicks' trial regarding the contested issue of whether Hicks was facing and lunging at officers with a gun when he was shot, as Officer Vinson maintained, or whether he was shot in the back repeatedly by the officers as he was reaching for his cell phone to call for help, as Hicks maintained.

132. Although Hicks repeatedly sought forensic analysis related to the directionality of the gunshots he suffered, none was conducted.



133. The Commonwealth could not contest that the bullet removed from Hicks' chest during emergency surgery entered his body from behind (going in the back of Hicks right arm, exiting his arm, and entering his side); Vinson attempted to reconcile this fact with his testimony that Hicks was facing him when he shot him by suggesting that the third shot ricocheted off of the trailer wall. Ballistics expert Carl Rone testified that this bullet could have struck the building, fragmented and entered Hicks' body.

134. In his first amended PCRA petition, Hicks asserted claims based on the expert review and opinion of Dr. Michael Baden. Dr. Baden is Board-certified in Anatomic Pathology, Clinical Pathology and Forensic Pathology, a former Chief Medical Examiner of New York City, and a former Co-Director of the Medical-Legal Investigations Unit of the New York State Police.

135. Dr. Baden concluded, based on his review of Hicks' available medical records, that all three bullets entered the back of Hicks' body, entering (1) adjacent to his spine, (2) into his left buttock, and (3) into the rear of his upper arm before exiting his arm and entering his chest. Dr. Baden further concluded that no bullet wounds were received to the front of Hicks' body.

136. After Hicks filed his first amended petition containing Dr. Baden's findings, PCRA Unit attorneys for the Commonwealth submitted Hicks' medical records to the Medical Examiner for the City of Philadelphia, Dr. Gulino.

137. Dr. Gulino issued a report and an amended report concluding that, based on Hicks' remaining medical records alone, a dispositive determination could not be made regarding the directionality of two of the bullets.

138. The amended report served, *inter alia*, as the basis of the Commonwealth's motion to dismiss the petition (said motion to dismiss was later withdrawn after the CIU agreed to represent the Commonwealth in the instant PCRA proceeding).

139. After the motion was filed, Hicks' counsel requested that Dr. Gulino consider additional evidence that had not previously been provided to him—the clothing Hicks was wearing when he was shot.

140. Dr. Gulino concluded his examination of Hicks' clothing in December 2019 and issued a report on December 20, 2019, which contained his findings.

141. After reviewing the additional evidence, Dr. Gulino found: "My opinions regarding the gunshot wound to the right arm [] are unchanged." To wit, the entry wound is at the rear of the rear arm.

142. Significantly, Dr. Gulino concluded: "Whereas the medical records and radiographs were inconclusive regarding the directionality of the remaining wounds . . . the clothing provides evidence that: a) The entrance wounds were in the left midportion of the back and left buttock" and "b) These two bullets exited the front of the body (the upper abdomen and the left groin, per the medical records) but did not exit the clothing."

143. Thus, two experts—including one who began his review at the Commonwealth's request—now agree that Hicks was shot by police at least two times from behind, while his back was to the officers, as he has long attested.

144. Dr. Gulino and Dr. Baden's expert opinions corroborate Hicks' trial testimony that he was facing away from the officers and that Officer Vinson shot him three times: in the mid-portion of the back, in the buttocks, and in the "back part" of the right arm.

145. Dr. Gulino and Dr. Baden’s expert opinions are supported by the fact that there are defects consistent with bullet holes in the rear of Hicks’ clothing and none in the front of his clothing.

146. Dr. Gulino and Dr. Baden’s expert opinions establish that Officer Vinson’s testimony—that he shot Hicks when Hicks was almost fully facing him and “lunging” at him—is false.

147. Because neither the victim nor any other witnesses identified Hicks as the attacker, the Commonwealth’s case at trial largely depended upon Officer Vinson’s credibility.

148. Given the factual inaccuracies, discrepancies, and inconsistencies in Officer Vinson’s testimony, in particular his false testimony that he shot Hicks when Hicks was almost fully facing him and lunging at him—which appear to stem from an attempt to justify his use of deadly force—there can be no confidence in Officer Vinson’s testimony as to what Hicks was allegedly doing immediately before Officer Vinson shot him.

**STIPULATED AND AGREED BY:**

Dated: 12/15/20



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