

STATE OF COLORADO
COUNTY OF BOULDER

Walk-Through Authorized

DA 566 by *Christine*

COUNTY/DISTRICT COURT, BOULDER COUNTY, COLORADO

Criminal Action Number _____

WARRANT FOR ARREST UPON AFFIDAVIT

BEFORE THE HONORABLE ROXANNE BAILIN

The People of the State of Colorado,
To: Any person authorized by law to execute arrest warrants.

You are hereby commanded to arrest the person of: **THAYNE ALAN SMIKA**

DOB:	2/27/1959	HAIR:	Brown
HEIGHT:	5-11	EYES:	Hazel
WEIGHT:	150 pounds	RACE/SEX:	White/Male
DL #:	(Colorado ID)	SSN:	
ALIAS:		ALIAS D.O.B.:	

OFFENSE DATE:

And take the person above-named without unnecessary delay before the nearest judge of the Court of Record; to be advised that the person is being held for the alleged commission of the following crime(s), to-wit: In violation of C.R.S., 1973 revised:

Charge #	CRS #	Charge	Classification
1	18-3-102	First Degree Murder	1
2			

That this warrant for arrest is issued upon affidavit sworn to and affirmed before this court and relating facts sufficient to establish probable cause that the above-named offense has been committed and probable cause that the person named in this warrant committed that offense.

BAIL IS SET AT \$ 5,000,000 WITH CONDITION(S) no contact with victim's family.

DATE: 12.2.10

[Handwritten Signature]
Judge's Signature

Boulder Police Case # P83-7907
Deputy Chief of Police David D. Hayes
303-441-3300

RETURN OF SERVICE

I hereby certify that I have duly executed this warrant on this _____ day of _____, 20____,
by _____ as I am herein commanded.

SHERIFF FEES:
Service \$ _____
Mileage \$ _____
Return \$ _____
Total \$ _____

By: _____
Deputy

AFFIDAVIT FOR ARREST WARRANT

The Affiant, Deputy Chief David Hayes, is a duly commissioned police officer for the City of Boulder Police Department, City of Boulder, County of Boulder, and State of Colorado. The Affiant investigates crimes which occur within the City of Boulder, County of Boulder, and State of Colorado. The Affiant has been an Officer with the Boulder Police Department since February of 1978. The Affiant has been assigned to continue the investigation of a homicide that occurred at 805 29th Street, apartment #560, in Boulder on Monday, August 1st, 1983. The victim in this case, Sidney Wells, killed with a shotgun. The Affiant hereby affirms the following information:

The Affiant has reviewed the entire Boulder Police Department case file on this investigation, Included with this review was the examination of crime scene photographs. In viewing these photos, the Affiant did note that at the time of his death, Sid was wearing a pair of gym shorts and a white shirt with a tear on the left sleeve.

This Affidavit is based upon information from the original investigation following the 1983 homicide, and new information. Refined physical evidence testing methods, unavailable in 1983, were used to develop this information.

Initial Investigation

At 12:28 PM on August 1st, 1983, Officers of the Boulder Police Department responded to Spanish Towers Apartments, 805 29th Street, apartment #560, in the City of Boulder, County of Boulder, State of Colorado, on a report of a man not breathing. The details of that response are outlined in the original report written by then **Officer Ken Sundberg**, then **Detectives Fred Neitzel** and **Don Knight** (now deceased), who responded to the scene and observed the body of a white male, identified as Sidney (Sid) Wells, an occupant of the apartment. Wells was lying face down on the living room floor with an apparent gunshot wound to the back of his head. At the time of his death, Sid was wearing a pair of gym shorts and a white shirt with a tear on the left sleeve.

Detective Neitzel spoke to the victim's brother, **Samuel (Sam) Wells**, the party who had discovered Sid Wells' body. Sam Wells told Detective Neitzel that he had returned home from a camping trip on August 1st, 1983, and discovered his brother Sid lying on the living room floor. Sam Wells told Detective Neitzel that he lived with Sid in the apartment as did a third roommate, **Thayne Smika**.

Detective Neitzel did not observe any signs of forced entry into the apartment and there were no signs of a struggle with the exception of an over-turned chair and a glass-topped coffee table, situated at an angle to the couch and to the right of the body. Sid's head was positioned at the foot of this couch. On top of the coffee table was a note, which stated, "Sid/Sam I've gone home to visit my folks for a couple of days and I'll be back Tuesday or Wednesday. Thayne."

Detective Neitzel spoke to **Carol Kuykendall** who was cleaning apartment #562, located west and adjacent to #560. Kuykendall told Neitzel that at approximately 12:30 PM on August 1st, 1983, she heard a "loud bang." She said that she did not hear anything out of the ordinary following the noise.

Detective Neitzel then spoke to **Greg Eliot** who lived in apartment #558, east and adjacent to #560. Eliot told Neitzel that between 11:30 AM and 12 noon on August 1st, 1983, he was in the shower when he heard "a loud noise" that when asked further advised could have been a door slam or a gunshot. The Affiant also noted that Mr. Eliot first spoke with Officer Ken Sundberg and advised him that sometime between 11:20 and 11:45 AM, he heard a loud noise that could have been a door slam or a gunshot.

In August of 2009, the Affiant spoke with **Mr. Eliot**, who informed the Affiant of the following:

Mr. Eliot advised that he was certain the noise he heard on August 1st, 1983, came from apartment number 560, and that he was in the shower on the first floor of his apartment when he heard the noise. Mr. Eliot advised that after hearing the noise, he finished his shower, got dressed, and that while in his kitchen he heard a commotion in the shared hallway. Mr. Eliot advised that when he looked into the hallway he observed a person known to him as Sam Wells move past his apartment. Mr. Eliot advised that Sam Wells appeared visibly upset. Mr. Eliot further advised that, a few minutes later, he again heard a commotion in the hallway, and that when he looked out, Sam Wells was again in the hallway, and was accompanied by a Boulder Police Officer.

At approximately 2:40 PM on August 1st, 1983, **Dr. Kevin Hanley**, a pathologist employed by Boulder Community Hospital, and his assistant Randall Donato, arrived at the crime scene. Hanley examined the body and advised Neitzel that Sid Wells had died of a gunshot wound to the head. It was later determined that Mr. Wells was killed with a single shot from a .20 gauge shotgun. Officers did not observe any firearms near the body or anywhere in the apartment. The then Boulder County Coroner estimated that Sidney Wells died at approximately 11:35 AM on August 1st, 1983.

On the evening of August 1st, 1983, Neitzel and Knight drove to 365 S. Cedar in the town of Akron, Colorado (the home address of Darlene Smika, Thayne

Smika's mother). Thayne Alan Smika, a white male, DOB February 27, 1959, and then described as being 5-11, 140 pounds with Brown Hair and Brown Eyes, was at the residence and the detectives notified him of the murder. Smika told the detectives that a possible suspect was Craig Evans, a man Smika said had been stealing cocaine from the victim. Smika stated that he (Smika) had then in turn entered Evans' home in Boulder and had taken cocaine and cash from the residence. Smika said that Sid's death may have been in retaliation for that theft.

Based on this information, detectives took Smika into protective custody and transported him to the Akron Police Department. Smika's sister, Tava, was taken to her father's apartment in Akron for her safety. A taped interview was then conducted with Thayne Smika at the Akron Police Department. Smika was advised prior to speaking to the detectives that they were not interested in charging him with any possession or sale of drugs. Neitzel and Knight were told the following:

Smika told detectives that he had played the middleman the first time Sid Wells asked him if he (Smika) could get some cocaine for him. The exact time of the purchase is not clarified, but Smika told Detectives he obtained $\frac{3}{4}$ of an ounce for \$1,675. 3-4 weeks after this purchase, Wells told him 3 grams were missing and the cocaine had been cut. According to Smika, Wells did not accuse him at that time. Smika advised that they (he and Wells) decided to let it go and each would try to figure who was responsible. Smika advised that he told Wells that he suspected Craig Evans, because it was Evans who Smika had gotten cocaine for Wells from, and Craig Evans would know they had cocaine in the apartment. Smika told detectives that he owed Evans \$350 from the time when Evans had "fronted" him some cocaine and Smika had not yet repaid him, which he was to pay the weekend of July 29-31, 1983.

Smika advised that he then went over to Craig Evans' house and told Evans that Wells was missing some cocaine and that Wells suspected him (Smika) of the theft. Smika advised the reasoning behind this was to put Craig Evans at ease, so Evans would return and steal more. Smika advised that the then "staked out" the apartment for a couple of days, waiting for Craig Evans. Smika advised that he did see Craig Evans walking through the front door of the apartment complex and that after he left, Well's bag "was much lighter." Smika advised that he then informed Wells of what he observed (on either Thursday, July 28th or Friday, July 29th). Smika advised the he also told Wells he was pretty sure that he (Smika) could get the cocaine back from Craig Evans, and that Bruce Allen (friend of Smika's) could probably help him. Smika also advised that Craig Evans stole the cocaine a second

time "out of spite" for Smika, and that Craig Evans knew that Wells would blame Smika.

Smika advised that he also told Wells that they had not worked out all the details yet, but they would "slip" Craig Evans something. Smika also advised that Wells gave him until Monday, or Wells would go and talk to Craig Evans himself. Smika advised that he went into Craig Evans' home and located the stash in a backpack. Smika advised that he found 2 ½ grams of cocaine and \$1,000, which he took. Smika advised that Bruce did not go with him as he was out of town.

Smika told detectives that he delivered the money and cocaine to Sid Wells, on the morning of Monday, August 1st, 1983, a deadline given to him by Sid. Smika advised that \$300 of that money was given to Sid separately. Prior to delivering this money to Sid, Smika said he went to sleep at approximately 8AM on the morning of August 1st, 1983, setting his alarm for 10:00 AM. Smika advised that between approximately 3:30AM to 6:30AM he was cutting and straining the "coke", "doing a few lines", and stated something about "trash out". Smika said he shut off his alarm when it sounded and was next awakened by Sid Wells who was ringing the doorbell to the apartment (at approximately 10:30/quarter to eleven) after spending the night at his girlfriend's (Shauna Redford) apartment. Although the occupants of apartment #560 did not generally lock the door, Smika said they began locking the door following the missing cocaine, allegedly stolen by Craig Evans. Sid had previously told Smika that he would be collecting the rent due at 11:00 AM on August 1st, 1983. Sid was to deliver the rent to his mother, June Wells, with whom he was to have lunch that same day at 12 noon. Smika said that at 11:00 AM, he gave \$300 in an envelope, 1/8 ounce of cocaine, and approximately \$750 separate from the rent to Sid. Smika advised that Sid then left to go take a shower, and that he (Smika) gathered up the rest of his belongings for the trip to his parents' home and left the apartment, not locking the door. According to Smika, Sid was wearing a white shirt with a rip on one of the shoulders, and either sweats or a pair of gym shorts. Smika advised that Sid wore this shirt a lot, and further described it as "an around the apartment shirt". During an initial conversation, Smika told detectives that he had left at approximately 10:00 AM, but changed the time to 11:00 AM in this interview. Smika also told detectives that he had told Sid on Sunday night, July 31st, 1983, he had given the money and cocaine to his friend Bruce Allen to hold until August 1st. Smika said he had not actually given the money to Bruce, but had only told Sid that in order to have time to "cut" the cocaine with mannitol or another substance so that he could have some for himself. Mr. Smika also advised that he may have informed Sid the evening of July 31st,

1983/early morning of August 1st, 1983, that he was going to Akron on August 1st, 1983.

Neitzel and Knight had also engaged in a conversation with Thayne Smika on the evening of August 1st, 1983, that was not recorded. This conversation took place in the detectives' car after Smika consented to return to Boulder from Akron. Smika told them that he had gone to Akron, Colorado, to visit his parents, do laundry, run some errands and get a haircut and permanent. He also said that he did not own a shotgun, but his father had given him one that he had not seen for approximately seven (7) years. He said he did not know where that gun was at that time. On the evening of November 21, 2010, the Affiant did speak with retired Detective Neitzel who now lives in the state of Florida. Detective Neitzel did confirm that this conversation with Mr. Smika did take place.

Neitzel personally spoke to **Kathy Karmis** on August 1st, 1983, and on subsequent dates. Karmis lived in #335 at Spanish Towers and knew Thayne Smika. She told Neitzel that at approximately 6:30 AM on August 1st, 1983, she observed Thayne Smika in the parking lot of Spanish Towers. He was carrying a green trash can with a black lid. She noted that Smika was carrying the can from the parking lot toward the apartments and he was carrying the can with both hands. She said that it seemed strange to her since Thayne, Sid and Sam never emptied their trash and their apartment was generally messy. Of the three roommates, Thayne was the least likely to take out the trash. Karmis was walking the opposite direction of Thayne and she said "hi" as she approached him. Thayne looked away and did not acknowledge her, continuing to walk to the building. She thought Thayne was wearing blue jeans and possibly a gray western shirt with snaps.

While at the crime scene, the Affiant recalled that there was still trash in the can, although the Affiant could not recall specifically what type of trash was in the trash can. Additionally, when Detective Neitzel spoke to Detectives Stange and Steingraber regarding the trash can, they both recalled that there was still trash in the trash can. This trash can, which measures approximately 28 inches in height not including space provided by the lid, was subsequently seized from apartment during a search of the crime scene.

Search Warrant Execution – Crime Scene

Then **Detective Steingraber** (now deceased) obtained the initial search warrant for apartment #560 at 805 29th Street in the City Boulder, County of Boulder, and the State of Colorado.

Neitzel spoke to **Detective Dale Stange**, one of the detectives who executed that search warrant. Stange advised Neitzel of the following:

During the search, detectives found neither a spent shell casing nor a firearm in the apartment. Stange noted that just above the water line in the toilet in the downstairs bathroom, he observed a red ring around the inside of the toilet. He also saw several items on the glass-topped coffee table in the living room next to Sid's body. Included with those items were a note from Thayne to "Sid/Sam" and a note from Sam Wells saying that he had gone camping and would be returning around 1:30 PM on August 1st. There was also an envelope that was torn open and empty. The name "Sid" had been written on the outside of the envelope and under the flap inside the envelope "\$300" had been written.

In the bedroom identified by Sam Wells as his own, police found a billfold that contained \$50.00 and papers that indicated the billfold belonged to Sid Wells. This was found under the desk in Sam Wells' bedroom.

The Affiant examined the glass-topped coffee table in the living room. The Affiant observed what appeared to be blood spatter and hair on the table and what appeared to be blood on one of the magazines (on the table), as well as an envelope that was located near the note from Thayne Smika.

In addition to the above, the Affiant personally examined Thayne's day/date books found in the bedroom identified as his. In viewing these books, The Affiant noted the word "haircut" across July 1st and July 2nd. The Affiant also saw the names "Bill" and "Sherry" written near other notations for haircuts as well as the name "Odyssey Hair" in the books.

As a result of the information in the day/date books found in Smika's room, Neitzel contacted **Sherry Schneider** in Boulder. She was employed by Regis Hair Salon when contacted, but had formerly worked for Odyssey Hair Salon. She told Neitzel the following:

She remembered Thayne Smika and knew that the photo in the Daily Camera newspaper was the person she knew as Thayne Smika. She said she gave Smika a "semi-tight" permanent wave in his hair on approximately June 24th, 1983. Smika attempted to pay for the permanent with a credit card, but since her former employer, Odyssey Hair, did not accept credit cards, Smika wrote a check on what turned out to be a closed account. Schneider advised that Smika would not have needed another permanent until approximately October 1983 and probably would not have needed a haircut until that time as well.

Detective Neitzel had observed the interior of apartment #560, Sid Wells' apartment. While in the apartment, he noted that there was both a washing machine and a dryer on the second level. He also noted that there were coin-operated washers and dryers on the first floor north tower of the Spanish Towers Apartments. The Affiant also notified Neitzel that he had observed loose change in Thayne Smika's room, indicating that Smika had the cash to use the coin-operated machines.

Consent Search – 365 S. Cedar, Akron, Colorado

At approximately 8:40 PM on August 3rd, 1983, following an interview with Tava Smika, The Affiant and Detective Steingraber executed a Consent to Search from Darlene Smika at approximately 9:18 PM on August 3rd, 1983. Detectives found the following items in a basement bedroom identified by Tava as belonging to her brother Thayne:

1. Montgomery Ward's brand .20 gauge shotgun contained in a cardboard box found in the bedroom closet
2. Gun cleaning kit found in bedroom closet
3. Cleaning solution found in closet
4. Two rounds of .20 gauge shotgun ammunition found in a pocket of a hunting vest hanging in the bedroom closet

The Affiant also observed what appeared to be freshly laundered clothing and a large blue duffel bag. These items were also taken into custody. As the shotgun box was removed from the bedroom closet, **Tava Smika**, Thayne's younger sister, who remained present during the search, remarked that she had not seen that item before.

On-going Investigation

On August 3rd, 1983, Detective Knight and then Boulder Police **Sergeant Robert Hendry** met with **Craig Evans** and his attorney at the Criminal Justice Center. A taped interview was conducted with Evans who denied that he was missing any drugs or cash from his home, and denied taking any drugs from Sid Wells. He also said that he did not know Sid Wells and did not kill him. On August 4th, 1983, Craig Evans submitted to a polygraph examination, which was performed by then **Lieutenant Dennis Hopper** of the Boulder County Sheriff's Department. During that examination, Hopper determined that Evans was responding truthfully to the questions regarding his not being involved in the murder of Sid Wells. (Subsequent investigation

showed that Evans had a solid alibi for the day of the murder, including independent witnesses who could corroborate his story.)

On August 3rd, 1983, Detectives Neitzel and Knight conducted a taped interview with **Darlene Smika**, Thayne Smika's mother.

Darlene told detectives that on the afternoon of August 3rd, 1983, Thayne told her that he did own a shotgun. She also told them that Thayne suffered from seizures and that although he could not control them, he could remember what happened afterwards. She stated that she had told Thayne the week prior to August 1st, 1983, that she would be out of town on that date. She also said that she had not given Thayne haircuts or permanents in the past. During the interview, Darlene expressed concern that Thayne "may have had some involvement" in the homicide of Sid Wells. She asked to speak to a psychologist about concerns regarding her son. Police made arrangements with Dr. Dean Plazak of Boulder for the purpose of discussing a prior treatment that her son received from a Denver Doctor in 1977. At the conclusion of the appointment, Dr. Plazak, advised that he did not have anything pertinent that would aid in the investigation being conducted by the Boulder Police Department into the death of Mr. Wells. Dr. Plazak advised that he informed Mrs. Smika that in that the request for her appointment was by the police department, any information she related to him would not be invoked in the appointment. According to Dr. Plazak, Mrs. Smika advised that she would not relate anything to him under those circumstances.

On August 3rd, 1983, the Affiant and then Detective Larry Steingraber (now deceased) spoke with **Darryl Smika**, Thayne Smika's father. The detectives learned the following:

Mr. Smika, who was separated from Darlene Smika, said that he spoke to Thayne at approximately 7:00 PM on August 1st, 1983. He said Thayne was calling from Darlene's house to say that he was busy washing clothes and could not see his father on the evening of August 1st, 1983, but could see him on August 2nd, 1983.

Mr. Smika said that the last time Thayne had been in Akron was sometime between July 13th and July 15th, 1983, and the time prior to that was in January. He knew his son had been living in an apartment in Boulder since approximately January 1st, 1983, and that he had two (2) roommates.

Darryl said that in the past Thayne had come home to do laundry and that he believed that the last time had been in January 1983. He said Thayne did own or have possession of a shotgun that he (Darryl) had

bought from Montgomery Ward's while they were living in Nebraska. He described the gun as a Montgomery Ward's brand 16-gauge shotgun with an unknown choke and barrel length. A check with the Bureau of Alcohol Tobacco and Firearms (ATF) revealed that Mr. Smika purchased a .20 gauge shotgun at a Montgomery Ward's store in North Platte, Nebraska on September 29th, 1970. A later check with ATF also revealed that Darryl Smika had no other guns registered to him.

While reviewing the reports submitted by detectives in 1983, the Affiant read a report by Detective Larry Steingraber, written on August 8th, 1983. The report was a summary of a phone call between Detective Steingraber and Darryl Smika, Thayne's father. Darryl Smika lived for approximately three (3) years in the basement bedroom that had previously belonged to Thayne, the room where the Affiant and Steingraber found a .20 gauge shotgun. The report reads, in part, that Mr. Smika stated that he was living in the basement from approximately 1980 to January 1983. He stated that he then moved all of his belongings out in January 1983 and moved to an apartment in the City of Akron. Mr. Smika stated that he left several of Thayne's items in the closet when he left that had been in there when he moved in. The items included a beige pair of hiking shoes, another box with a pair of shoes in it, several other boxes on the floor that contained some type of electronic equipment and a few articles on the top shelf. Mr. Smika said he 'could not recall' if there had been any weapons in the closet. Mr. Smika did state that the closet was very small and that he had moved out everything that he possibly could so that he could place his own clothing in there.

The Affiant and Detective Steingraber had also conducted an interview with **Tava Smika**, Thayne Smika's 16-year-old sister, on August 3, 1983. At that time, Ms. Smika advised us of the following:

Tava arrived home at 365 S. Cedar, Akron, CO, at approximately 3:30 PM on August 1st, 1983. Upon her arrival, she saw Thayne's car, a 1983 Dodge Aries K-car, parked in front of the residence. When she asked Thayne what he was doing there, he said that he had a few things to take care of. She told detectives that although Thayne usually went to a beauty shop to have his hair cut, he has had his hair cut at home by his mother in the past. Tava said that when she came in the house, her brother had already brought his dirty clothes into the home and that a load of laundry was done at 4:30 PM. She was unsure if this was the first load, but said that Thayne had more laundry to do after that load.

Tava said her mother had left on Sunday, July 31st, 1983, to go to Camp Buckhorn, located in Ft. Collins. She was to return to Akron on Saturday, August 6th, 1983. The last time Tava recalled Thayne

coming home was the time when he had come home to take care of his license plates.

Tava told police that her brother "appeared OK" when he was home and that they had gone out to eat. After dinner, they returned to the house and did not leave again. She also told police that Thayne still had a basement bedroom and that he had a key to the back door of the house.

Tava recalled that when she first saw Thayne on the afternoon of August 1st, 1983, he was wearing black shorts and no shirt or shoes. He then changed into jeans and a button-up denim shirt to go out to dinner. She said that Thayne told her that he was "financially strapped." Tava thought that Thayne had taken his clothes with him when he left with the detectives. She thought he had taken a blue duffel bag and an overnight bag with him.

When she was asked whether her brother owned a gun, she said that she thought he owned a BB gun that was still downstairs. When told by detectives that her father said Thayne owned a shotgun, she said that either the BB gun or the shotgun was still in his bedroom. During a subsequent interview, Tava advised that when she last saw the BB gun it was standing along the wall in the closet of what was Thayne's bedroom. Tava also confirmed that she had not before seen the box found to contain the .20 gauge shotgun (taken from the closet shelf by Detective Steingraber).

On August 8th, 1983, Detective Neitzel spoke to **Laurie Clothier**, Sid Wells' supervisor at Franco's Restaurant, located in Boulder, where Sid worked part time. She told Neitzel that at 9:30 AM on August 1st, 1983, she phoned Sid Wells at his residence and Wells answered the phone. She said that she was sure that it was Sid to whom she had spoken, and she was also sure of the time that she called. (While the Affiant was reviewing reports and interviews regarding this case, it should be noted that Ms. Clothier was actually not sure if she had phoned Sid at his apartment or at his girlfriend Shauna Redford's apartment.)

Detective Neitzel interviewed **Rob Wells**, Sid Wells' oldest brother. Mr. Wells, who was in the Coast Guard at the time of the murder, advised that he had spoken to Sid prior to the murder and Sid had, "in a roundabout way" expressed a desire to evict Thayne Smika. Sid told Rob that he suspected that Thayne was fencing stolen goods out of their apartment.

During the course of the investigation, Detective Neitzel spoke to **Shauna Redford** on a number of occasions. During those conversations, Shauna Redford told Neitzel the following:

On the evening of July 31st, 1983, and into the early morning of August 1st, 1983, Shauna was in Sid Wells' apartment (at the time, Ms. Redford lived in another apartment in the same building as Sid Wells). She said that in addition to Sid Wells and herself, Jeff Kohen and Thayne Smika were present. In the early morning hours of August 1st, 1983, Shauna left Sid's apartment and returned to her own. When she left, Sid, Thayne and Jeff were still in the apartment. Sometime later, she was awakened when Sid entered her bedroom. Sid noticed that she was awake and said, "I'm glad you're awake." She thought that Sid had something on his mind and wanted to talk about it, but she was very tired and she fell asleep. On the morning of August 1st, 1983, she left her apartment for an 8:00 AM class, leaving Sid Wells asleep in her bed. When she returned home at approximately 10:50 AM, Sid was still in her bed. When she entered her bedroom at that time, Sid made a motion to her that indicated to her that he had been awake upon her return. She reminded Sid that he was to have lunch with his mother. He needed to get up if he was going to be on time. Shauna then left to run errands. When she returned to the apartment complex at approximately noon, she noticed Sid's car still in the parking lot, which she thought unusual. She tried to call Sid at his apartment from her own apartment at noon and 12:15 PM, but she got no answer. She then noticed that Sid's hairbrush was missing from her apartment. When asked by detectives, Shauna advised that it would be unusual for Thayne Smika to be seen emptying the trash at 6:30 AM on August 1st, 1983. She said Smika would usually stay up until early morning hours and then sleep all day. In reference to the use of the washing machine in Sid's apartment, Shauna was unaware of any restrictions barring Thayne from using the machine. She thought Thayne had used the washer and dryer in the past.

Shauna identified, from a photograph, the hairbrush found by detectives on the glass-topped coffee table in Sid's apartment. She said that this was the brush that was missing from her apartment and belonged to Sid Wells.

Detective Neitzel spoke to **David Stapp**, a former roommate of Sid Wells and Thayne Smika. Stapp told Neitzel the following:

Stapp had lived in apartment #560 with Sid Wells and Thayne Smika in early 1983. He told Neitzel that, in his opinion, it would be highly unlikely for Thayne to go to Akron for a haircut. He also noted that in the time he lived with Thayne and Sid, Thayne had never left a note for anyone advising where he was going. Stapp did not recall Smika ever taking the trash out, and, in fact, the trash was usually taken out either by Sid or himself. Stapp recalled that Smika would stay up until the

early morning hours and then sleep most of the day. He noted that if Thayne would do any house cleaning, it would be in the late afternoon. Stapp did note that while he lived there, neither he nor Thayne were allowed to use the washer and dryer. Stapp had never seen any guns in apartment #560. (In a subsequent interview, Stapp said that although they weren't supposed to use the washer and dryer, Sid was seldom home and Thayne used the washer and dryer all the time.)

Detective Neitzel spoke to **Bruce Allen**, Thayne's friend, whom Thayne had implied was involved or had knowledge of the cocaine theft by Craig Evans. Allen told Neitzel the following:

He had never spoken to Smika about burglarizing Craig Evans' home to recover stolen drugs or money. He said that prior to August 1, 1983 he had given Thayne \$5,000 to invest for him. Sometime after that exchange, Smika told Allen that he had not invested the money, but had used some of the money to live on. Allen said he had gotten some of his money back, but Smika still owed him \$2,000.

Allen told Neitzel that on occasion, prior to the murder of Sid, he and Thayne had used cocaine together. When Bruce asked Thayne where he had gotten the cocaine, Smika told Allen that it belonged to Sid, but that Sid would never miss it.

Detective Neitzel spoke to **Tina Krzes** who lived with Bruce Allen.

During that interview, Krzes said that she had seen a newspaper article (Longmont Times-Call, August 11th, 1983) which stated, "Smika and a friend named Bruce then staked out the apartment, spotted a man stealing drugs, and then, on Saturday night before the murder, arranged to party with the man who they say stole the drugs. After the man became intoxicated, Smika apparently told police, he and his friend took \$750 cash, plus about two grams of cocaine from him." Krzes said that when she spoke to Thayne about this, he denied making the statement and stating that either the police had made it up or the newspaper misprinted it.

Detective Neitzel spoke to **Robert Sundell** who worked with Sid Wells at Franco's Restaurant. Sundell told Neitzel the following:

On Friday, July 29th, 1983, Sid told Robert that he had purchased a large quantity of cocaine and that some of the cocaine was now missing. Sid told him that he suspected Thayne Smika of being responsible. According to Sundell, when Sid confronted Thayne, Thayne had then told Sid that he suspected Craig Evans of the theft.

Robert Sundell also told police that Sid had related the Craig Evans story to him on the Friday before the murder. Sundell told police that Sid had thing Sundell heard was that Sid had been murdered

Detective Neitzel spoke to **Jeff Kohen**. Kohen had been with Sid on the night of July 31st, 1983. Kohen related the following:

Jeff Kohen was identified as Sid Well's best friend, and was interviewed a number of times. The Affiant has reviewed the transcripts of those interviews, and learned the following:

Jeff had known Sid Wells for several years. He was aware that Smika moved in with Wells in January. Jeff became aware that Wells was dealing small amounts of cocaine in June. Wells had shown him some cocaine (not clarified when) and said he had spent \$2,100 for it.

Two weeks prior to the homicide, Wells told Jeff someone was stealing cocaine from his stash. Wells suspected Smika. There were actually two times cocaine was taken. The second time cocaine was missing happened between Tuesday and Friday. Jeff had returned from a trip to California on Friday and Wells had advised him only 5 grams were left. The first theft occurred two weeks prior to the second theft. During the first theft, 2 grams were missing. An additional 5 grams were missing as a result of the second theft.

After the second theft, Wells advised Jeff that he confronted Smika. Smika told Wells that he may know who stole it, and he will plan the "set up". The set up consisting of letting the guy come in, steal everything, set up a meeting with the guy, and then rip everything back off from him. Bruce Allen (friend of Smika's) was to help Smika with this.

On Sunday, July 31, 1983, Jeff worked a double shift at Winston's and Franco's (then restaurants at the Hotel Boulderado in Boulder). Jeff arrived at the Wells apartment at around 10:30 PM. Smika was there, sitting on the couch in the living room, watching TV. Shauna arrived a short time later. During that evening/early morning he heard Sid ask Smika, "Is it too late to call Bruce?" and "Is there any chance that Bruce is going to come over?" Wells told Jeff that Thayne was supposed to be getting the cocaine back by that night. Jeff was aware that Sid hid his cocaine in the apartment and prior to July 31st, 1983, and the only people who knew where the cocaine was hidden were Sid, Kohen and Smika.

Jeff and Wells went up to Wells' room and spoke for a few minutes. During this conversation, they talked about an accident Wells had seen

during the day. They also talked about the results of Smika's set up. Smika told Wells they got 1/8 of an ounce and \$750 in cash. Bruce Allen was supposed to come over around 12 Midnight with both items.

Jeff advised that Shauna left and returned to her apartment around 12:30 AM. Jeff advised that they (he, Sid and Thayne) then used cocaine. Wells had retrieved a portion from his wallet and went upstairs to get the rest. Jeff advised this cocaine was "heavily" cut with Manitol. Jeff advised that Smika then told Wells, "Why don't you go upstairs and get another one. We'll take care of it in the morning. Jeff advised that they had never done that much (3 grams), which he stated was worth \$75.

Jeff had told the police the details about the alleged theft by Craig Evans as related to him by Sid Wells: Thayne and Bruce had gone over to Craig's, gotten him drunk and took \$750 and two grams of cocaine.

Jeff also told Neitzel that prior to August 1st, 1983, Sid suspected that Thayne was selling stolen goods out of a storage locker. When Sid confronted Thayne, Thayne admitted that some of the items, specifically a VCR, were, in fact, stolen.

During the course of the investigation, Detective Neitzel spoke with **Sam Wells** on several occasions. The following is a summary of what Sam told police.

On July 31st, 1983, Sam decided to go camping alone. He left a note saying that he had gone and would return around 1:30 PM on August 1st, 1983. When he left on July 31st, 1983, Sam noted that Thayne's car was parked facing west and was three (3) to four (4) spaces from the trash dumpster, located in the northwest corner of the parking lot at Spanish Towers. (The dumpsters are actually located in the northeast section of the parking lot.) When he returned from camping at approximately 11:45 AM on August 1st, 1983, he did not see Thayne's car. Prior to going upstairs to the apartment, Sam cleaned out his car and aired out his sleeping bag. When he did go upstairs at approximately 12:20 PM, he found the door to the apartment unlocked. When he entered the apartment, he saw Sid lying on the living room floor. He also noted that a chair located just to the left of Sid's body was turned over, and the coffee table, located just to the right of Sid's body, had been moved out. After determining that his brother was dead, Sam called the police. He said he did not disturb anything in the apartment. Sam told investigators that Thayne had family in Akron, Colorado. He also said that he had never seen Thayne take the trash

out nor had he ever known Thayne to leave a note for anyone. He had never known Thayne to leave for several days at a time.

Sam said he had a tendency to be late, but he arrived home early from his camping trip. He had no idea why Sid's wallet was found in his room. Sam noted that whoever murdered his brother would have had to know that he was going to be home at that time because Sid was rarely at the apartment.

Detective Neitzel spoke to **Detective Don Knight** who told him the following:

Knight had spoken to **Brad Kent**, who then lived in Aurora, Colorado. Mr. Kent told Knight that he was a former roommate of Thayne Smika's. Approximately two (2) years prior to the murder, he had observed Thayne Smika in possession of two rifle cases. Kent knew that the cases contained something because they were standing up. He did not know what types of guns were in the cases.

The Affiant also told Neitzel that he had spoken with **Marilee Hammer**, who is employed by a real estate company in Denver.

Marilee Hammer told the Affiant she knew Thayne Smika and that she used to work with him at Perry & Butler Real Estate. Hammer told the Affiant that she had seen Smika three (3) to four (4) months prior to the murder. At that time, he told Hammer he was planning to move from address to address to avoid paying bills.

During this investigation, no other shotguns/shotgun cases were observed or recovered from the Smika residence in Akron, Thayne Smika's automobile, or in apartment number 560 at 805 29th Street, other than the 20-gauge shotgun recovered from the Smika residence.

Medical Reports

Detective Neitzel reviewed the coroner's report prepared by **Dr. Kevin Hanley**, a pathologist employed by Boulder Community Hospital, who conducted the autopsy of Sid Wells. Neitzel summarized Dr. Hanley's report in the following manner:

Death in this twenty-two year old white male is attributed to a homicidal shotgun injury of the head, with resultant severe brain destruction and widespread fracturing of the cranial bones. Most of the pellets remained within the cranial cavity, although one was found at the opening of the right nares and it's possible some exited through the jagged tear at the medial aspect of the left eye. The direction of fire of

the weapon was probably parallel to the midline of the skull with slight downward angle. Death was essentially instantaneous.

Dr. Hanley also noted that the wound was a contact wound.

Initial Lab Results and Related Information

In 1983, the Affiant initially prepared four lab requests for the Federal Bureau of Investigation (FBI) in Washington, D.C. With those lab requests, 62 items were submitted. These items included the shotgun, shells and gun cleaning kit recovered from Smika's Akron residence. Also included were the wadding and pellets removed from Sid Wells' head during the autopsy and the Atomic Absorption kit performed on the hands of Sam Wells on August 1st, 1983. (This particular test can indicate whether or not a person has recently fired a gun.)

*Hayes later spoke to **Special Agent Mike Malone** of the FBI. Malone advised the Affiant that he had found hair in the submitted gun cleaning kit and that he found that the hair was light brown head hair, Caucasian in origin. This hair evidence was sent to Cellmark Diagnostics in Germantown, Maryland, for testing. According to lab results received from Cellmark on October 7th, 1997, the DNA technicians were unable to extract DNA material from the submitted sample.*

*Detective Neitzel spoke to **Special Agent Roger Asbury** of the FBI who advised him that he had compared the components of the lead pellets found in the victim's head with the lead pellets from the two shotgun shells recovered from Thayne Smika's Akron home. Asbury completed a report based on the findings of that comparison. As quoted from that report:*

"The specimen Q-12 (shot pellets found in the back of Sid Wells' head) and the shot shells Q18 and Q19 (shot shells from the Smika residence) were analyzed by Neutron Activation Analysis (NAA) for elemental composition. Pellets matching the composition of Q12 pellets were found among pellets analyzed from the Q18 and Q19 shot shells.*

Pellets matching the composition are commonly found among shot shells from the same box. However, matching pellets are sometimes found from different boxes and are more likely to occur among shot shells from different boxes of the same shot shell type and manufacturer packaged on or about the same date."

Agent Asbury "presented to Neitzel" the following:

Agent Asbury compared the components of the lead pellets that were found in the head of Sid Wells with the lead pellets found in the two .20 gauge shotgun shells recovered from the Akron home. Based on his comparison, he would "expect" that the above listed three shells came from the same box, the same manufacturer and probably packaged on or about the same day, he advised that this was not to say that some boxes elsewhere might not have similar composition.

**It is important to note that the FBI later informed law enforcement agencies that the FBI Laboratory does not believe that Neutron Activation Analysis in and of itself can support this degree of specificity or words to this effect. After discussions between the FBI and the National Research Council (organized by the National Academy of Science in 1916 to associate the broad community of science and technology with the Academy's purposes of furthering knowledge and advising the federal government) a study was initiated to assess the soundness of the scientific principals underlying Compositional Analysis of Bullet Lead (CABL) to determine the optimum manner for conducting the examination and to establish scientifically valid conclusions that can be reached using the examination. After the development of a feasible statement of task, a committee that had the expertise required by the statement of task was assembled. The results of this study, which concluded in 2004, are detailed in a publication titled Forensic Analysis-Weighing Bullet Lead Evidence which the Affiant has reviewed. It was the conclusion of this committee that; "In many cases, CABL, is a reasonably accurate way of determining whether two bullets could have come from the compositionally indistinguishable volume of lead. It may thus in appropriate cases provide additional evidence that ties a suspect to a crime, or in some cases evidence that tends to exonerate a suspect. CABL, does not, however, have the unique specificity of techniques such as DNA typing to be used as stand-alone evidence." In 2010, the Affiant, Detective Colleen Wilcox of the Boulder Police Department and Chief Investigator Jane Harmer and Assistant District Attorney Ryan Brackley of the Boulder County District Attorney's Office consulted directly with committee member, Dr. Robert R. Greenberg, from the National Institute of Standards and Technology, and indirectly with committee member, Dr. Karen Kafadar, from the University of Colorado at Denver, regarding the Compositional Analysis of Bullet Lead (CABL) that was done in this case and subsequent steps outlined later in this affidavit.*

Detective Neitzel spoke to Detective Don Knight concerning firearms tests that were taking place at the FBI Lab in Washington, D.C. Detective Knight told Neitzel the following:

Detective Knight personally spoke to **Special Agent Paul Schrecker**, who worked in the Firearms Identification Section. Schrecker advised Knight that the two shotgun shells recovered from the Smika residence in Akron had at some time been loaded into and taken out of the shotgun recovered from the Akron home. Schrecker also said, in his opinion, if the shotgun were cleaned after it was last fired, it was not cleaned thoroughly. Furthermore, the pellets identified as those recovered from the victim's head were number six (#6) shot and the writing on the shells recovered from the Smika residence indicated Winchester Western brand #6 shot.

Detective Neitzel then contacted FBI Special Agent Paul Schrecker to clarify what he had told Detective Knight. Schrecker advised Neitzel of the following:

The tests conducted, to determine that the two shells taken from Akron had been in the shotgun recovered in Akron, consisted of taking two additional shotgun shells and placing them into the Akron shotgun. The mechanism marks on the two sample rounds were compared to the mechanism marks found on the two shotgun shells recovered from Akron. The shells were compared microscopically, and it was Schrecker's opinion that there was a positive match. He said there was no doubt in his mind that the two rounds recovered in Akron in Thayne Smika's hunting vest had been placed in and removed from the shotgun recovered from the Akron home.

Detective Neitzel reviewed a report from the FBI Lab concerning the shotgun taken from the Akron home. According to this report, no blood was found on the shotgun and pellets recovered from the victim's head, based on weight and diameter, are number six (#6) shot.

Reports from the FBI Laboratory also provide the following information:

- 1) Removed from the victim's head were one over-powder wad, two filler wads and one piece of plastic wadding (shot collar). These specimens are consistent with the type of wads loaded into .20 gauge shells of Winchester manufacture, such as specimens Q18 and Q19 (the live rounds recovered from the Smika residence in Akron).
- 2) "Residues" were noted in the barrel of the shotgun recovered in Akron, indicating that the gun had been fired since it was last cleaned. It was not possible to determine when the shotgun was last fired.

In 1983, Detective Neitzel spoke to **Mike Jordan**, an employee of Winchester Western, Olin Division, located in East Alton, Illinois. Mr. Jordan worked in production of shotgun shells and he told Neitzel the following:

Winchester Western has always manufactured its own shotgun pellets. The two main elements of the pellets are antimony and arsenic, used for the hardening of the shotgun pellets. These are the only two elements that remain constant. Other materials used in the shotgun pellets will vary from batch to batch. If three rounds contained pellets, which were chemically broken down, and the materials identified making up the composition of these pellets, and the elements proved to be the same, it would indicate that these pellets were probably made at the same time.

According to Mr. Jordan, the likelihood of two different batches of shotgun pellets having, elementally, the same composition was very slim. Winchester Western number six (#6) shot is used in several gauges of shotgun shells. Of a given production run of #6 shot, approximately 60% go into 12-gauge shells and only 20% go into .20 gauge shells.

The Affiant also reviewed written reports from then **Lieutenant William Spotts** of the Boulder Police Department-dated October 28th and November 10, 1983. According to these reports, Lieutenant Spotts hand carried specimens Q18 and Q19 (shells recovered from the Smika residence in Akron, Colorado) to the Olin (Winchester) Headquarters in East Alton, Illinois, on October 27, 1983, where he met with company representatives Mr. Mike Jordan and **Mr. Donald McCollister**. According to Lieutenant Spotts, Mr. Jordan and Mr. McCollister identified these shells as being manufactured between April of 1969 and September of 1972, based on Olin's records as it pertains to the components of shotgun shells. These components included the yellow tubes (the portion of the shell containing the paper wadding and the pellets), the solid brass cap rather than a mixture of brass and other metals used in later shells, and the knurling marks on the brass cap (a single roll near the top and three rolls in consecutive order towards the base of the brass cap). Other identifying items on these particular shells is the red printing, which was discontinued in 1972, and the primer case being made out of steel rather than less expensive metals used in later shells.

On November 10, 1983, Lieutenant Spotts again spoke with Mr. Jordan who advised that based on the antimony percentages found in the shotgun pellets recovered from Mr. Wells' head and analyzed by the FBI Laboratory, he believed these pellets would be consistent with the percentage of antimony found in shotgun shells manufactured by Olin (Winchester) between 1969 and 1972.

During the course of this investigation, the Affiant read a written report prepared by Mr. McCollister dated April 17, 1985, regarding the contents of the shell recovered from Mr. Wells. According to this report, the presence of the paper cup wad identifies it as being loaded by Olin (Winchester/Sears) in that no other manufacturer utilizes this construction, nor is it available for reloaders.

On January 28, 2010, the Affiant did send copies of the reports/information previously received from Winchester (Olin) from 1983 to present to **Mr. Paul Szabo**, who is a Technical Consultant at Winchester (Olin). The Affiant did speak with Mr. Szabo on February 18, 2010, and that after reviewing the material sent to him, Mr. Szabo did confirm that based on the percentage of antimony in the pellets recovered from Mr. Wells, he is able to confirm that these pellets were consistent with pellets loaded into Winchester/Sears .20 gauge shotgun shells that were manufactured between 1970 and 1974. Mr. Szabo also confirmed that the shells found at the Smika residence in Akron were manufactured by Winchester (Olin) between April of 1969 and September of 1972.

On August 2, 2010, the Affiant, **Detective Colleen Wilcox** of the Boulder Police Department and **Chief Investigator Jane Harmer** and **Assistant District Attorney Ryan Brackley** of the Boulder County District Attorney's Office met with Mr. Paul Szabo at the Winchester (Olin) Plant in East Alton, Illinois.

After a tour of the loading side of the plant, Mr. Szabo, who has been with Winchester (Olin) since 1981, advised us of the following:

Mr. Szabo advised that starting in the 1960's, manufacturers of shotgun shells agreed that .20 gauge shells would be yellow, and this color choice remained consistent until approximately 5-7 years ago, when an Italian firm stopped using the yellow color for the .20 gauge shells they produced.

Mr. Szabo advised that .12 and .20 gauge are the most commonly used shotgun shells.

Mr. Szabo advised that #6 shot is .11" in diameter, and the over powder cup wad in a .20 gauge shell is actually .16 gauge.

Mr. Szabo advised that the capacity of the lead melting pot is 15,000 pounds.

Mr. Szabo advised that the available shotgun gauges are 410, 20, 12, 10, 16 and 28.

Mr. Szabo advised that he would be able to "testify" to the information regarding the wadding, plastic sleeve, and the levels of antimony and arsenic in Mr. McCollister's April 17, 1985 memorandum.

After viewing a picture of the live rounds recovered from Akron, Mr. Szabo advised that he could identify them as being of Winchester (Olin) manufacture.

In regards to the fiber wads, Mr. Szabo advised that other manufacturers may have used fiber wads but that the paper cup wad was unique to Winchester (Olin) or words to this effect.

Mr. Szabo advised that Winchester (Olin) moved from paper pulp/ground wood pulp to Olinkraft in 1974.

Mr. Szabo advised that per their 1970 catalog, Winchester (Olin) did make 2 3/4"-.20 gauge shells with either a 1 or a 1 1/8 oz loads, and 3"-.20 gauge shells in a 1 1/4, 1 1/8 and 1 3/16 oz loads, with the 1 1/8 and 1 3/16 shells containing copper plated shot. Mr. Szabo further advised that the 3" shells may have come loaded with more or different powder, and if necessary, different wadding.

In a follow up e-mail Mr. Szabo advised that Winchester (Olin) had a patent for the paper cup wadding from 1958 to 1969, and that they also had a patent on the shot collar from 1964 to 1981.

On the morning of Tuesday, August 10, 2010, the Affiant, Detective Colleen Wilcox, and Chief Investigator Jane Harmer (of the Boulder County District Attorney's Office) conducted a taped telephone interview with Mr. Don McCollister, now retired from Winchester (Olin)

Prior to this interview, the Affiant provided Mr. McCollister with copies of his memorandums dated April 17, 1985 (2), and Case File Reports from then Lt. Bill Spotts dated October 28, 1983 and November 10, 1983.

During this interview, Mr. McCollister, who worked at Winchester (Olin) from 1948 to 1994, advised us of the following:

Mr. McCollister advised that Lt. Spotts' reports were an accurate reflection of the information he and Mr. Jordan provided to him, and that his (Mr. McCollister's) reports were based on his experience and factory records he had access to at the time his report was written.

Mr. McCollister advised that in 1948, Winchester (Olin) started using the paper cup wad, and then changed to the "one piece plastic wad" (cup wad and spacers) in the late 1970's and 1980's.

Mr. McCollister further advised that Winchester (Olin) was the only company that produced shells with the cup wad construction. Mr. McCollister further advised that the "shot collar" was not particularly unique and that the shot collar was used until it was combined with the one piece plastic wad. Mr. McCollister advised that he was not sure what other companies may have used a "shot collar."

Mr. McCollister further advised that other companies, including Winchester (Olin), would look at shells made by other companies to see what their components looked like.

In regards to the shells that were recovered from the Smika residence in Akron, Mr. McCollister advised that his identification and dating of these shells was based on the following:

- 1) Yellow tube*
- 2) Solid brass cap*
- 3) Steel primer cup which Winchester (Olin) started using in 1969*
- 4) Knurl marks (4) which Winchester (Olin) stopped using in 1972 due to stress fractures*
- 5) Red printing on the tube which changed from red to black in 1972.*

*On the morning of Wednesday, August 18, 2010, the Affiant, Detective Colleen Wilcox, Chief Investigator Jane Harmer and Assistant District Attorney Ryan Brackley (of the Boulder County District Attorney's Office) conducted a taped telephone interview with **Mr. Mike Jordan**, also retired from Winchester (Olin).*

Prior to this interview, the Affiant provided Mr. Jordan with copies of notes from a phone conversation with him on October 10, 1983, copies of the memorandums from Mr. McCollister dated April 17, 1985 (2), and Case File Reports from then Lt. Bill Spotts dated October 28, 1983 and November 10, 1983, and telephone interviews with Mr. Jordan dated October 3, 1983 and January 24, 1985.

During this interview, Mr. Jordan advised us of the following:

Mr. Jordan worked at Winchester (Olin) form June of 1967 to October of 2001, and in 1983, Mr. Jordan was the product service manager.

Mr. Jordan confirmed that .20 gauge shells were approximately 20-25% of the entire shotgun shell market, and approximately 40-50% of the .20 gauge shells were #6 shot. Mr. Jordan advised that he based this information on manufacturing records he had access to at the time.

When asked about the identification of the rounds found at the Akron residence, Mr. Jordan advised that the production dates for these shells was based on his and Mr. McCollister's observation of the shells, the height and length of the materials, and the knurl pattern. Mr. Jordan advised that this information was then compared to the manufacturing and production records that he and Mr. McCollister had access to at the time.

When asked about the identification of the contents of the round from Mr. Wells' head, Mr. Jordan advised that the wadding and Mark V liner were of Winchester (Olin) manufacturer.

Mr. Jordan further advised that Lt. Spotts' report was a true and accurate account of the information they provided to him.

During a review of the FBI lab reports, the Affiant noted that the FBI Laboratory recovered an orange fiber from the shotgun box found at the Smika residence in Akron. Also submitted to the FBI were samples of carpet taken from the crime scene. A microscopic analysis was done to compare carpet from the crime scene and the orange fiber. The FBI reported that this fiber both microscopically and instrumentally matches the nylon fibers found in the composition of specimens K4, K6 and K7 (carpet samples from hallway, living room and bathroom). Accordingly, this fiber was found to be consistent with having originated from the same source as specimens K4, K6 and K7".

Although these reports may indicate that the shotgun gun box recovered from the Smika residence in Akron, was in apartment #560, it is important to note that no one can say for certain that the shotgun box and other items removed from the crime scene, including pieces of this carpet, were not placed in the same intake bin or placed in or near each other in the Property and Evidence room then being used by the Boulder Police Department and the Boulder County Sheriff's Department.

The Affiant also learned that according to the FBI Laboratory Reports, the swabbings from the Atomic Absorption Kit performed on the hands of Samuel Wells were analyzed for the elements of antimony and barium, which are components of most primer mixtures and can be deposited on the hands when a firearm is discharged. No significant amounts of antimony and barium were detected on the swabbings. It does not preclude the possibility

that he could have discharged a firearm, but no residue was deposited on his hands. Nor does it preclude that any residues that could have been deposited were removed by washing his hands prior to the test being administered.

The Affiant also learned that according to the FBI Laboratory Reports, latent fingerprints and one latent impression (which is either a finger or a palm print) were present or developed on the envelope which supposedly contained the \$300 and the envelope that contains a utility bill (the envelope that contains the note left by Mr. Smika). None of the fingerprints can be attributed to Thayne Smika, however, as noted in the report, Mr. Smika's inked palm prints are needed for a complete comparison of the latent impression. The remaining latent fingerprints were found not to belong to Sid Wells. During the course of this investigation, the Affiant noted that one of the paramedics at the scene did report handling the envelope which supposedly contained the \$300, and then handed that same envelope to then Boulder Police **Officer Ken Sundberg**. The Boulder Police Department has since obtained elimination finger and palm prints from each of the initial responding officers, personnel from the Boulder Fire Department who were on scene, and the two paramedics who also responded. These prints have been submitted to the FBI Laboratory for further elimination.

Additional Information Regarding the Shotgun Recovered from the Smika Residence in Akron

Detective Neitzel personally viewed the specification sheet provided by Montgomery Ward's regarding its .20 gauge shotguns. Upon examining this sheet, Neitzel noted that some of the features of this gun, the same kind found in the Akron home, are: "Easy take down design, easier to transport, and easier to store and clean." Further, Detective Stange told Detective Neitzel that the .20 gauge shotgun recovered from Smika's belongings had a plug inside which limited the number of rounds that can be loaded into the shotgun to three.

On November 26, 2010, the Affiant and Sergeant Cooper Grimes, the Sergeant in charge of the Boulder Police Department's Property and Evidence Unit, did measure this shotgun and found the overall length to be approximately 46". Broken down, the barrel itself was found to be approximately 26" long, the stock approximately 12" and the action approximately 22".

1997 Information

In late April or early May 1997, the Affiant met **Gina Diamond**, who is from Akron, Colorado, and who was working at the Fire and Police Pension Association of Colorado. Diamond told him that she knew

Thayne's sister, Tava, when they were in high school together at the time of the Wells' murder. Gina volunteered that Tava had told her that Tava had washed Thayne Smika's bloody clothing when he arrived in Akron on August 1st, 1983.

In a follow-up telephone call to Gina Diamond, she advised the Affiant that upon further thought, she may have only heard the information second-hand, but could not recall specifically. She also expressed reluctance to become involved in the criminal investigation.

In a later interview with Tava Smika, she too denied the above information.

Affiant learned that Denver County Judge Ettenberg signed an arrest warrant for Thayne Smika on May 28th, 1986, for Theft and Second Degree Forgery based upon evidence which indicated that between January 12th, 1986, and March 5th, 1986, Smika allegedly forged 14 checks to himself with a total value of \$63,850.59, while he was employed as an accountant by Western Empire Constructors, Inc., a Denver company. The Affiant learned that the warrant had been outstanding for approximately five years following Smika's disappearance in approximately October of 1986. However, because Mr. Smika had not been located the warrant was purged from the system. The Denver District Attorney's Office re-drafted an arrest warrant on these forgery charges and re-submitted this warrant to a Denver Judge in order to aid our investigation. The warrant was signed and there was an arrest warrant for Thayne Smika on 14 counts of Second Degree Forgery. This subsequent warrant is also no longer active.

In 1997, Boulder Police **Officer Ruth Christopher**, posing as a journalism student investigating the Wells' homicide, talked with Darlene and Darryl Smika:

Darlene Smika stated that she had not heard from Thayne for approximately 11 years and that Thayne had changed his name when he left Denver. She declined to disclose his new name, but implied that she did know what it was. She also declined to comment on whether any family member had ever hired someone to find Smika, but she did imply this. According to Darlene, Thayne left Denver and changed his name out of fear for his life because he knew who really killed Sid Wells and felt that if he came forward, these people would kill him as well. Darlene explained that Darryl Smika had purchased a car for Thayne in 1986 in order for him to leave the state. (A car belonging to the Smika's was found abandoned in Beverly Hills, California, in October 1986.) Thayne had also asked his parents to apply for passports as he was leaving the country and he would notify them where he would be so they could visit. Both parents did obtain

passports, but Thayne never contacted them to let them know where he was. Darlene admitted to Officer Christopher that she knew that Thayne was using and selling cocaine at the time of the murder although she claims that she did not learn this until after the murder. Darlene continued to deny knowing Thayne's whereabouts.

Darryl Smika stated he had not spoken to Thayne for approximately 11 years, and that he last spoke with Thayne, when Thayne contacted him and told him he was changing his name and leaving Colorado. Thayne told his father to come and collect his personal belongings and dispose of them. Darryl also claimed to have read a "deposition" composed by Thayne stating who the real killer is. He would not disclose the person Thayne implicated. He did say that when he cleaned out Thayne's apartment, this "deposition" was not among his belongings and he assumes that Thayne took it with him. Darryl believes that Thayne may have left the country.

The Affiant also spoke with **Sergeant Melissa Kampf** (also a member of the Boulder Police Department) who contacted several of the people who had been interviewed as possible witnesses in 1983. Although their previous interviews were taped and transcribed, they were interviewed again (dates noted below) in an effort to confirm what they had previously said, and to ask if there were things that they had subsequently remembered that they had not told police. Sergeant Kampf advised the Affiant of the following:

One of the original people who had been interviewed was **Bobbi Thorpe**, who was interviewed on October 25th, 1983. Bobbi had known Thayne for approximately 1½ years at the time of the murder and was the girlfriend of Tracy Johnson. (Tracy and Thayne were friends and had purchased a condominium together which was later foreclosed on for lack of payment.) Sergeant Kampf obtained Bobbi's telephone number through another witness and called her on June 27th, 1997, at her home in Wisconsin. She agreed to be interviewed and was very cooperative. The interview was recorded and transcribed.

Sergeant Kampf asked Bobbi, whose last name is now Devine, about the drug use among her friends as well as Sid Wells. She told the Affiant that a week or two before the murder, Thayne had asked her to get an ounce of cocaine for Sid. She stated that she did not get the ounce for Thayne because he wanted her to "front it" to him and she didn't believe that Thayne would ever pay her. She said she knew at that time that Thayne was "grasping for money" and that in all the time she had known him, he had never held a job. Bobbi set Thayne up with her supplier, "Deano", to buy the ounce for Sid, but she does not know if the transaction ever took place.

When asked what else she remembered just prior to the murder, she believed Thayne "was going off the rocker" because he was so depressed. She said he would not come out of the apartment or return phone calls and that he was sleeping a lot. She also said that she definitely thought that Thayne was suicidal at that time.

Bobbi recalled that Thayne "always wanted to plot the perfect crime...every time we got together he talked about that, plotting the major crime where he'd never get caught."

Sergeant Kampf then asked Bobbi to recall what she could following the murder. She related the following story: "We all went to the Dark Horse and it was the night they had two for one drinks...Thayne and I were sitting at one of those tables by the dance floor talking and Thayne was getting pretty drunk which he didn't do a whole lot. I mean, he always usually had control and there was a bunch of glasses lined up and I remember this so vividly. There was a bunch of glasses and we were talking about, I was talking about something and it was some type ... I don't even remember what it was, but it was like about brains being splattered. And he takes his glass and he goes, 'Bobbi, you know I killed him,' and he just slammed that glass. He just like pushed it into all the other glasses and the glasses just shattered.... And I looked at him and I go, 'Oh, okay Thayne,' and it scared, it just scared me." The Affiant asked Bobbi what she thought he meant by that and she said, "At the time, I took it he was admitting it." She thought that this had taken place a couple of weeks to a month after the murder. Bobbi had related similar information in her 1983 interview, but at that time she told detectives she thought Thayne was "joking."

Another incident that Bobbi recalled took place following the murder. Bobbi had loaned Thayne some record albums prior to the murder and she kept asking Thayne about getting them out of the apartment for her after the murder. She said, "I kept asking Thayne, 'Well, do you want to go pick up your stuff?' cause he wouldn't go, you know, and I go, 'Don't you think you could pick up, you know, get some of your stuff like your toothbrush or something?' and he would never want to go there. I said, 'Well, some day I'd like to get my albums.' You know, selfish me, and he goes, 'Oh, there's going to be brains splattered all over them.'" It is unknown if Thayne knew at that time that Sid had been killed in the living room where the albums were kept.

Bobbi advised that Thayne told her that he left his apartment on the day of the murder (August 1st, 1983) at 10 AM.

Bobbi said that Thayne had been involved in several "scams" to get money and one that she recalled had involved a stolen Montgomery

Ward's credit card. She said that she had "gone shopping" with Thayne so that he could pick out what he wanted to buy in the future. Although they did not buy anything on that trip, Bobbi recalled Thayne looking at shotguns. Thayne told her he had gone back and used the card. She does not know when.

Bobbi Devine is now deceased.

On August 28th, 1997, the Affiant and Sergeant Melissa Kampf interviewed **Tina Arthur, formerly Tina Krzes**, at the Boulder Police Department. The information she provided was consistent with that which she had provided in 1983. During the interview, the following information was provided:

In the days following the murder, Thayne stayed with Tina while Bruce Allen was attending a family reunion. She stated that Thayne was very interested in news articles related to the murder. He cut out all of the articles and was "always critiquing" what the newspaper said. She initially believed that Thayne was not responsible for Sid's murder. She had seen the story in the Daily Camera that talked about Craig Evans stealing Sid's cocaine and Thayne and Bruce burglarizing his house to retrieve drugs and money. Thayne denied he was the source of this information. A short time later, a Daily Camera reporter took her to lunch and showed her a copy of a "deposition" from Thayne. Contained in the "deposition" was Thayne's recounting of the Craig Evans story. Tina went home and confronted Thayne. She asked him why he had lied when she asked if he had told this story. Thayne didn't have an answer and she told him to leave.

After the murder, she received a call from Thayne's mother during which Darlene asked Tina if she thought Thayne had killed Sid. It seemed to Tina that Darlene "knew something that I didn't."

In the weeks before the murder, Tina said that Thayne was "definitely different." She said that she and her friends assumed it was because Thayne was doing "way too many drugs." She thought that either Bruce or Tracy Johnson had approached Thayne to talk to him about his drug use. She was also aware of Thayne's financial troubles as well as the insurance fraud he had committed prior to moving to Boulder.

With regard to Thayne telling the police that he had gone to Akron to do his laundry on the day of the murder, Tina thought it was very odd because Thayne rarely visited his parents. During a telephone conversation with Mrs. Smika, Mrs. Smika told Tina that she "hadn't seen him in a while." Tina further advised that Thayne normally did his

laundry at Spanish Towers and she had never seen him take his laundry out of the building.

She said that at some time prior to the murder, Thayne purchased a leather jacket and a shotgun from Montgomery Ward's on a credit card that, she learned from Bobbi, belonged to someone else. She later saw a soft-sided zippered gun case in the Spanish Towers apartment where Sid was murdered.

Tina also stated that Bobbi had told her recently that Thayne had confessed to the murder to her while they were drinking at The Dark Horse bar in Boulder. According to Tina, she and her friends were under the impression after the murder that Thayne had been granted immunity from prosecution and that it didn't matter what anyone told the police. She felt that this might explain why Bobbi had not reported this confession to the police earlier.

On January 11th, 2010, the Affiant spoke with Tina who recalled Thayne telling her within days of Sid being killed that if you were ever going to kill someone use a shotgun because it can't be traced or words to this effect.

On September 12th, 1997, Sergeant Melissa Kampf and the Affiant interviewed Sid Wells' best friend, **Jeff Kohen**, at his home in Denver. During the interview, we learned the following:

Prior to his murder, Sid told Jeff that he had purchased an ounce of cocaine so that he would be able to sell it to his friends. Jeff estimated the ounce had cost about \$3,000 and he said he did not know where Sid had gotten the money for the purchase. The night before the murder, Jeff had been visiting Sid at his apartment and he recalled talking to Sid about the cocaine. Sid told Jeff that he suspected Thayne of stealing his cocaine. Sid also told Jeff that he had confronted Thayne about the theft and that Thayne had told him a story about "this other guy" that had taken Sid's drugs. Both Sid and Jeff agreed that the story was "concocted" by Thayne.

After the news media had run stories about the re-opening of this case in 1997, **Mr. Dan Laurin** contacted Sergeant Melissa Kampf. According to Mr. Laurin, he did contact Detective Don Knight some time shortly after the murder. (Knight does not mention his contact with Laurin in his reports, and Knight has since died.)

Detective Neitzel spoke to Laurin on August 12th, 1983 and learned that Laurin had spoken to Knight some time prior to that date. Mr. Laurin had

apparently observed a suspicious male from the balcony of his apartment at 2905 E. Aurora in Boulder on the day Mr. Wells was murdered.

On December 29th, 1997, Sergeant Melissa Kampf and the Affiant conducted a videotaped interview with Dan Laurin near his former apartment. This location is approximately one and one-half blocks north, and approximately one-half block east of the Spanish Towers Apartment Complex where Mr. Wells was murdered. During this interview, Mr. Laurin provided the following information:

On August 1st, 1983, Mr. Laurin was home for lunch from his job at Crouch Motors in Boulder. He could not recall the exact time and said he alternated between early and late lunches that began at 11:30 AM and 12:30 PM in the afternoon. Although he could not recall the time, he told us that at the time of the murder, he had read an approximate time for the murder and realized that he had seen the suspicious party at around that time. He was living in an apartment that did not allow pets and about five minutes after he got home for lunch, he noticed his cat was sitting in the window. Fearing that his landlord would see the cat, he walked to the window to remove it. He looked out the window that faces south on Aurora and looks into the parking lot of the Cavalier Apartments, which are adjacent to Spanish Towers. He noticed a suspicious male walking from the far south end of the Cavalier Apartments parking lot in a northeasterly direction. The male was "zigzagging" through the lot and appeared to be very nervous. He was looking over his shoulder and all around as well as walking very quickly. The party had on a denim jacket, jeans and what appeared to be a light colored shirt. It appeared that the male had something "jammed" up his right sleeve because he held his arm stiffly in front of his body and often reached over with his other hand in an effort to adjust the item in his sleeve. Mr. Laurin said the object could have been a broomstick or a baseball bat or similarly shaped object. The male party appeared to be Lebanese or Middle Eastern with bushy dark hair and a thick beard. Lauren said the male had a "distinct face." Mr. Laurin stepped onto his balcony and continued to watch the male's progress through the parking lot, which measures approximately 400 feet from end to end. Dan Laurin kept watching the individual because he was acting so strangely. The male crossed East Aurora and disappeared from Laurin's line of sight just east of his apartment. It appeared to Mr. Laurin that the male had entered the East Campus Village Apartments or had continued past them. East Campus Village Apartments are located directly east of Laurin's apartment building.

Mr. Laurin advised that a day or two after he had seen this party, he saw a photograph of Thayne Smika in the newspaper, possibly the Boulder Daily Camera, but he could not be certain. The newspaper

article had two or three photographs, and when he saw the photo of Thayne, he immediately knew this was the party he had seen walking through the parking lot on the day of the murder. He called the Boulder Police Department and spoke to a male detective. He told the detective what he had observed and was told by the detective that he must be mistaken because Mr. Smika did not look like his photograph in the paper and the detective may have said that Smika was clean-shaven. Mr. Laurin felt that he was "blown off" by the detective who spent only a few minutes on the phone with him and told him he would call if he needed anything else. Mr. Laurin said he felt frustrated by his contact with the detective and when he called again a few days later, the person he spoke to again dismissed him.

Mr. Laurin was certain at the time of the murder, and continued to be certain in 1983, 1997, and now in 2009 (the Affiant talked with Mr. Laurin in 2009) that the person he saw behaving so suspiciously on August 1st, 1983, was Thayne Smika.

There is a note in the case file authored by Detective Knight that refers to his conversation with Laurin. The note lists Laurin's description of the suspicious male as "Hispanic, mustache, stocky, 5'8," work pants, shirt partially rolled up." The note also lists the time that Laurin saw the male as "1200 +/-."

There is a small entry in Detective Neitzel's report referring to his contact with Laurin who had called him on August 12th, 1983. Laurin told Neitzel that he had seen a party running between apartment buildings on the day of the murder. Laurin told him that he had seen a photo of Thayne Smika in the newspaper and he was "90% sure" that the person he saw was Smika. Laurin described the party as "5'8" - 6' tall, stocky build wearing work clothes. The party was carrying his arm as though he had something in his sleeve. The man had a beard and mustache.

When Neitzel spoke to Detective Knight, Knight recalled speaking to Laurin, but told Neitzel that the description Laurin had given Neitzel differed from the one he had offered to Knight. According to Neitzel's report, Knight told him that Laurin had said the person was clean-shaven. (The note authored by Knight clearly contradicts this.) In the Affiant's conversation with Mr. Laurin, he was very clear that the man he saw had a full beard and bushy hair. In fact, he recalled being very surprised when the detective had told him Smika was actually clean-shaven. (Smika had a full beard and mustache on the day of the murder.)

During the course of this investigation, the Affiant reviewed old newspaper clippings from the Boulder Daily Camera, and noted that a photograph of Thayne Smika (with a beard and mustache) had been run after the murder.

Additional Lab Results

While reviewing the case file, Sergeant Melissa Kampf learned that a small amount of dried blood had been discovered and collected from Thayne Smika's waterbed mattress. This blood was discovered by **Randall Paulson**, an attorney for the Wells family, standing by at apartment #560 while Thayne removed personal belongings on September 24th, 1983. Paulson collected and maintained custody of this blood until it was turned over to Detective Knight. The blood was tested by The Southwest Institute for Forensic Science in October 1983. It was determined that this blood was type A, the same type as Sid Wells'. No further testing was done in 1983. The Affiant is aware that labs currently have the ability to do DNA testing to more accurately characterize blood. The FBI tested this blood in 1997 and later advised that there was not sufficient quantity of the blood to determine a DNA profile.

In addition to this blood scraping, it was decided to send other items to the FBI Lab in Washington, D.C., for further testing. The FBI Lab was chosen not only for its expertise, but also because the FBI Lab had done much of the original testing; lab seals were still in place on much of the evidence. On July 7th, 1997, Affiant and Sergeant Melissa Kampf hand-delivered items of evidence to the FBI Lab. These items were delivered to the Evidence Control Unit at FBI Headquarters in Washington, D.C.

The following items were submitted for further testing:

Item	Collected From
Trap water from bathroom sink	Crime Scene
Duffel bag containing Smika's clothing	Smika Residence in Akron
Swabs from bath drain	Smika Residence in Akron
Swabs from the washing machine	Smika Residence in Akron
Blood from waterbed mattress	Crime Scene
Toilet swabs - Submitted three sets	Crime Scene
White long sleeve shirt belonging to victim	Crime Scene
Two pairs of Wrangler blue jeans	Smika Residence, Akron,
Denim shirt	Smika Residence, Akron

The Affiant learned from an FBI lab report that no discernable DNA had been detected from these items.

At the FBI Laboratory, Sergeant Melissa Kampf and the Affiant met with **Tom Callaghan**, the examiner assigned to this case, who suggested that he would also like to examine the .20 gauge shotgun which had been removed from the Smika residence in Akron for the presence of DNA. Although some testing had been done in 1983, more sophisticated testing could possibly detect blood and DNA on the gun. The gun was submitted and no discernable DNA was found.

Sergeant Kampf and the Affiant also spoke with **Special Agent Paul Schrecker** of the firearms unit of the FBI Laboratory and asked if additional more specific testing could be done on the shotgun pellets to detect other elements that were not being tested in 1983. Agent Schrecker agreed to conduct Inductively Conducted Plasma-Atomic Emission Spectroscopy (ICP-AES) on the pellets. Based on this information, the Affiant submitted to the FBI Lab the aforementioned shotgun, the remainder of the pellets recovered from the head wound of Mr. Wells, and the shells recovered from the Smika residence in Akron.

On July 16th, 1997, items Q12 (pellets from the victim's head), and Q18-Q19 (pellets from the shells recovered from the Smika residence in Akron) were resubmitted to the FBI Laboratory, with a request that the laboratory personnel determine, and then compare, the elemental composition of these specimens using Inductively Coupled Plasma-Atomic Emission Spectroscopy (ICP-AES). According to the FBI lab report, thirty of the thirty-two remaining Q12 shot pellets and thirty of the remaining shot pellets from the Q18 and Q19 shot shells were instrumentally analyzed to determine their elemental composition. These analytical results were then compared to the Neutron Activation (NAA) results previously reported. The Q12 pellets represent two distinct compositions of shot lead. The shot pellets analyzed from the Q18 and Q19 shot shells represent the same two distinct compositions of shot lead. Moreover, the frequency of occurrence of the two compositions of shot pellets in the three specimens is approximately the same. The FBI report concludes that the Q12 shot pellets originated from the same manufacturer's source of shot pellets as the shot pellets in the Q18 and Q19 shotgun shells.

The FBI lab report also notes that these results compare favorably with previously reported 1983 (NAA) results. This report also notes that one of the thirty shot pellets analyzed from Q19 (one pellet from one of the two shells recovered from the Smika residence in Akron) could not be associated with any of the other shot pellets analyzed in this or the 1983 laboratory results.

The Affiant noted that there were several hairs collected in this case which include:

1. A hair found in the shotgun box,
2. A hair found in the gun cleaning kit, and
3. Hairs found in the shower drain and washing machine at the Akron home.

Also in evidence were the hair samples taken from Thayne Smika pursuant to a 41.1 Order, which had been obtained by the Affiant on August 31st, 1983, and several hairs belonging to the victim which had been removed from a piece of skull taken at the autopsy. The hair evidence was sent to Cellmark Diagnostics in Germantown, Maryland, for testing. According to lab results received from Cellmark on October 7th, 1997, the DNA technicians were unable to extract DNA material from the submitted samples.

On April 20th, 2001, the Affiant submitted items of evidence to the Colorado Bureau of Investigation (CBI) for further DNA analysis. The items submitted are listed below by the CBI number, Boulder Police evidence number, and description:

CBI #	BPD #	Description of Items Submitted to CBI	Consumed
1	1	Victim's shirt with dried blood	
2-6	1NH-5NH	Smika's head hair from 41.1 Order	
7	1DK	Blood from Smika's waterbed mattress	X
8	3	Shotgun from Smika's Akron bedroom	8B swabbing
9	5	Denim shirt belonging to Smika	
10	3H	Swabs from Akron bath drain	X
11	6H	Swabs from Akron washing machine	X
12	4	2 pr. Jeans belonging to Smika	
13	10HA	Steering wheel from Smika's car	X
14	5A (DS)	Swabs from toilet at crime scene	X
15	---	Plastic bag w/ DNA secondary evidence (FBI)	

On August 16th, 2001, Sergeant Kampf received a CBI lab report which indicated that some of the submitted items contained minimal samples that would be consumed during DNA analysis. The items that contained these minimal samples were, by CBI number: 7, 8B (swabbings from the barrel of

CBI #8) 10, 11, 13 and 14. Items #1 and #2 were tested and a DNA profile was developed for each.

Upon receiving permission from the Boulder County District Attorney's Office, the aforementioned items were analyzed for the presence of DNA. On May 6th, 2002, Sergeant Kampf/The Boulder Police Department received a CBI lab report that contained the following information:

A DNA profile was developed from item #7 (waterbed mattress) that indicated the presence of a mixture. The sources of the DNA profiles developed from items #1 (Wells) and #2 (Smika) can be excluded from being contributors to both the major component and the minor component of the DNA profile developed from item #7

A DNA profile was developed from item #8B (swabs from shotgun) that indicates the presence of a mixture of two or more individuals. Smika cannot be excluded from being a possible contributor to the DNA profile developed from item #8B. The percent of the population that can be excluded from being a contributor to the DNA profile developed from item #8B is 99.68%. In addition the source of the DNA profile developed from item #1 (Wells) can be excluded from being a contributor to the DNA profile developed from item #8B.

A partial DNA profile was developed from item #10 (swabs from Akron bath drain) at the following loci: Amelogen and D8S1179. The sources of the DNA profiles developed from items #1 and #2 can be excluded from being contributors to the partial DNA profile developed from item #10.

An uninterpretable DNA profile could not be developed from item #14 (toilet swabs) except to note that the source was of male origin. A DNA profile could not be developed from items #11 and #13 (washing machine and steering wheel)."

In October of 2009, the following items were submitted to the Colorado Bureau of Investigation (CBI) for further DNA analysis.

The items submitted are listed below by Boulder Police evidence number and description:

BPD #	Description of Items Submitted to CBI
32A	Toilet swabbings
5LS	Magazine and Envelope
5 & 12-18MAK	Shirt from Smika residence and DNA extracts
4 & 15	Hair from coffee table
3 & 3-11MAK	Shotgun, box and DNA extracts
1 & 1-2MAK	Wells' shirt

On December 9, 2009, the Affiant spoke with **Agent Mary Schleicher** at the Colorado Bureau of Investigation who advised that:

- 1) No blood was found on the Magazine and Envelope
- 2) Mr. Smika's shirt was not tested for DNA as a previous lab had already determined that there was no blood on it
- 3) No detectable DNA was found on the shotgun and box
- 4) Only Mr. Wells' DNA was found on his shirt
- 5) The examination of the hair is still pending
- 6) The swabs from the toilet were not tested as the results would have no added value (both Thayne Smika and Sid Wells lived the apartment and presumably used this bathroom)

Agent Schleicher further advised that CBI could test the DNA extracts from the shotgun in an attempt to determine who the DNA may belong to, however, the testing would consume the extracts.

Consultant - Chemistry

Dr. Vincent Guinn, Professor of Chemistry

During the course of this investigation, the Boulder Police Department and the Boulder County District Attorney's Office consulted with Dr. Vincent Guinn, who at the time was a Professor of Chemistry at the University of California at Irvine. Dr. Guinn, who holds A.B. and M.S. degrees from the University of Southern California, and a Ph.D. in physical chemistry from Harvard University, and who, with colleagues at General Atomic, originated the Neutron Activation Analysis method of gunshot-residue and bullet-lead evidence specimens, later adopted by the FBI Laboratory.

Dr. Guinn, in a 1984 written opinion, concludes that "all of these pellets (from Q12, Q18 and Q19) were in all probability produced from just two different melts of lead." Dr. Guinn was also of the opinion that "each of the 3 shot

shells contains a number of pellets of each of these two compositions --- and none of an intermediate or entirely different composition." Dr. Guinn also suggested that an analysis of other components in these pellets might aid in the comparison of these shells.

In 1997, Dr. Guinn was asked to review the FBI's results regarding its 1983 NAA analysis of the shot shell pellets. Dr. Guinn was later asked to review the FBI's results regarding its 1998 ICP analysis of the shot shell pellets. A synopsis of his report is as follows:

Regarding the 1983 NAA Analysis of the Shot Shell Pellets:

In his March 14th, 1984, report, Dr. Guinn expressed his agreement with the FBI Laboratory's 1983 two-group classification of the results, and that Agent Asbury's work was performed carefully and well. Dr. Guinn also advised that the report's conclusion (that the likelihood of any person randomly buying a box of Winchester .20 gauge shot shells with No. 6 pellets in any gun shop and receiving a box that contained shot shells of these two pellet compositions, in approximately equal number), was "remote," was too ambiguous, unless clarified.

Dr. Guinn also suggested that the 3-element FBI analysis (Sb, As, & Cu) could have been improved if they had also measured a 4th element (silver), and the results also fell into Groups I and II.

Regarding the 1998 ICP Analysis of the Shot Pellets:

Dr. Guinn advised that on July 16th, 1997, the remaining shot shell evidence pellets in the case were submitted by David Hayes to the FBI Laboratory, requesting that appropriate numbers of the pellets be analyzed by ICP-AES for the elements silver (Ag), cadmium (Cd), tin (Sn), and bismuth (Bi). In 1983, ICP-AES was not generally available.

In this 1997 (1998) ICP analyses, the FBI Laboratory took 30 pellets each, from specimens Q12, Q18 and Q19. The 5-element results fell into the same two composition groups (I and II) that were found in the 1983 NAA testing with just three of those elements.

Dr. Guinn's conclusion states in part:

"One can conclude that the ICP measurements added a great deal to the forensic impact of the shot shell composition information in this case. In addition to the 1983 3-element INAA data on 42 pellets, the 1998 5-element ICP data on 90 pellets are seen to confirm and refine the earlier work, to add two more elements (Bi and Ag, both impurity

elements), and to lead to the same grouping into two composition groups (I and II).

The question of what is the probability that one could buy a box (of 25 Winchester .20 gauge shot shells with No. 6 pellets) that would give closely similar results to those found on specimens Q12, Q18, and Q19, unfortunately has no simple firm, numerical answer. We have a good deal of information regarding the production of shot shell pellets and shotgun shells, but do not know enough about such important parameters as size of a melt in a production run, number of melts included in a production run (one Lot) etc. We can make one illustrative approximate calculation that is worth noting. For a reasonable lead-melt size of one ton (2000 pounds) one could produce about 7.5 million No. 6 pellets (nominally 0.11 inch in diameter spheres of lead, each pellet weighing about 0.121 gram). These would fill enough shot shells, of 207 pellets per shot shell, to fill 1,450 boxes of 25 shot shells per box. If only one such melt of lead ended up in these boxes, every pellet would have a single elemental composition. If there was mixing of such pellets from two melts of lead in a storage bin just before shot shell loading, there would be two elemental compositions (if the second lead melt had a somewhat different elemental composition than the first melt). If the two melts were both present in about equal amounts, (as pellets), there would result two tons of lead, or 2,900 boxes of 2-group pellets. Over-simplified for the purpose of illustration, this example is generally consistent with the analytical 2-group findings in this case. Although 2,900 boxes seems a large number, it is tiny as compared with the number of boxes of .20 gauge shot shells with No. 6 shot produced commercially in the U.S. per year."

Dr. Guinn also cited a number of publications on the research conducted to establish this field -- all three being on studies carried out in his laboratory at the University of California at Irvine (UCI) Department of Chemistry (1970 to 1990). These publications are as follows:

A. A short account (Transactions of the American Nuclear Society, Vol. 28 (1978) pages 93-94 entitled "Neutron Activation Analysis of Shotgun Pellets", by N. R. Wallis, V.P. Guinn and M. A. Purcell. This was an exploratory study in which we analyzed 19 different brands of shotshell pellets and found each source quite analytically quite distinguishable from each of the others.

B. A longer SSP section of a second paper (Journal of Radioanalytical and Nuclear Chemistry, Vol. 14 (1987) pages 265-273 entitled "New Studies in Forensic Neutron Activation Analysis", by V.P. Guinn, S.R.

Fier, C.L. Heye, and T.H. Jourdan. In this study, Dr. Jourdan analyzed a total of 712 individual pellets taken from 56 different boxes (of 25) of shotshells and 7 bags of pellets used by reloaders, made by 11 different companies, representing 40 different trademark brands. The samples included a full range of shotshell gauges and shot sizes. The samples were analyzed by INAA for antimony, arsenic, copper and silver. Again, the samples from different sources were analytically distinguishable from one another.

C. The 205-page 1986 PH.D. Dissertation of Thomas H. Jourdan, entitled "The Forensic Comparison of Shotshell-Pellet Specimens by Instrumental Neutron Activation Analysis". A short synopsis of the major findings was provided in "B" above. Not mentioned in that paper, but shown in the dissertation, was the fact that, on the average, the 15 pellets selected from 5 shotshells from a single box exhibited only one composition in 62.3%, two compositions in 30.2%, three compositions in 5.66%, and four compositions in 1.89% of them.

In February of 2010, the Affiant contacted Dr. Jourdan (noted above), who is now the Assistant Director, of the Forensic Science Institute, and Associate Professor of Chemistry at the University of Central Oklahoma in Edmond, Oklahoma, and provided him copies of Dr. Guinn's reports. After reviewing these reports, Dr. Jourdan advised that the topic of his Dissertation was actually "Comparative Shotshell-Pellet Analysis Using Neutron Activation Analysis", and that this analysis was later transitioned at the FBI Laboratory from Neutron Activation Analysis (NAA) to ICP/MS.

Dr. Guinn is now deceased.

Consultant - Probability

Dr. Robert A. Bardwell

The Boulder Police Department also consulted with an expert in the field of probability, Robert A. Bardwell, Ph.D.. Dr. Bardwell holds a B.A in Philosophy and a Ph.D. in Mathematical Statistics from the University of Colorado and has done statistical consulting since 1989. In addition, Dr. Bardwell did research, consulting and statistical programming from 1976 to 1986. Dr. Bardwell served as an instructor and teaching assistant at the University of Colorado at Boulder from 1985-1989. Dr. Bardwell has also testified as an expert in the area of statistics in the United States District Court.

Synopsis of Dr. Bardwell's Report:

Dr. Bardwell, using the NAA and ICP-AES results from the FBI Laboratory and, in consideration of the recommendations from the National Research Council regarding the Compositional Analysis of Bullet Lead (CABL), further characterized the pellets in the shell that killed Mr. Wells, and the pellets in the two live rounds recovered from the Smika residence in Akron, by:

- 1) Alloys in lead pellets
- 2) Presence of exactly 2 alloys
- 3) Proportion of 2 alloys

As the result of this analysis, Dr. Bardwell concluded:

The rarity of these alloys is 1 in 526 to 1 in 119,617

The rarity of shells with 2 alloys is 1 in 2.27

The rarity of 70/30 split of 2 alloys is 1 in 2.45

The overall rarity of the 3 shells in this case (shell that killed Mr. Wells and the two shells recovered from the Smika residence in Akron) is 1 in 2,925 to 1 in 665,250-Concluding that the 3 shells have the same signature (number, type and proportions of alloys).

Consultant- Research Microscopist

Mr. Skip Palenik, Senior Research Microscopist

During the course of this investigation, the Boulder Police Department consulted with Mr. Skip Palenik, a Senior Research Microscopist with the Microtrace Company located in Elgin, Illinois, regarding the shot shell evidence.

Mr. Palenik's Preliminary Report

"The waxes extracted from the wads from the victim's wound (Q13) have been examined using polarized light microscopy, thermal analysis and infrared micro-spectroscopy. They have been characterized and compared with known waxes obtained from the shotgun shell manufacturer and two unspent shells recovered from

Smika's mother's home (Q18 and Q19). The wax from the Q13 shell wad and the known mutton/tallow wax, known to be in use before 1974, melt within one degree Celsius of each other. In addition, the wads from the Q18 and Q19 shells also melt within this same range. In addition, these waxes crystallize in the same way when examined under the polarizing microscope and exhibit similar infrared spectra.

These findings indicate that both the wads from the victim's wound and from the two old shells found in the suspect's mother's home contain a wax composition which is consistent with the old wax used in manufacturing these shells before they changed to a new wax composition. The years during which the various wax compositions were employed is still unclear to me based on the sample labeling and statements from Winchester. This is one of the technical issues I still need to resolve. However, this information gap doesn't change the fact that the waxes from both the questioned and known shotgun wads are still nearly identical to one another on analysis. This does not mean that they came from the same box or lot, but it does indicate that they were manufactured during the same period.

Conclusions: Analysis has shown that the waxes used in the paper wads from the questioned (Q-13) and known (Q18, Q19) shotgun shells are consistent with those used in old shells manufactured by Winchester, which were not in production at the time of the murder."

According to information contained in this affidavit, the Affiant notes the following:

- 1) The shotgun shell used to kill Mr. Wells (.20 gauge #6 shot) was manufactured by Winchester Western (Olin) between 1970 and 1974, and the two live shotgun rounds recovered from the Smika residence in Akron (.20 gauge #6 shot) was manufactured by Winchester Western (Olin) between April of 1969 and September of 1972. As such, at the time of the murder, the shell used to kill Sid Wells was between 9 and 13 years old. According to the FBI Laboratory, an examination of extractor marks on these two shells indicate that these shells had been loaded into (and out of) this shotgun.
- 2) The .20 gauge shotgun also recovered from the Smika residence was found to have been purchased by Darryl Smika on September 29, 1970 at a retail store in North Platte, Nebraska. According to both Tava and Darlene Smika, who had both recently cleaned what

was Thayne's bedroom, this shotgun was not there at that time. When the box found to contain the shotgun was taken off the closet shelf by Detective Steingraber on August 3, 1983, Tava Smika advised that she had not seen that box before. The capacity of this shotgun was determined to be 3 rounds.

- 3) The .20 gauge shotgun recovered from the Akron residence was found to have an overall length of approximately 46". Broken down, the barrel itself was found to be approximately 26" long, the stock approximately 12", and the action 22". Each of these pieces would fit in the trash can Kathy Karmis observed Thayne Smika carrying towards the apartment building the early morning hours of August 1, 1983. This trash can is approximately 28" in height not including space provided by the lid.
- 4) Thayne Smika suggested that Craig Evans was a potential suspect in the death of Sid Wells, however, when asked about this later by Tina Krzes (based on an article in the Boulder Daily Camera), he denied making the statement-stating that either the police had made it up or the newspaper misprinted it. Tina also recalled that Thayne (within days of Sid being killed) telling her that if you were ever going to kill someone, use a shotgun, because it can't be traced, or words to this effect.
- 5) Thayne Smika reported leaving for Akron at both 10 and 11AM on August 1, 1983. Smika acknowledged that he was to meet Sid at 11AM to give Sid rent money and money and drugs he (Smika) had taken from Craig Evans. Smika reported being woken up by Sid Wells ringing the doorbell at 10:30-10:45 AM. According to Shauna Redford, Sid Wells was still in her apartment, and in bed, when she returned at approximately 10:50 AM. Shauna reminded Sid that he was to have lunch with his mother. He needed to get up if he was going to be on time. Shauna then left to run some errands. Smika advised that he did meet with Sid Wells and that he gave him rent money as well as money and drugs he (Smika) had taken from Craig Evans. Smika advised that Sid then left to go take a shower, and that he (Smika) then grabbed the rest of his stuff and left. According to Smika, Sid was wearing a white shirt with a rip on one of the shoulders, and either sweats or a pair of gym shorts. (At the time of his death, Sid was wearing a white shirt with a tear on the left sleeve and gym shorts). Greg Eliot, who lived in an apartment next door, reported hearing a loud noise that could have been a door slam or a gunshot between 11:20 and 11:45 AM. Mr. Eliot later informed Detective Neitzel that the time frame was between 11:30AM and 12 noon. Sam Wells returned to the apartment at approximately 12:20PM and found Sid dead. A

Pathologist from Boulder County Coroner's Office, who responded to the scene, determined that Sid died at approximately 11:35 AM.

- 6) There were no signs of forced entry or indications that the apartment had been ransacked.
- 7) The amount of money and cocaine described by Thayne as being given to Sid was not found in apartment number 560, or on Sid's person.
- 8) Smika reported telling Sid on the evening of July 31st/morning of August 1, 1983 that he was going to Akron to visit his parents. Smika also reported meeting with Sid at approximately 11AM on the morning of August 1, 1983, yet Smika still left a note stating that he had gone to Akron.
- 9) According to Bobbi Devine, Smika stated that he killed Sid Wells.
- 10) When first contacted by Detectives Knight and Neitzel on the evening of August 1, 1983, Smika first denied owning a shotgun, then stated his father had given him one but that he had not seen it for seven years. Smika further advised that he did not know where this shotgun was.
- 11) During this investigation, no other shotguns/shotgun cases were observed or recovered from the Smika residence in Akron, Thayne Smika's automobile, or in apartment number 560 at 805 29th Street, other than the 20-gauge shotgun recovered from the Smika residence.

The Affiant believes that he has shown probable cause to believe that Thayne Alan Smika, DOB February 27, 1959, committed the crime of Murder in the First Degree, and the Affiant respectfully requests that an arrest warrant be issued.



David D. Hayes, Affiant

Sworn to before me and subscribed in my presence this 2nd day of December, 20 10 in the City of Boulder, County of Boulder, and State of Colorado.



Judge