

Maryland's Automated Ballistic Fingerprinting IBIS System Played No Role in Convicting a Murderer

Philip F. Lee, 2/15/06

On April 2, 2005 the Washington Post published a news article [1] asserted that Maryland's ballistic fingerprinting database was successful in gaining a convictions of Robert Garner for the murder of Kelvin Braxton outside of a Popeye's restaurant in Prince Georges County on **April 23, 2004**. The Post quotes PG state's attorney Glen Ivey saying "It was powerful evidence. I hope this verdict helps our efforts to have the [ballistics identification database] continued and expanded."

This conviction came at just the right moment for stalling an attempt by the Maryland Legislature to kill the program which collects shell casings from new handguns sold in Maryland. Maryland's program uses the Integrated Ballistics Identification System (IBIS) to image a shell casing from each new handgun sold in Maryland and IBIS is also used for automated searching of a data base of the stored images to match shell casings left at a crime scene. It was imagined that such matches would provide investigative leads for police to find criminals.

Many reports indicate that IBIS doesn't work, so it was surprising to hear the Ivey statement. It is worthwhile to confirm Ivey's assertion about the usefulness of IBIS or the stored ballistic fingerprint to this case to justify future actions about Maryland's shell casing collection process. This usefulness should be evident from the court transcripts [3] of the Garner trial. **These transcripts make clear that IBIS played no role at all in solving this case or in convicting Garner of murdering Kelvin Braxton.** It's not even a close call. **Police testified that IBIS was not used – rather only manual ballistic examinations were given in evidence!** Dates play a important role in understanding what happened and a timeline of events is given here.

The testimony [3] reveals that witnesses observed the license of the shooter's car as it left the scene. One witness wrote the license down to make sure it would be remembered and gave the license to the police. The car was traced to Themitha Garner who is Robert Garner's sister. The sister testified [3] that she has lent the car to her brother, but asserted that it was stolen the day of the shooting and that she had gone to the police the next day to file a report of the theft. This theft was refuted by testimony [3] from Garner's female companion (identified in news article [2] as Kila Robinson) that Garner was driving his car the particular day of the shooting, that Garner was at the location of the shooting with a handgun she saw in his waistband and that Garner made an incriminating utterance when driving away from Popeye's.

The testimony [3] reveals that witnesses identified Garner's photograph as being the shooter from an array of photographs prepared by police. And these witnesses didn't just get a fleeting glance at the shooter; they observed him in line for chicken at the restaurant for several minutes and again during the shooting event. One even testified that she observed Garner because he was attractive.

So, the license plate on the shooter's car leads to Garner's sister, investigations lead to Garner and photos are presented to witnesses and they identify Garner as the shooter. Garner is arrested on **May 7, 2004**.

From this point, this narrative will present events chronologically according to dates given in the accounts of the testimony. To understand the significance of some of these dates and events, you need to know that the evidence technicians collect evidence under the supervision of the detectives and it is the firearms examination unit which has the expertise and the job to examine and evaluate firearms related evidence.

3/27/2004 .40 caliber Taurus, serial number SVH60174 purchased from REALCO by Michele Anderson

4/5/2004 Shell casing from Taurus PT-140, SVH60174 .40 caliber gun placed in the MSP database.

4/23/2004 Kelvin Braxton is murdered at Popeye's; police collect bullet and fragments, shell casings and witness statements. Among these statements Cynthia Hedgepeth gives license of car used by shooter to police

4/24/2004 Evidence technician collects bullet and fragments during autopsy of Braxton.

4/24/2004 Themitha Renee Garner. (sister of defendant) and her brother report her Mazda stolen on evening of 4/23/04.

4/27/2004 Evidence technician transfers evidence shell casings, bullets and fragments to Firearms Examination Unit from Evidence Unit.

4/27/2004 PG County Police Department Firearm Examination Unit receives shell casings & 4 fired bullets and some bullet jackets.

4/30/2004 JoShaun Smith identifies photo of Garner in array as resembling the shooter

5/3/2004 Barbara McRae-Hunter identifies Garner as shooter from photo array according to lead detective Richardson

5/5/2004 Warrant issued to search Themitha Garner's residence for "Clothing, shell casings, shells, . . ." (transcript of testimony by Detective Richardson has the date as 5/5/2005 which is after the trial, so I believe he meant 5/5/2004 and just misspoke).

5/6/2004 Statement of Charges issued against Garner for murder of Braxton

5/7/2004 Garner arrested and charged with the murder of Braxton and graduates with associates degree

5/10/2004 Evidence technician transfers 6 bullets, a bullet jacket and bullet fragments to Firearm Examination Unit from Evidence Unit.

5/10/2004 PG County Police Department Firearm Examination Unit receives eight envelopes containing fired bullets and bullet fragments from this shooting.

Date not given PG County Police Department Firearm Examination Unit seals shell casing and bullet evidence and stores it at the property warehouse on Harwood Rd.

10/25/2004 Ten evidence shell casings taken from property warehouse on Harwood Rd to Maryland State Police Firearms Lab Reisterstown, Maryland for comparison with shell casing of gun purchased by Michele Garner (Anderson)

Clarence E. Fields, Laboratory Technician with the Maryland State Forensic Science Division, retrieves the shell casing of gun purchased by Michele Garner (Anderson) stored by MSP.

Torin Zachary Suber, Firearms Examiner for the Maryland State Police, compares the shell casing of gun purchased by Michele Garner (Anderson) stored by MSP and retrieved by Clarence E. Fields with the evidence shell casings – specifically one of the evidence casings – manually using a comparison microscope and concludes the evidence casing and MSP stored casing are from the same gun.

12/5/2004 Michele Alethea Anderson marries Garner in jail

3/28/2005 Garner trial begins and testimony implicating Garner by his female companion for the day is published by the examiner [2].

4/1/2005 Garner trial ends with guilty verdict

4/2/2005 Washington Post article is published with Ivey's statement

The testimony [3] and the chronology flowing from it make a few points evident. MSP firearms examiner Suber testified that the MSP stored shell casing of the firearm purchased by Michele Anderson (Garner's soon to be wife) was matched to the crime shell casings 5 months after the shooting and 4½ months after Garner is arrested. That is, conventional police work had already led to Garner as the shooter – not IBIS. Suber testified using conventional manual ballistic comparisons of evidence casings to the MSP stored gun-sale casing using manual observation from a comparison microscope. Trial testimony reveals that IBIS was not used and the PG lead detective requested a comparison to the casing stored from the specific gun tied to Michele Anderson which was performed manually.

In the trial, Michele Anderson Garner used a spousal immunity to refuse to testify [3]. Inasmuch as she married Garner while he was in custody on 12/5/04 and that the gun she owned had been "traced" to the crime scene, you'd think that this marriage might not have been allowed. It really doesn't take a lot of cleverness to imagine that she might have some useful testimony to offer. But the state let her gain a spousal immunity by letting her marry Garner.

Ivey makes the point that the stored shell casing from the purchased gun was important to the state's case against Garner. So, one might argue that taking cases and storing them would be occasionally useful to police even if IBIS didn't work for closing the loop on stupid criminals like Garner – that is, when a gun can be traced to a criminal by a conventional police investigation.

It is a matter of opinion whether a conviction might have been obtained without the shell casing evidence, but, to believe that the jury would find not guilty in this case without that evidence, you'd have to 1) think the firm identification of witness Barbara McRae-Hunter and the resembling identification by witness JoShaun Smith not convincing; 2) think it wasn't Garner driving his sister's car (because it was stolen) or that witness Cynthia Hedgepeth at the shooting made an error in noting the license of the car as the shooter drove away; 3) believe that the witness Kila Robertson, a female companion of Garner who testified as to being at the Popeye's in Garner's car with Garner, being the woman having tattoos and hair coloring like the woman described by witnesses as accompanying the shooter, testifying to seeing a gun in his waistband, and to hearing an incriminating utterance he made when driving away from Popeye's was lying; 4) believe that Garner sister's car was really stolen and that the thief resembled Garner well enough to confuse witnesses.

There will always some people who would rather believe that Garner's guilty verdict depended on testimony that a gun was traced to the crime which had been bought by a woman who later became Garner's wife but without any testimony placing that gun in Garner's hands. These people would rather believe that this tracing, which involves a shell casing with a nebulous chain of custody (the state stored casing was collected by a commercial company, sent to a NY firm, forwarded to REALCO in Maryland, sold by REALCO which then forwarded the shell casing to the MSP) was convincing whereas the other evidence would not be.

Perhaps the state is so incompetent that it cannot win murder cases even with eyewitnesses to the events including a personal friend of the defendant. If so, our public safety is in serious trouble, but that appears to be state's attorney Ivey's assertion. It is a remarkable confession by Mr. Ivey to a lack of confidence in the competence of a department he leads.

[1] "Ballistics Database Yields 1st Conviction, Oxon Hill Man Tied To Murder Weapon" Ruben Castaneda and David Snyder, April 2, 2005; Page B01
<http://www.washingtonpost.com/wp-dyn/articles/A19876-2005Apr1.html> also on Maryland Alert in http://groups.yahoo.com/group/Maryland_Alert/message/1465

[2] "Woman testifies that friend left murder scene with pistol" Robert Arkell, 3/28/05;
http://dcexaminer.com/articles/2005/03/28/news/maryland_news/05newsmd29trial.txt
also on Maryland Alert in http://groups.yahoo.com/group/Maryland_Alert/message/1467

[3] "Garner Trial Transcripts by Date of Testimony," Obtained and posted by Phil Lee; the daily transcripts are in ASCII text files of size around 350KB except the last of 41KB.

3/28/05 http://groups.yahoo.com/group/Maryland_Alert/files/garner3-28.txt

3/29/05 http://groups.yahoo.com/group/Maryland_Alert/files/garner3-29.txt

3/30/05 http://groups.yahoo.com/group/Maryland_Alert/files/garner3-30.txt

3/31/05 http://groups.yahoo.com/group/Maryland_Alert/files/garner3-31-05.txt

4/1/05 http://groups.yahoo.com/group/Maryland_Alert/files/garner4-1-05.txt

Appendix. Summary Notes of Trial Testimony

These notes were recorded from testimony at the trial. Links to the actual testimony are given in reference of the main article [3].

21 MR. MOOMAU: May it please the Court, good
22 afternoon. My name is William Moomau. I'm an assistant
23 State's Attorney here for Prince George's County. I'll
24 be representing the State of Maryland throughout this
25 trial.

1-111

1 On **April 23, 2004**, in front of a crowded
2 Popeye's restaurant at approximately 7:55 located at
3 6247 Livingston Road in Oxon Hill, Prince George's
4 County, Maryland, Kelvin Braxton was shot and killed.
5 He was 22 years of age at the time. He wasn't just shot
6 and killed, he was put to death. Because the evidence
7 is going to show that, the autopsy report shows, he was
8 shot eleven times. The last time, in the back of the
9 head to end his life, to make him go away.

10 See, on that day, the 23rd, Kelvin had been at
11 his mother's house where she lived. Mia Braxton. And
12 his mother was getting ready to move, and Kelvin was
13 there helping her move. He was there with a friend of
14 his, Ricardo Shannon Scriber. Sometime after 7:00 they
15 decided to go get something to eat. Kelvin wanted to
16 get Ricardo something to eat at Popeye's. It was close
17 by. They go there. They go there in Mr. Scriber's car.
18 They park in front. They go inside. They're waiting in
19 the line inside.

20 Kelvin turns, sees the Defendant. The
21 Defendant is with a female. She's noticed because she
22 has a lot of tattoos on her. And I don't know, I don't
23 mean any disrespect to her, but she was a bigger woman.
24 She had red streaks in her hair, and her hair was red.
25 People noticed her. They noticed him. At some point,

1-112

1 Kelvin and Ricardo Scriber, they get the food, and they
2 go over to the drinks, the drink station. Then they go
3 out.

4 Before that, the Defendant had gone outside.
5 He's waiting there. There's words exchanged. In fact,
6 there were some words exchanged inside. The evidence
7 will show that Kelvin Braxton approached the Defendant.
8 Tried to greet him. The Defendant ignored him. Kelvin
9 Braxton didn't like that. And he said some
10 disrespectful words to the Defendant. Some unkind
11 words. Some curse words. And that's what this is over.

12 They went outside. They had words. Kelvin
13 Braxton got in the passenger side seat of the car.
14 Ricardo Scriber was in the driver's seat. The next
15 thing everyone knew, shots being fired. One, two,

16 three, four, five, six. Numerous. Through the
17 passenger side window. Hitting Kelvin Braxton. He gets
18 out. He opens the door. Now, there's -- say, I'm
19 sitting in the passenger seat. There's a car beside
20 him. Their car was facing the Popeye's. He opens the
21 door. He stumbles out. He runs to the back of the car.
22 He doesn't expect the Defendant to be there waiting for
23 him. He had come around the other side of the other car
24 to shoot some more times, finishes him off, shooting him
25 in the back of the head.

1-113

1 As you can imagine when this happens, there's
2 pandemonium. People were screaming, crying, running.
3 Calls are made to 9-1-1. Patrol officers arrive on the
4 scene. They tried to secure the area, tried to calm
5 everybody down. Evidence technicians arrive. Homicide
6 Detectives arrive. The lead Detective in the case is
7 Detective Charles Richardson. He gets the video from
8 the store. He had to have it enhanced by the Secret
9 Service because the video doesn't show -- it shows the
10 victim going to the drink station, and Ricardo Scriber
11 who was with him. It doesn't show the Defendant or the
12 girl that he was with because they were out of the field
13 of view. That was one video camera.

14 There was another video camera that is showing
15 the door. And my interpretation of it is that the lens
16 was so covered with grease it's like looking, if you've
17 ever been swimming in a river under water without any
18 goggles on, that's what it looks like. You can just see
19 shadows of people. So, that video may help some, but
20 you're not going to be able to pick anyone out in that
21 one. And the first one isn't -- the quality is not that
22 good.

23 Shell casings are found at the scene. Ten
24 shell casings, .40 caliber, Federal brand. There are
25 some bullets found at the scene, bullet jackets,

1-114

1 fragments in the car, underneath the victim, on the
2 parking lot. They're analyzed and looked at and it's
3 determined that all ten of the shell casings that were
4 found were fired from the same gun. The bullets that
5 were recovered from the victim's body, as well as the
6 bullet fragments there in the parking lot underneath the
7 victim, in the car, they're consistent with the shell
8 casings that were found at the scene.

9 The cars there are fingerprinted. Robert
10 Taylor is the evidence technician. He was able to lift
11 some prints. They were examined. The prints came back
12 to the victim, Kelvin Braxton. Detective Richardson
13 starts pursuing leads. He wants to find out who did
14 this terrible thing. At some point the Defendant is
15 developed as a suspect.

16 Now, part of that is someone -- some people at
17 the Popeye's got a license plate number of the car that
18 drove away. See, the Defendant was there in a car. A
19 teal colored Mazda. And when it was driving away, the
20 license plate number BKV 310 was written down. Comes
21 back to his sister, Themitha Garner. A Mazda.

22 Through his investigation, the Defendant is
23 developed as a suspect. There's some photo spreads that
24 are put together. Some people that were there at the
25 Popeye's, and you'll hear their names, JoShaun Smith,

1-115

1 Barbara McRae-Hunter, Cynthia Hedgepeth, Leonard Davis.
2 They all gave statements. They were all interviewed
3 that day -- or that evening, or night.

4 I'll tell you now, Cynthia Hedgepeth gave a
5 written statement, and in her statement she mentioned
6 the terrible shooting that had taken place, and she gave
7 the license plate number. At some point later, through
8 an interview, she discloses that she thought she saw a
9 gun in the hand of the victim when he exited the vehicle
10 after the Defendant had fired the first rally of bullets
11 into the car. But no gun was found at the scene. And
12 no shell casings from any other gun were found at the
13 scene.

14 Photo spreads are developed. They're shown to
15 JoShaun Smith by Detective Richardson. He picks out a
16 photograph of the Defendant. Now, it's not a positive
17 identification. He "resembles" that person. He shows a
18 photo -- Detective Richardson shows a photo spread to
19 Barbara McRae-Hunter. You will see them. There's a
20 group of photos that look like high school graduation-
21 type pictures and another group of photos that are black
22 and white type pictures, and she picks out the
23 Defendant. And the reason she picked out the Defendant
24 is that she admired his looks. She was looking at him
25 there, especially with the lady that he was there with.

1-116

1 She was thinking, you know, "What's he doing there with
2 her?" And we'll get to who she was.

3 Based on that information, Detective Richardson
4 obtains an arrest warrant. But that's not it. Because
5 Detective Richardson finds out about a girlfriend of the
6 Defendant. Michele Anderson. Finds out that she had
7 purchased a handgun. A .40 caliber Taurus, serial
8 number SVH60174. She had purchased it on March 27th of
9 2004, at a store by the name of REALCO. And what this
10 brings into play, and you'll hear testimony dealing with
11 this, whenever a firearm, a handgun is sold in the State
12 of Maryland, included in the box with the handgun from
13 the manufacturer is a shell casing fired from that gun
14 at the manufacturer. When that handgun is sold, that
15 shell casing is sent up to the State Police in

16 Reisterstown. It's put in their database there.
17 So, with the information Detective Richardson
18 had that a gun, a handgun, had been sold to the
19 Defendant's girlfriend, Michele Anderson, he takes the
20 shell casings recovered at the scene that had already
21 been analyzed that had been fired from the same gun, he
22 takes them to Reisterstown. He meets with a Firearms
23 Technician there, Zach Suber, of the Maryland State
24 Police. He picks out one of the casings that Detective
25 Richardson had brought, and had already been analyzed

1-117

1 and shown had been fired from the same gun, and he
2 compared it with the shell casing they have on file
3 there, the one fired from the .40 caliber Taurus PT-140,
4 serial number SVH60174, sold to the Defendant's
5 girlfriend on March 27, 2004. They were fired from the
6 same gun.
7 To Detective Richardson, it doesn't end there,
8 because he wants to find out who the girl was the
9 Defendant was there with. And he does. He finds out.
10 The girl's name was Kila Robertson. He interviewed her,
11 and she's going to testify. She's going to testify
12 that, yes, she was at the Popeye's with the Defendant
13 that day. She's known him for awhile. In fact, lived
14 in the same neighborhood. She was there with him.
15 She's going to testify. She has tattoos on her, how
16 people described her there. She had streaked hair, red.
17 She was in there in the Popeye's restaurant with him on
18 a Friday night, and that's when this happened. She
19 remembers because it was what she called ladies night,
20 or girls night out.
21 Robert Garner goes outside. She's going out.
22 All of a sudden, she starts hearing shots. She gets in
23 the car. She sees him get in the car, sees the handgun
24 in his waist. The Defendant says, "He's gone." She
25 says, "What happened? What's going on?" "He's gone."

1-118

1 And that's not all the evidence, because you
2 can't cover it all in opening, but that's pretty much
3 it. It's going to be, like the Judge instructed you,
4 you could be here three days. I just ask that you be
5 fair, be attentive, and be fair. I'm not going to ask
6 you to use your common sense because I found when
7 lawyers ask someone to use their common sense, they're
8 usually talking about using the lawyer's common sense.
9 So, use your own common sense, the sense that brought
10 you here, the sense that you developed dealing with
11 family, children, school, friends, work, and use that.
12 And in evaluating the evidence using that judgment, just
13 be fair. That's what we all ask for. And I'm confident
14 that at the end, in using your judgment, you will
15 conclude beyond a reasonable doubt that the Defendant,

16 Robert Garner, is guilty of murdering Kelvin Braxton.
17 And that's a verdict that I will ask that you return.
18 On behalf of the State of Maryland, I want to
19 thank you for your service. I look forward to working
20 with you throughout this trial. And I'm sure that in
21 the end, your verdict will be a just one. Thank you.

Summary of witness testimonies:

Mia Braxton (Mother of victim Kevin Braxton). Testifies about Kevin's activities helping her move before the shooting and identifying her son in a videotape from Popeyes where the shooting occurred.

Kila Robinson. In response to the first question as to whether she knows Robert Garner (the defendant) she pleads the fifth. After being given immunity, she testifies she knew Garner several years. Then she testifies as being the tattooed person in state's evidence photographs; that she was at Popeyes with Garner on the day of the shooting in the car seen leaving with the shooter; that Garner drove the car; that it was in the evening; that she got into the left register line; that she did not appear in store video; that Garner was in line with her and didn't leave the line to go outside; that she didn't see the shooting; that Garner drove away from the store; that she saw his firearm in his waistband.

JoShaun Smith. (Special Agent with Dept. of State). Testifies to being at Popeyes on the day of the shooting at about 6:00pm and about the layout of the restaurant. Testifies as to the beginning of the altercation between the person killed and the killer. Testifies about the layout around the outside of Popeyes. Testifies about the shooting which he witnessed. Testifies about picking the photo of Garner as RESEMBLING the shooter (not definite).

End of Testimony on 3/28/05

Barbara McRae-Hunter. Describes being at Popeyes; describes a couple in line 1; describes how the victim tried to talk to the suspect and the suspect didn't reply; describes how she picked a picture of the shooter out of a photo array to identify the picture of the shooter on 5/3/05 [10 days after the shooting]; describes that she watched the suspect and victim for about 10 minutes while in line at Popeyes.

Cynthia Hedgepeth. Describes the shooting; seeing the license of the car that the shooter left in (as a passenger) and that she gave the license number to the police after the shooting; said she couldn't identify the shooter.

PATRICIA ARONICA-POLLAK, M.D. (Maryland Assistant Medical Examiner). Testifies that Kelvin Braxton died from 11 gunshot wounds and the details of the wounds; testifies to body fluid tests; testifies to bullets and other evidence recovered in autopsy; testifies as to cause of death.

Leonard Davis. (Justice Protective Security Officer for the Department of Justice). Testifies seeing the shooter and victims in Popeyes, that the victim held the door when he entered the restaurant; that he saw victim and shooter leave, and then after first shot, turned to see shooter shooting the victim; testified about shooter getting companion and leaving in a car; testifies the shooter drove the car on leaving; testifies about not being able to identify the shooter from photos.

Robert G. Morrison. (Executive Vice President and Chief Operating Officer of Taurus International Manufacturing, Inc.) Testifies about firearm manufacturing and testing practice; about shell casing collection procedure for sales to States of Maryland and New

York [appears they have very careful and thorough procedures]; that the firearm was Model PT-140 with Serial Number SVH60174 and shipped to NY to RSR Group 21 Trolley Road -- Trolley Circle, in Rochester, New York

End of 3/29/2005 testimony.

Jermaine Allen. (Prince George's County Police Officer for 3 years) Testified as being first responder on scene and what he did to control the scene until investigators arrive and to aid investigators in crowd control. Testified that evidence remained in same location as he first observed it until investigators arrived.

Michael Brown. (Prince George's County Police Officer for 3 years & Squad VPO – processing officer for squad) Testified as being officer on the scene after two or three officers but before investigators, describes efforts to control the scene and to mark location of evidence. Identifies evidence marked by placards by him from photos of the crime scene. Is vague about when he arrived and left the scene.

Robert McDaniel. (Prince George's County Police Officer for ? years, Evidence Unit for the Forensic Services Division). Testifies about transferring evidence from Evidence Unit to the Firearms Unit; testified that he delivered six bullets, a bullet jacket and a bullet fragment on **May 10, 2004**; testified that he also delivered fired shell casings, or cartridge casings, bullets and fragments on **April 27th**. (Exhibits 32 through 45); testified that he did not develop evidence only delivered it.

Brian Grempler. (Evidence Technician with Prince George's County Police for 4 years). Testifies to being at autopsy of Kelvin Braxton on **April 24th, 2004** to collect evidence; that he collected evidence marked as State's Exhibits 20, 21, 22, 23, 24, 17, 18 and 19 which are bullet and bullet fragments; that he took the evidence to the Evidence Section to be forwarded to be forwarded to the firearms unit.

Michele Garner. (wife of defendant and formerly Michele Alethea Anderson). Testifies to having married the defendant on Dec. 5, 2004; invokes her marital privilege to not testify

CHARLES RICHARDSON. (Detective with Prince George's County Homicide for 8 years and 16 years total with the PG police). Testifies to being lead detective on this case; testifies about supervising interviews of witnesses; collecting personal items of the victim including a lottery card, multiple glassine baggies, court papers, match book, a contractor I.D. card, \$110, D.C. driver's license, a cigarette lighter, keys, 65 cents change, and then \$12; testifies there was nothing in the baggies; testifies about reviewing surveillance tape from Popeyes and taking the tape to the Secret Service to enhance the tape. Testifies about receiving license number for a lead; tracing that number to 1992 Mazda owned by Themitha Renee Garner and Angella Vernessa Garner; testifies that Themitha Renee Garner is a sister of defendant; testifies about getting a photo of defendant and preparing a photo array to show witnesses; testifies showing JoShaun Smith a yearbook on April 30, 2004 with Robert Garner in the yearbook and that Smith said that a photo of the defendant resembled the man that committed the homicide; testifies showing Barbara McRae-Hunter two photographic arrays on April 24, 2004 and that McRae-Hunter selected a photo of the defendant as being the man who committed the homicide; testifies showing Leonard Davis two photographic arrays on April 24, 2004 and that Davis was unable to identify anyone.

RICHARDSON testifies filing an Application for a Statement of Charges against the Defendant for the murder of Kelvin Braxton on **May 6, 2004**, 10:19 am; testifies the Defendant was arrested for the murder of Kelvin Braxton on **May 7, 2004** at his sister's (Themitha Garner's) residence and searched Ms. Garner's residence using a warrant issued **May 5, 2005**; testifies coming contact with Michele Anderson who is now Michele Garner the defendant's wife; testifies that he had learned Michele Garner (Anderson) had bought a

pistol at REALCO guns. Testifies to going to Maryland State Police Firearms Lab on Reisterstown, Maryland with the shell casings from the scene of the Popeye's (Exhibits 44, 42, 41, 40, 39, 38, 37, 36, 35, 32 being shell casings) which he obtained from the property warehouse on Harwood Road on **October 25, 2004**; testifies meeting Zach Suber at the lab and ask for a comparison of the casings with that of the one on file from the gun purchased by Michele Garner (Anderson); testifies trying to locate female companion of shooter via cell phone records and located a witness by the name Kila Robertson; testifies about how the photo arrays were constructed and that one photo was an arrest photo from a prior arrest of the defendant; testifies about learning about the owner of the suspect car the same night as the shooting.

Corporal Robert Taylor, ID 2039. (Prince George's County Police Evidence Section for 6 years). Testifies about formal training as evidence technician; that the crime scene at Popeyes was secure when he arrived at 8:10pm; testifies about the evidence collected including photos of the evidence; testifies collecting fingerprints of victim off a car; testifies about recovering shell casings, projectiles and projectile jackets.

Alan Jackson. (Supervisor of the Prince George's County Police Department Firearm Examination Unit; police officer for twenty years; supervisor for PG). Testifies as to his training and experience as a firearms examiner; when prosecutor moved to accept Mr. Jackson as an expert, defense asked for voir dire on his expertise in ballistic fingerprinting – to that the prosecutor responded that ballistic fingerprinting would be beyond the scope of prosecution testimony; court rules ballistic fingerprinting is within the expertise of the witness; court accepts Mr. Jackson as an expert. Testifies as to how he does ballistic comparisons under microscope; testifies as to the various markings that are made by firearms on cartridge parts when fired; testifies that on **April 27, 2004**, he received ten fired cartridge cases and four fired bullets, bullet jackets and items like that from the crime scene and on May 10th received eight envelopes containing fired bullets and bullet fragments submitted to our laboratory; testified that all bullets and bullet jackets were fired from the same gun; testified that the measurements from the bullet lands and grooves narrowed the gun used to Astra, Beretta, Heckler, and Koch, K-o-c-h, Hi-Point, Ruger and Taurus; testifies that all cartridge cases were fired from the same gun; testifies that after conducting examination the evidence was sealed and sent to property for storage. When the defense asked on cross examination whether the shell casings and bullets were submitted for comparison to ballistic database, the prosecution objected that the cross was not within scope of direct examination. That objection was sustained.

Richard Anderson. (Retail sales clerk, REALCO Gun Shop). Testifies as to the procedures for selling a handgun; testifies being familiar with Michele Anderson having sold at least two handguns to her at various times; testifies that he delivered the a Taurus PT-140, serial number SVH60174 .40 caliber gun in question to her on **March 27, 2004**; testifies about REALCO's (and his) practice for forwarding the shell casing to MSP.

Clarence E. Fields. (Laboratory Technician with the Maryland State Forensic Science Division for 3 years 2 months). Testifies as to background and training for his ability to perform to maintain ballistic database for MSP including procedures for adding new shell casings to the Quetel System database; testifies from reports prepared that the particular shell casing from the Taurus PT-140, serial number SVH60174 .40 caliber gun was placed in the MSP database on **April 5, 2004**; Testifies that he retrieved the shell casing from storage on **October 25, 2004**; Testified that there were 50,900 shell casings in the database [as of the day of the testimony 3/30/05 I guess].

Torin Zachary Suber (Firearms Examiner for the Maryland State Police for 4 years 3 months). Testifies about functions he performs as a firearms examiner and about his education and training for his job; testifies about comparison microscopes ("bread and butter of what we do") and their use for shell casing comparison; (become qualified as

expert in the field of firearms examination); testifies as to getting evidence (10 shell casings) on **October 25, 2004** for comparison to the stored casing and a report from Terry Eaton of PG police dept.; testified that he concluded from Eaton's report that all the 10 evidence casings came from the same gun and that conclusion led him to test compare only one of the 10 to the stored casing; testifies about using the comparison microscope to make comparison from one of the 10 evidence casings to the stored casing from the MSP storage of new gun casings; testifies that in his opinion the two casings were fired from the same gun; (here several efforts of defense attorney to get testimony about police use ballistic fingerprint database were defeated on the basis that no testimony by the prosecutor on direct covered this material; also efforts to get testimony about the wrong shell casing being forwarded from the retail sale was defeated for the same reason); testifies that ballistic markings can change over time, but "it takes a long -- thousands and thousands of rounds, and, actually, damage, or, actually, if it had been distorted in some kind of way by a shooter. That's possible."

When asked about use of the computer, Suber testifies "The computer does nothing for me. Like I stated before, I use a comparison microscope, which enables me to bring two objects together to appear as one." Continuing Suber testifies:

Q. Are computers able to give aid to you in your deliberations as to your conclusions?

A. Not at all. The Maryland IBIS system is just an investigative tool. It enables me to say -- it breaks it down, per se, as to a list of possibilities. But what this right here, it was all the way done on the comparison microscope. It's a computer aid. It's just an investigative tool. Testifies that this was the first time he had been called to testify concerning a shell casing from the MSP stored casings from new guns.

Ricardo Scriber. Testifies that he was a friend of the victim Kelvin Braxton; that he went to Popeyes on the day Braxton was killed; Testifies about being unable to identify shooter about being unable to remember shooter's female companion hair color or special characteristics, about not overhearing the conversation between the victim and the killer, about not seeing the killer leave or the car he left in; Denies supplying police with a written statement (then his written statement is introduced as evidence) to which he clarifies that his statement wasn't supplied to police but to a detective;

End of Testimony on 3/30/05.

A motion on 3/31/05 objected to the evidence concerning the gun sold by REALCO on the basis that the state didn't show how a gun sold by Taurus to Rochester, New York got to REALCO (defect in chain of evidence). Motion was denied.

Beginning of defense:

ERICA COLES. Testifies to witnessing the shooting while driving into the parking lot at Popeyes and that the shooter ran off then walked down Livingston Road and didn't get into a car in the parking lot; testified that the shooter wore a white teeshirt, jean shorts and a black skull cap and black tennis shoes; testifies she saw the two people in the shooting -- victim and attacker; testifies it wasn't the defendant.

CHARLES RICHARDSON (recalled Detective). Defense asked Detective concerning numerous witnesses that were unable to identify the defendant from a photo array or people who weren't shown an array because they said they couldn't identify the shooter. Defense asked Richardson whether other lines of investigation were pursued and was shut down on most occasions by court. Richardson testified that there was no evidence from phone records that the defendant had contact with the victim; no evidence of a prior beef between the two; Defense tried a series of questions to discredit Richardson for conduct on other cases such as lying and threatening witnesses -- court wouldn't allow the questions to be answered; defense tried to discredit Richardson for not being thorough enough with his investigation to

rule out other suspects and identifies two people calling 9-1-1 on the shooting that were not interviewed.

Clarence L. Parker, Jr. Testifies as to knowing the defendant about 10 years; that the defendant is a peaceful person of good character; that he had no knowledge that Garner was ever in trouble with the law.

Themitha Renee Garner. (sister of defendant). Testifies brother was to graduate on **May 7** with associates degree, but was arrested that day; testifies that brother regularly used her Mazda with license BKV 310. Testifies she reported the Mazda stolen on the 24th of April, 2004; that she went to the police station with her brother to make the report; that the police report contains the date of 23 April in evening that the car was stolen.

Corrine Mallory. Testifies basically that she heard shooting at Popeyes but was too far from it to see anything significant; testifies seeing a person leaving the area at a fast pace on foot; testifies about calling 9-1-1; testifies about not being interviewed by police

The jury returns a guilty verdict 1st degree murder and violence with a firearm in about 8 hours of deliberation.