

NORTHEASTERN UNIVERSITY

SCHOOL OF LAW

Law Office 6

Legal Skills in a Social Context

2023

WHO KILLED LOUIS BROWN?

How the Criminal Justice
System Fails Families and
Communities

TABLE OF CONTENTS

Acknowledgments	3
NUSL’s Legal Skills in a Social Context Course	4
Executive Summary	5
Methodology	7
Background	8
I. Contextualizing Louis’ Murder: Boston in the 1990s	10
A. Systemic Issues in Boston Law Enforcement	10
B. Media Representation of Louis’ Murder	12
(i) How the Media Portrayed Louis’ Murder	15
(ii) Implications of the Media’s Representation of Louis	16
C. What Happened That Day: December 20, 1993	16
D. How Law Enforcement Charged Charles Bogues	18
E. Why Charles Bogues Accepted a Plea Deal	19
II. Systemic Failures by the Justice System	21
A. Police Mishandled the Collection and Preservation of Evidence ...	21
(i) A Description of Select .45 Caliber Evidence and the Police Collection Effort	21
(ii) Table 1: Ballistic Evidence Definitions	23
(iii) Table 2: .45 Caliber Evidence	24
B. The Prosecution Presented Misleading Ballistic Evidence	26
(i) Overview of Grand Jury Role	26
(ii) Guidelines for Prosecutors	27
(iii) Available Ballistic Reports for the Grand Jury	27
(iv) Key Findings by Ballisticians	29
(v) Ballistic Evidence Presented to the Grand Jury	34
(vi) Implications of These Omissions	37
C. The Prosecution Minimized Witness Testimony and Omitted Key Details	37
D. Defense Attorney John Sprague Failed to Provide Adequate Legal Representation	43
E. The Prosecution Manipulated the Plea Bargain Process	45
(i) Prosecutorial Discretion and Overcharging Tactics	45
III. Systemic Failures Post-Conviction	47
A. Judges Denied Charles Bogues’ Appeals	47
B. District Attorney’s Office Refused to Reopen Case	48
Conclusion	49
Appendix	51
A. Call to Action Flyer	

ACKNOWLEDGMENTS

This project was completed under the supervision of Professor Andrew Haile, by the following students:

Rakabe Abraham
Jenna Clemenzi
Madison Crump
Gabrielle Delgado
Kyle Josias
Cate Spirgel
Emily Teems
Christopher Thomas
Ryan Wallace

With contributions by the following students:

Josephine Ban
Rylie Bretz
Julia Canney
Josephine Golder

We are eternally grateful to Chaplain Clementina Chéry and her family for trusting us with Louis' story. We owe an enormous debt to Chaplain Chéry, the Peace Institute, Antonio Thompson, Pastor Ron and Kim Odom, Elisha Ross, Natasha Carrington, Alexis Smith, and Shondell Davis for sharing their loved ones' lives and memories with us for this report. We hope that we represented their stories in a way that is honest, compassionate, and with the care that they deserve.

We would also like to thank our Lawyering Fellows: Anna Caliandro, Kiran Keneally, and Ally Mastrangelo, for their support and feedback during our report process.

We are grateful to the following individuals for giving us their time:

Charles Bogue
Ryan Griffin, Special Agent, Bureau of Alcohol, Tobacco, and Firearms
Janet Fine, Executive Director of MOVA (2002-2012), current Vicarious Trauma Response Initiative Consultant for the International Association of Chiefs of Police
Toni Locy, former Boston Globe Investigative Journalist

NUSL's Legal Skills in a Social Context Course

Northeastern University School of Law gives first-year law students the opportunity to work together with nonprofit or government organizations on a social justice project. Students are introduced to effective community lawyering practices on behalf of a public-service partner organization. Alongside Professor Andrew Haile, this law office worked in partnership with the Louis D. Brown Peace Institute on a two-pronged project: examining the investigation of Louis Brown's death in 1993 and providing policy recommendations for the Massachusetts victim support system.

Executive Summary

On December 20, 1993, Louis Brown—a 15-year-old boy—died in a crossfire near his home in Dorchester, Massachusetts. For Louis' mother, Chaplain Clementina Chéry, and her family, the wake of Louis' death was a fog, characterized by a system that failed to deliver justice for Louis or support to his family.

Chaplain Chéry hoped, as she grieved, that law enforcement would carefully investigate the crime scene and uncover critical evidence. She hoped they would pursue every lead and interrogate every witness. Moreover, she hoped the criminal justice system would work diligently to bring closure to her family.

Instead, she found that the system was unsupportive and moved painstakingly slow. So, in the meantime, she founded the Louis D. Brown Peace Institute (Peace Institute) in Dorchester. The Peace Institute aims to fill a critical gap in the community: providing holistic, non-judgmental support to families affected by community violence. Since its founding, the Peace Institute serves as a fundamental source of support for families who are left behind by the Massachusetts' victim support system.¹

Ultimately, three years after Louis' death, prosecutors convicted Charles Bogue for Louis' murder. Chaplain Chéry found, however, that this conviction—which was supposed to serve as closure—left her with more questions when Mr. Bogue later recanted his guilty plea. He discovered several issues in the prosecution's case against him and with his defense counsel.² This report explores these issues by examining the failures of the criminal justice system. First, we evaluate the Boston Police Department's (BPD) failure to properly collect and preserve evidence from the crime scene. Then, we explore how the prosecution omitted key witnesses

from the Grand Jury proceeding, disregarded discrepancies in the descriptions of the perpetrator, and ignored evidence of additional shooters with the same type of gun. We analyze the prosecution's failure to bring additional witnesses forward that could corroborate the information presented to Grand Jurors. Additionally, we identify the consequences of inadequate representation by Mr. Bogues' defense attorney and the implications of his plea bargain. Finally, we document the post-conviction failures that prevented this case from being re-opened.

We find that Mr. Bogues' case is emblematic of Boston Law Enforcement's crack down on crime in the 1990s in predominantly Black communities like Dorchester. And, instead of justice, we uncover a lackluster investigation that leaves Chaplain Chéry with the same question from 1993: who killed Louis?

Methodology

Our work with Chaplain Chéry and the Peace Institute began with the investigation of Louis' murder. As a class, we reviewed articles, court documents, and videos about Louis' case. Next, we interviewed Chaplain Chéry and Mr. Bogues to understand their recollection of events. Then, we created a thorough timeline to refer to as we continued investigating. From there, we split up into four subgroups: people, evidence, police and prosecutorial misconduct, and policy.

Each subgroup conducted unique research. The first three groups conducted interviews with a government agent and a journalist, meticulously examined every document and video related to the case, hung flyers calling for anyone with information to come forward, and cold-called those who may have relevant information. Through this research, we both confirmed existing knowledge and raised further questions and concerns about the investigation and misconduct within the system.

The fourth subgroup examined the existing laws and structures in place to support victims. Then, this subgroup conducted interviews with both surviving family members of victims of homicide and interviewed experts in victim advocacy. With this background in mind, this subgroup compiled policy recommendations for supporting victims and survivors of homicide. The partner report to this publication, One Size Does Not Fit All: Transforming the Approach to Survivors of Homicide Victims in Massachusetts, outlines those recommendations.

Background

On December 20, 1993, Louis D. Brown, a 15-year-old sophomore at West Roxbury High School, died in a crossfire in Dorchester, Massachusetts. Louis was walking towards the Fields Corner MBTA station when a .45 caliber bullet struck him in the back of the head.³ In 1997—three years after Louis’ death—a Boston man named Charles Bogues plead guilty to second-degree murder. Mr. Bogues’ plea bargain required him to confess that a stray bullet from his .45 caliber gun killed Louis.⁴ Years later, in prison, Mr. Bogues uncovered evidence that contradicted what prosecutors told him. Three findings ultimately led Mr. Bogues to question his conviction:⁵

- (1) Eyewitness descriptions of Louis’ killer contradicted his own physical appearance;
- (2) Evidence indicated that another .45 gun was at the crime scene; and
- (3) Existing police reports revealed that he was not selected as a suspect from a photo lineup.

Mr. Bogues then filed several motions to withdraw his guilty plea, none of which succeeded.⁶

In 2012, when Mr. Bogues received parole, he claimed that prosecutors improperly induced him to confess.⁷ According to Mr. Bogues, prosecutors agreed to drop federal gun charges against him—which could have resulted in an additional twenty-three years in federal prison—on the condition that he plead guilty to second-degree murder for Louis’ death.⁸ To this day, Mr. Bogues maintains his innocence and claims he accepted the plea bargain due to pressure from prosecutors, deceitful ballistic evidence, and ineffective legal counsel.⁹

This report tracks the 1993 investigation of Louis' death. We evaluate the evidence collected at that time, explore several scenarios that could account for Louis' death, and highlight the failings in this investigation. We argue that the investigation failed in five main ways:

- (1) Mishandling of evidence during collection;
- (2) Misleading presentation of ballistics evidence;
- (3) Minimization of witness testimony by omitting key details;
- (4) Misconduct by defense counsel; and
- (5) Manipulation of the plea-bargaining process.

We do not emerge from this investigation with a definitive answer on who killed Louis. Due to the five failings listed above, that answer appears unknowable. Instead, we emerge from this investigation with a vision for improving the criminal justice system, specifically how victims and their families are treated following a homicide. After underscoring the failings in this investigation, we propose several policy recommendations in a separate report aimed at ensuring family members of victims of homicide are allocated the rights afforded to them by the law.

I. Contextualizing Louis' Murder: Boston in the 1990s

In the mid-1990s, state legislatures across the country cracked down on crime. As part of a collective effort to punish repeat offenders and deter further criminal activity, many states, including Massachusetts, passed so-called “Three Strikes” laws “mandating life imprisonment for the commission of a third felony.”¹⁰ This anti-crime fervor and fixation on punishment fueled an era of racist, arbitrary, and error-prone convictions, particularly in Boston.¹¹

Boston in the 1990s can be summed up in one word: over-policing. In 1990, there were 13,673 violent crime incident reports in Boston—the second highest rate since 1981 (a period that experienced a surge in crime due to the crack cocaine epidemic).^{12, 13} The 1990s conjure up disturbing images of Boston police officers surveilling predominantly Black neighborhoods and indiscriminately stopping and frisking young Black men. This culture of excessive policing is marked by bitter irony; it reminds many Bostonians that the police failed to track actual perpetrators while wrongfully pursuing innocent men.^{14, 15}

As a result, headlines exonerating innocent Black men wrongfully convicted in the 1990s continue to emerge today. Kenyon Sprinkle, Sean Ellis, and Shawn Drumgold serve as reminders of the real consequences from this tough-on-crime era.^{16, 17, 18} This is the backdrop of Louis' 1993 murder—a period that pushed punishment, permitted racially discriminatory police practices, and prioritized quick convictions over the administration of justice.

A. Systemic Issues in Boston Law Enforcement

Throughout the 1990s, the BPD came under scrutiny for shoddy police work, such as insufficient evidence collection and a low clearance rate for homicides in Black communities.

The failings of Louis' investigation were not an isolated occurrence. There are many well known cases that show the BPD's ineffectiveness of solving homicides in the 1990s, such as the investigation of the murder of Carol Stuart, a pregnant white woman who was killed by her husband.¹⁹ In her case, the BPD nearly indicted an innocent Black man for her murder based on her husband's witness statement.²⁰ Though her husband ultimately confessed to her murder, the United States Attorney's Office admitted that there was evidence of police misconduct within the investigation.²¹

The BPD's practices and track record attracted the attention of the media, specifically an investigative journalist for the Boston Globe, Toni Locy. Known for her series called *Bungling the Basics*—a series that heavily criticized the BPD's procedures and practices—Ms. Locy noted that the BPD too often lacked training; failed to properly secure crime scenes; and proved unable to follow basic police procedures.²² Ms. Locy recounted firsthand experience of police practices in which the BPD did not secure scenes with tape. Other times, they trampled evidence—thereby contaminating it—before it was collected.²³

Ms. Locy's series also shed light on now-documented racial bias in the District Attorney's office. In 1990, the Suffolk County District Attorney's office had a 71% conviction rate in murder cases involving white victims, but only 33% when victims were Black.²⁴ Boston defense attorneys and families of victims attributed this disparity to racial bias in the District Attorney's office. Interviewed by Ms. Locy, longstanding Boston defense attorney Barry Wilson described prosecutors' attitude towards cases involving people of color: "If the victim and the perpetrator are people of color, who cares?"²⁵ Notably in 1990, of the 96 Assistant District Attorneys in the Suffolk County office, 92% were white.²⁶

Media attention scrutinizing the BPD increased to the point that former Boston mayor, Raymond Flynn, created the St. Clair Commission to study the Department's systemic problems. At the root of these issues was one thing: a lack of standardized training for almost all officers *at all levels*.²⁷ Patrol officers and detectives—including homicide detectives—were expected to learn on the job, meaning they were paired up with more experienced officers.²⁸ This system, however, meant that there was no review nor accountability of the senior officers' effectiveness.²⁹ The lack of accountability extended far beyond just detectives; BPD leadership did not effectively communicate their expectations.³⁰ As a result, departments operated individually—they created their own rules and ways of conducting investigations.³¹

These issues affected Boston as a whole, not just communities of color—though we do see a different allocation of resources depending on where the murder took place.³² The BPD allocated many resources to Carol Stuart's murder due to the notoriety of this case, yet they still made detrimental mistakes.³³ But police were most ineffective in non-white neighborhoods like Mattapan, Dorchester, and Roxbury.³⁴

As we outline below, the investigation of Louis Brown's murder was characteristic of 1990s Boston law enforcement: officers did not properly collect evidence, nor did they properly take witness statements. And, even when officers conducted witness interviews properly, they disregarded statements that did not align with the BPD's own theory. At the same time, the media pushed racist tropes around gang involvement in homicides in communities such as Dorchester, reinforcing a narrative that these deaths did not matter.

B. Media Representation of Louis' Murder

Media coverage of Louis' death echoed that of the infamous 1993 Polly Klaas murder—a twelve-year-old girl kidnapped from her bedroom during a sleepover and later killed. Both murders shocked the conscience of the nation. Two children died while doing seemingly safe, mundane activities: walking to a nearby train station in broad daylight and having a sleepover. Unlike Louis, however, Polly Klaas was a white girl from a predominantly white town: Petaluma, California.³⁵ The story of a young, white girl, unsafe in her own home, naturally moved the public—reporters had little convincing to do. On the other hand, Louis lived in a predominantly Black neighborhood marked by gang violence. But reporters zeroed in on Louis' upright reputation and insinuated that his death carried more weight than a typical homicide in Dorchester—that *his* death, unlike others, was unprovoked and particularly tragic.

Additionally, news outlets that covered Louis' death repeatedly contrasted his shy demeanor with that of his purported perpetrator: Mr. Bogues, a son of a policeman turned “gang member” (a characterization Mr. Bogues disputes to this day). Reporters created a “good gang” versus “bad gang” dichotomy, emphasizing Louis' involvement in a teenage anti-violence, anti-gang council and Mr. Bogues' alleged involvement in a violent street gang. This juxtaposition served to emphasize the tragic loss of a good kid to gang violence in Dorchester.

The media rang the alarm: if Louis—an honor student and member of an anti-violence youth group—could be “gunned down” in broad daylight on a busy city street, then no one was safe.³⁶ Likewise, by highlighting Mr. Bogues' father as an upstanding Boston policeman, the articles insinuated that even children from “good” families could succumb to violence.³⁷ And although the use of evocative language such as “gunned down” elicited fear and emphasized

violence in the community, it was ill-fitted for Louis' story. According to Mr. Bogues, the shooting was accidental—Louis was an unintended target and died in the crossfire.³⁸

(i) How the Media Portrayed Louis' Murder

Good Gang versus Bad Gang	Perpetrator is the son of a Boston policeman	Louis was "gunned down"	Louis was a shy honor student
"Brown's involvement in a 'good gang' gave him a new pride, just as important as book learning."	"Bogues' father is a Boston policeman."	"Brown was gunned down one December afternoon."	Louis was a "shy teenager who was so afraid of the streets that he rarely left his home."
Louis was part of a teenage anti-violence, anti-gang council.	"Bogues [is] the son of a police officer."	"[Louis] was gunned down in 1993."	Louis was a shy teenager who participated in an anti-violence youth group.
Louis was headed to a Teens Against Gang Violence Christmas party.	"A Suffolk grand jury indicted Bogues, the son of a Boston police officer."		"Brown rallied to be an honor student. He spent Sundays reading encyclopedias."
"[Louis] was shot . . . as he walked to an anti-gang meeting."	"Bogues' father, Charles T. Bogues, is a 'good police officer.'"		". . . [Louis] was everyone's perfect child."

(ii) Implications of the Media’s Representation of Louis

Effusive descriptions of Louis as “the perfect child” dominated the narrative and distracted from the main point: a mother lost her son to street violence and waited three years before receiving any answers from the police. The media did not ask why it took the police so long to provide answers, or how this drawn-out process affected Chaplain Chéry’s ability to heal. Instead, the media pushed tough-on-crime propaganda and mobilized the city against Black men caught up in gangs. Reporters missed an opportunity to highlight the ineptitude of state officials tasked with investigating homicides in Boston. And the tough-on-crime narrative overtook any calls for systemic change by the resilient communities living with this violence. Instead, reporters could have explored how law enforcement failed to provide swift justice for grieving loved ones, like Chaplain Chéry.

Perhaps most importantly, a faithful, fact-based account of Louis’ death might have reassured his family that there was no need to dramatize his story to ascribe meaning to it. Louis’ death mattered just as much as Polly Klass’. And to all the families who lost a loved one to gun violence—whether or not their loved one engaged in criminal activity—there should be no question that their lives mattered too.

C. What Happened That Day: December 20, 1993

The shootout that dominated the media occurred in the late afternoon of December 20, 1993, at the convergence of Tonawanda Street and Geneva Avenue (see A on map below).³⁹ Mr. Bagues initially met David Miller, Carleton Phillips, and Tony Turner here to sell them cocaine.⁴⁰ According to evidence presented to the Grand Jury, on the day of the shooting, Mr.

Miller carried a .32 caliber handgun and Mr. Phillips did not have a gun.^{41, 42} Mr. Bogues, however, carried a .45 caliber handgun, and admits he shot it during the confrontation.⁴³

Louis walked towards the Fields Corner subway stop, on his way to a Christmas party hosted by Teens Against Gang Violence.⁴⁴ Normally, Louis' mother would drive him to these meetings, but that day he decided to take the subway to not be late.⁴⁵ While Louis walked to the train, the shooting began. He died in the crossfire, just across the street from Mr. Bogues and his associates (see C on map below).⁴⁶ At the time of the shooting, a local resident named Tamara Acevedo looked out her window, waiting for her children, at 97 Waldeck Street.⁴⁷ Instead of her children, she saw “five to seven black men” opposite her window (see A on the map below).⁴⁸

Additionally, two schoolteachers carpooling home from work—Daniel Leite and Margarita Duarte—drove past the intersection during the shooting (see C on map below).⁴⁹ Instead of a simple drive home, they found themselves caught in the crossfire, and a bullet fragment from the shooting lodged itself in Mr. Leite's car.⁵⁰

A final witness, identified in the record only as “William,” claimed he saw the gunman who shot Louis.⁵¹ William was inside the travel agency (see D on map below) when the shooting started.⁵² The witness description that William provided to police did not match that of Mr. Bogues.⁵³

Below, we analyze the events of December 20, 1993; examine where systemic failures influenced the investigation; highlight the people affected by those failures; and build the groundwork for the policy proposal in our companion paper.



D. How Law Enforcement Charged Charles Bogues

In 1996, three years after the fatal shooting, police implicated Mr. Bogues in Louis' murder. Officers arrested Mr. Bogues during an illegal gun sale, and he faced federal drug and firearm charges.⁵⁴ Undercover informants then connected him to the crossfire that killed Louis. So, prosecutors tacked on state first-degree murder charges.⁵⁵ Federal and local law enforcement worked together to identify Louis' killer. Assistant United States Attorney Ralph Boyd and Suffolk County District Attorney Ralph Martin worked on the case for over 3 years.⁵⁶ The investigative task force included law enforcement officers from the BPD, state and transit police officers, federal and local prosecutors, and federal agents from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Mr. Phillips, who participated in the shooting, told police he

witnessed Mr. Bogues purchase the gun that presumably killed Louis.⁵⁷ After the police told Mr. Bogues his gun killed Louis, Mr. Bogues confessed to the murder.⁵⁸ Mr. Martin described the investigation “like stitching a quilt together . . . there was a piece here, a piece there and pretty soon the pieces added up to enough to indict Charles Bogues.”⁵⁹ We reached out to former District Attorney Ralph Martin, but he declined to comment on our investigation.

E. Why Charles Bogues Accepted a Plea Deal

Following his arrest, Mr. Bogues retained John Sprague as his defense attorney and paid him \$20,000 to represent him.⁶⁰ Mr. Bogues faced both federal and state charges.⁶¹ The federal drug and firearm charges carried a mandatory minimum sentence of fifteen years in federal prison.⁶² The state first-degree murder charge carried a life-sentence in state prison, with no opportunity for parole.^{63, 64}

According to Mr. Bogues, his attorney ineffectively assisted him in his defense.⁶⁵ In our interview with Mr. Bogues, he alleged that Mr. Sprague never requested discovery; paid other lawyers to show up in court for him; and had an undisclosed conflict of interest due to his continuing employment as a Massachusetts State Trooper.^{66, 67}

The prosecution offered Mr. Bogues a plea deal: a reduction of the state charge to second-degree murder with a sentence of life with the possibility of parole after fifteen years; dismissal of the federal charges; and a commitment that the state would not oppose parole.⁶⁸ Despite never requesting evidence about the charges against Mr. Bogues, Mr. Sprague—his lawyer with an ethical duty to advocate for his client—advised him to accept the plea. And Mr. Bogues agreed.⁶⁹

Mr. Bogues recalled that taking the plea deal meant serving his sentence in state prison—meaning staying closer to his son—rather than federal prison.⁷⁰ If Mr. Bogues had declined, his charges would have required him to serve over fifteen years in federal prison and still face state first-degree murder and gun possession charges.⁷¹ Mr. Bogues therefore had to decide whether to take this plea deal before learning, years later, about crucial issues with the investigation and evidence used against him. In the sections that follow, we detail our findings on these issues. Had Mr. Bogues known about these issues when presented with the plea deal, he might not have accepted the deal in the first place.

Mr. Bogues did not know he could ask for more evidence before accepting the plea deal.⁷² Mr. Sprague failed to advise his client of this right, failed to discuss the option of a trial, and failed to disclose the lack of evidence against his client.⁷³ The prosecution's offer of a reduced sentence, coupled with Mr. Bogues' lack of knowledge about the evidence against him, made the plea deal seem like his best option. So, Mr. Bogues accepted the plea deal. In reality, he had a chance of succeeding at trial against the first-degree murder charge. Instead, he served seventeen years in state prison and will remain on parole for the rest of his life.⁷⁴ This outcome is a result of many law enforcement failures within the investigation itself, the Grand Jury proceeding, and finally the plea bargain, which we explore in more detail.

II. Systemic Failures by the Justice System

A. Police Mishandled the Collection and Preservation of Evidence

(i) A Description of Select .45 Caliber Evidence and the Police Collection Effort

In a homicide investigation, evidence collection sets the foundation for the eventual conviction of a murderer. Police must carefully collect and preserve evidence to correctly identify the perpetrator and build a strong base for the prosecution's case. In the wake of Louis' murder, responding officers preserved the crime scene by blocking the area off with police cars and yellow crime scene tape.⁷⁵ To further ensure security, they closed the relevant area of Geneva Avenue to traffic and had additional police officers at the perimeter.⁷⁶ Police took these actions as their initial crime scene preservation steps.

Sergeant Detective Daniel J. Downey's Police Report provides further insight into the investigators' evidence-gathering operation. First, Sgt. Det. Downey stated, "Boston Police Department Crime Scene Unit YD-200...illuminated the crime scene."⁷⁷ They then marked potential evidence on Tonawanda and Waldeck Street "with cones, numbered 1 [through] 10 and letter A."⁷⁸ The car with ballistic damage "was marked with cones lettered B & C."⁷⁹ Police also added numbered and lettered cones to the ballistic evidence at 101 Waldeck, 485 Geneva, 482 Geneva, 11 Tonawanda, and 23 Tonawanda.⁸⁰ Finally, they gathered and inventoried the evidence. The inventory reports revealed a lack of uniformity.

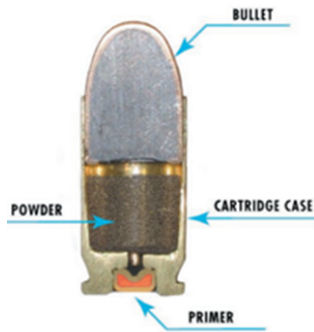
Notably, a comparison of these documents and the cone designations to Det. John C. Seay's initial ballistics report, completed several days after the evidence collection effort, revealed significant discrepancies.⁸¹ For example, there are two labels of "cone number 1" in Sgt. Det. Downey's Police Report. One refers to evidence found at 485 Geneva, and the other at

11 Tonawanda; but the 11 Tonawanda cone appears to refer to Item (9) of the comprehensive ballistics report.⁸² This lack of uniformity made it difficult to reexamine the evidence as not all the itemized evidence matched the cone-labels with certainty. Unfortunately, the cone-labels held the most detailed location information, such as a street address of the evidence.⁸³ By contrast, the itemized ballistic report mostly contained vague references to the crime scene.⁸⁴ In this way, the evidence reporting hampered our reinvestigation.

Table 1, below, sets out ballistic evidence terminology and definitions. Below that, table 2, consists of: select .45 caliber bullet evidence collected; a description of the evidence; and how the collectors retrieved the evidence. The terms listed in the first table define the terms used within police evidence reporting and help contextualize the meaning of the second table. The second table provides an inventory of the .45 caliber evidence gathered (using the labels applied by Det. Seay's report) with bullet analysis description as presented in the evidence reports, that is relevant to solving Louis' murder.

(ii) **Table 1: Ballistic Evidence Definitions**

Term	Definition
Cartridge (or unit/round of ammunition in its entirety)	<ul style="list-style-type: none"> • This refers to the entire, individual round (commonly mistaken as the bullet). • A cartridge consists of primer, powder, the bullet (projectile), and the cartridge case.
Bullet (or projectile)	<ul style="list-style-type: none"> • The bullet is the projectile launched by firing a gun. • Depending on the resulting impact, investigators might retrieve the entire projectile or a fragment of it. • A ‘jacketed’ bullet has an extra layer of metal cover.
Cartridge Case (BPD uses the term shell)	<ul style="list-style-type: none"> • This—different from the cartridge/round—refers to the container of “the bullet, powder and primer.”
Grooves	<ul style="list-style-type: none"> • The identifying marks or impressions left by a firearm’s rifling on a projectile as it exits the barrel.
Lands	<ul style="list-style-type: none"> • The areas between each marking (groove) on a spent round.
Twist	<ul style="list-style-type: none"> • Refers to the direction a projectile spirals as it exits the firearm. • Groove marks “reflect...the direction in which [the projectile] spirals,” or twists.



85

(iii) **Table 2: .45 Caliber Evidence**

Evidence and Descriptions	Collection Information
Item (3): The Bullet That Killed Louis - “.45 caliber spent bullet copper jacketed with six lands and grooves and left-hand twist.”	<ul style="list-style-type: none">• This was “submitted to the Ballistics Unit by [Detective Richard F. Ross],” in a glass jar on Dec. 22, 1993.• This refers to the “large caliber bullet recovered,” by Medical Examiner, Antonio E. Boschetti.
Item (4): Seven .45 Bullet Casings - According to the Seay Report, these were “seven .45 caliber discharged cartridge cases [head-stamped] R-P.”	<ul style="list-style-type: none">• These “seven (7) .45 caliber discharged cartridge cases, recovered at the scene by Det. John C. Seay of the Ballistics Unit.”
Item (8): .45 Caliber Spent Bullet - Det. Seay described this as a “.45 caliber copper jacket spent bullet weight 230 grains. 4 lands and 4 grooves, right hand	<ul style="list-style-type: none">• Det. John C. Seay recovered this evidence, with no exact location specified.
Item (9): .45 Caliber Fragments - The Seay Report describes this item as two “copper jacket fragments,” that are both too destroyed to contain “sufficient microscopic detail to positively match,” with other .45 caliber evidence.	<ul style="list-style-type: none">• Det. John C. Seay found one fragment, and Det. Sgt. Daniel Downey found the other.• Both fragments appear to refer to the 11 Tonawanda evidence marked with “cone number 1.”

97-99 Waldeck Street Ballistic Evidence

- This evidence collection consisted of three .45 caliber cartridge cases.

- Two days after Louis’ murder, Police Officers Timothy Smith and Mayfield Holliday retrieved the cases from 97-99 Waldeck Street after a concerned citizen reported potential evidence.
- They filed the evidence as number 11 and sent the items to the Ballistics Unit.
- Though, ballistics expert, Sergeant Detective James O’Shea says that, “[one] live round and [one] spent cartridge... was [never] moved to Archives,” and “likely destroyed before 1997.”

While the police did seem to follow some evidence-gathering procedure, Table 2 shows a lack of detailed evidence locations; an inconsistent inventory system; and lost or disposed-of evidence. This is shown through most evidence items being listed generally as found “at the scene,” rather than the specific street addresses noted in the initial evidence collection.⁸⁶ Prosecutors used this .45 caliber evidence—the size of bullet that killed Louis—as the main thrust of physical evidence against Mr. Bogues. These evidentiary issues and the contradictory ballistics analyses presented below support Chaplain Chéry’s belief that police did not find who killed Louis. It also reinforces Mr. Bogues’ claims that the prosecutors did not correctly portray the evidence against him to the Grand Jury. The evidence-handling made it difficult to reinvestigate Louis’ murder and thereby, examine Mr. Bogues’ claim of innocence.

B. The Prosecution Presented Misleading Ballistic Evidence

(i) Overview of Grand Jury Role

In Massachusetts, Grand Juries are used to determine if there is enough evidence to charge a person with a crime.⁸⁷ Grand Juries are comprised of 23 citizens, whose identities remain secret.⁸⁸ Grand Jurors have an investigative role and typically serve for six months.⁸⁹ An Assistant District Attorney oversees the proceeding and presents the prosecution’s case.⁹⁰ The Grand Jury makes their determination based on witness testimony and physical evidence presented only by the prosecution—no defense lawyer is generally present.⁹¹ Then, an indictment is returned if jurors find “probable cause” that the person in question committed the crime.⁹² This is not a determination of guilt. Once the Grand Jury returns an indictment, then the defendant can be charged, and formal proceedings can begin.⁹³

(ii) Guidelines for Prosecutors

A prosecutor must adhere to certain ethical rules in their portrayal of evidence to the Grand Jury. Prosecutors are not required to present all evidence to the Grand Jury.^{94, 95} But, the prosecutor must inform the Grand Jury if exculpatory evidence exists “that would greatly undermine either the credibility of an important witness or likely affect the Grand Jury’s decision.”^{96, 97, 98, 99} Case law supports this guideline. The Supreme Judicial Court of Massachusetts held in 1982, and reaffirmed in 1984, that “at the very least the grand jury must hear sufficient evidence to establish the identity of the accused . . . and probable cause to arrest him.” Commonwealth v. O'Dell, 392 Mass. 445, 450 (1984) (citing Commonwealth v. McCarthy, 385 Mass. 160, 163 (1982)). In both cases, indictments were dismissed due to the insufficiency of evidence presented to the Grand Jury.^{100, 101}

In Mr. Bogue's case, Assistant District Attorney Robert Tochka presented the prosecution's case to the Grand Jury.¹⁰² As discussed below, there is key ballistic evidence, essential to the Grand Jury's decision, that Mr. Tochka never presented.

(iii) Available Ballistic Reports for the Grand Jury

Between the time of the incident on December 20, 1993, and Mr. Bogue's appeal in 2007, several ballisticians examined and submitted reports regarding the evidence recovered at the scene. A ballistician is a person who studies evidence and determines the facts relating to the use of firearms.¹⁰³ Detective Seay of the BPD made the first report shortly after the incident in 1993; Detective Vickers of the BPD next presented before the Grand Jury in 1997; and Mr. McGuinness and Detective O'Shea made the last two reports in 2004 and 2006 in preparation for Mr. Bogue's appeal. Our team carefully reviewed these reports. Additionally, we interviewed Special Agent

Ryan Griffin of the Bureau of Alcohol, Tobacco, and Firearms (ATF) to get his opinion about the ballistics reports.

Each report offers some new information; some come to different conclusions, while others contradict one another. Notably, three of the four ballisticians found evidence indicating more than one .45 caliber firearm used at the crime scene. This is particularly important because Louis was killed by a .45 caliber firearm. Unfortunately, the officers on duty did not report the location of the second .45 caliber projectile with specificity. Nonetheless, the presence of more than one .45 caliber firearm raises the possibility that someone else—other than Mr. Bogues—could be responsible for Louis’ death. The chart below provides the highlights of each report.

(iv) Key Findings by Ballisticians

Ballistician	Key Findings
Detective John C. Seay, Boston Police <i>December 30, 1993</i>	<ul style="list-style-type: none">• The projectile recovered from Louis’ body had six lands, six grooves, and a left-hand twist and came from a .45 caliber firearm.• A .45 caliber projectile found elsewhere at the scene had four lands, four grooves, and a right-hand twist.
Detective Mark W. Vickers, Boston Police <i>February 6, 1997</i>	<ul style="list-style-type: none">• The projectile recovered from Louis’ body came from a .45 caliber firearm.• All .45 caliber evidence presented to the Grand Jury came from the same firearm.
Mr. James T. McGuinness, Private Expert hired by Bogues <i>November 22, 2004</i>	<ul style="list-style-type: none">• The projectile recovered from Louis’ body and the projectile recovered at the scene could not have come from the same firearm.
Detective James O’Shea, Boston Police <i>November 27, 2006</i>	<ul style="list-style-type: none">• The .45 caliber projectile recovered from Louis’ body had six lands, six grooves, and a left-hand twist.• The .45 caliber projectile recovered at the scene had four lands, four grooves, and a right-hand twist.
Special Agent Ryan Griffin, Bureau of Alcohol, Tobacco, and Firearms (ATF) <i>November 9, 2022</i>	<ul style="list-style-type: none">• Louis’ wound and the condition of the bullet that killed him indicates that the bullet was influenced by some environmental factor before hitting him, such that the bullet was partially flattened and tumbling upon impact.• Though Mr. Bogues could have potentially hit Louis from his approximate firing location, other shooters could not be ruled out given the presence of other .45 caliber evidence at the scene.

(1) Detective John C. Seay found two .45 caliber projectiles that could not have come from the same firearm.

Detective John C. Seay of the BPD conducted the first examination of ballistic evidence on December 30, 1993. He concluded that Item (8) had four lands and grooves with a right-hand twist, while Item (3) had six lands and grooves with a left-hand twist.¹⁰⁴ Though Detective Seay did not expressly conclude so, the finding of two projectiles with different lands, grooves, and twists means that they could not have been shot from the same firearm. This supports the conclusion that at least two different .45 caliber firearms were used at the scene. It also calls into question whether it was Mr. Bogues' firearm that killed Louis, or rather, another unidentified firearm.

(2) Sergeant Detective Mark W. Vickers concluded that all .45 caliber evidence came from the same firearm.

In 1997, Sergeant Detective Mark W. Vickers of the BPD Ballistics Unit presented the ballistic evidence to the Grand Jury.¹⁰⁵ Detective Vickers admitted that he was not the ballisticsian on duty following the incident but was substituting for Detective Seay.¹⁰⁶ He claimed he had enough time to review the evidence before the hearing.¹⁰⁷ Detective Vickers presented evidence of the projectile found in Louis' body and the seven cartridge cases found elsewhere at the scene.¹⁰⁸ Though he admitted he made no comparison between the projectile and the casings, Detective Vickers concluded that all .45 caliber evidence presented came from the same firearm.¹⁰⁹ This contradicts Detective Seay's finding of one projectile with four lands and grooves and one projectile with six lands and grooves.¹¹⁰ Detective Seay's finding supports the

conclusion that two individuals possessed the type of firearm that killed Louis. By omitting this evidence, the prosecutor could have misled the Grand Jury to believe that the evidence presented was complete, and that all .45 caliber evidence came from the same firearm. It is unclear why Detective Vickers presented testimony contradictory to the evidence collected by Detective Seay.

(3) Ballistician James T. McGuinness concluded that the two .45 caliber projectiles could not have come from the same firearm.

James T. McGuinness was a ballistician hired by Mr. Bogues in preparation for his appeal.¹¹¹ Though Detective Seay reported evidence of two .45 caliber firearms years prior, Mr. McGuinness was the first ballistician to expressly conclude that the .45 caliber evidence collected at the scene came from two different firearms. On November 22, 2004, Mr. McGuinness concluded that the bullet recovered from Louis' body and the bullet found elsewhere at the scene came from two different firearms.¹¹² This finding supports the conclusion that there were at least two different .45 caliber firearms at the scene and contradicts Detective Vickers's testimony before the Grand Jury.¹¹³ The presence of two different .45 caliber firearms indicates a possibility that someone else could be responsible for Louis' death.

(4) Sergeant Detective James O'Shea further supports the conclusion that the two .45 caliber projectiles found at the scene could not have come from the same firearm.

Sergeant Detective James O'Shea of the BPD Ballistics Unit conducted the final review of the ballistic evidence. The prosecution hired him in response to Mr. Bogues' appeal.¹¹⁴ On November 27, 2006, Detective O'Shea found that the projectile recovered from Louis' body had six lands and grooves, while the projectile found elsewhere at the scene had four lands and grooves.¹¹⁵ This finding further indicates that two individuals at the scene possessed the type of

firearm that killed Louis. Additionally, Detective O’Shea reported that he was unable to find the live .45 caliber bullet and cartridge found in the alley between 97 and 99 Waldeck Street.¹¹⁶ This cartridge case is particularly important. Had the cartridge case been fully examined, the ejector marks could have matched the lands and grooves of the projectile found in Louis, the projectile found elsewhere at the scene, or have had completely different markings—implicating a third potential shooter.

(5) Observations by Special Agent Ryan Griffin.

On November 9, 2022, our project team met with Special Agent Ryan Griffin of the Bureau of Alcohol, Tobacco, and Firearms (ATF) to discuss the facts of Louis’ case and gather his observations on the ballistic evidence collected—that which was presented to the Grand Jury in Charles Bogues’ case, and that which was not. It should be noted that this was an informal conversation, not an official consultation; the statements below do not reflect the opinions of the ATF, the Department of Justice, or the United States Government.

A large portion of our discussion centered on the bullet that took Louis’ life: a .45 caliber copper jacketed bullet bearing six lands and six grooves and a left-hand twist.¹¹⁷ Louis’ autopsy report contains several telling descriptions of both the bullet and his wound that give context to the circumstances surrounding his death. First, the bullet was flattened on one side.¹¹⁸ The Special Agent indicated that this usually occurs when a bullet contacts a surface prior to impact with a victim. This contact could include interference from an intermediary object between the shooter and victim or alternatively a ricochet. Second, Louis exhibited a “keyhole bullet wound.”¹¹⁹ The Special Agent informed us that this is a telltale sign of a “tumbling bullet,” which can be caused by ricochet or intermediate contact, distance, or environmental factors.

Third, we discussed the .45 caliber spent and deformed copper jacket fragment found in front of 11 Tonawanda Street.¹²⁰ Though too deformed to determine the direction of the twist, Sgt. Det. James O’Shea noted that the fragment “may be engraved by 6 lands and 6 grooves,” and therefore could potentially match the bullet that killed Louis.¹²¹ Based on the approximate location of Mr. Bogues during the shootout, this fragment would have been located directly next to his firing position. The Special Agent indicated that it would be quite strange to see a fragment that close to a shooter’s firing position, even if fired directly at the ground. He stated that it was more likely that the bullet either encountered an obstruction after firing, such as a car or sign, or the bullet was fired from a secondary location, with Mr. Bogues as the potential intended target. If the bullet was not fired by Mr. Bogues, but instead towards him, such evidence would cast serious doubt on the narrative presented to the Grand Jury—that Mr. Bogues fired the shot that killed Louis. This evidentiary line of reasoning, a centerpiece of Mr. Bogues’ attempts at clearing his name, was never investigated or seemingly even considered by prosecutors in his case.

In addition to descriptions of physical evidence, we presented the Special Agent with a map indicating the approximate locations of Mr. Bogues, Louis, and physical evidence collected. Based on this map, the Special Agent evaluated the prosecution’s theory that Mr. Bogues fired the fatal shot. The Special Agent gave the opinion that, based on these approximate locations, a ricochet may not have been necessary for Mr. Bogues to have hit Louis; the angles were tight, but not out of the question. The autopsy report indicates that Louis was struck at a slightly downward angle on the upper right side of his head.¹²² Based on the approximate location of Mr. Bogues and Louis, this downward angle could have been caused by bullet drop, natural in an

arcing shot; however, other firing positions, such as a rooftop, could also have caused this angle and point of entry.

Based on the ballistic evidence and circumstances described, the Special Agent told us that coming to any concrete conclusion as to who killed Louis would be very difficult. While the evidence could indicate Mr. Bogues as the potential shooter, he thought there were several alternate possibilities. These included a shooter at an elevated location such as a roof, a ricochet from a different location, or a shooter from an alternate angle whose shot made intermediate contact with a hard surface before striking Louis. Additionally, the Special Agent noted that the 11 Tonawanda fragment evidence—found in front of where Mr. Bogues claims he was standing and firing for some time—indicated at least a possibility that another shooter could have fired the shot that killed Louis.

(v) Ballistic Evidence Presented to the Grand Jury

Sergeant Detective Mark W. Vickers of the BPD was the testifying officer before the Grand Jury regarding the ballistic evidence recovered at the scene. Throughout his testimony, he discussed the projectile recovered from Louis' body, and the seven cartridges found at the scene. Detective Vickers ultimately concluded that the projectile and cartridges came from a .45 caliber firearm and therefore, that all of the .45 caliber evidence presented to the Grand Jury came from the same firearm.¹²³ Based on the clustered nature of the seven cartridges, Detective Vickers also concluded that the individual remained stationary at the intersection of Geneva Avenue and Tonawanda Street while shooting the firearm.¹²⁴

In contrast, the reports of several other ballisticians conclude that the .45 caliber evidence collected came from *two* different firearms—rather than the single firearm identified by

Detective Vickers. This evidence could demonstrate that another individual was responsible for Louis' death. Further, evidence of a cartridge found at the scene was not included in Detective Vickers's testimony to the Grand Jury. Standing alone, this evidence would not be groundbreaking; however, it could have led to questioning from the Grand Jury about the location of the cartridge and painted a fuller image of the events that occurred on the day of the incident. Detective Vickers omitted two important pieces of evidence, discussed below.

(1) Evidence of a Second .45 Caliber Firearm

In Detective Seay's 1993 report, he stated that the projectile recovered from Louis' body had six lands, six grooves, and a left-hand twist.¹²⁵ Detective Vickers disclosed this evidence to the jury.¹²⁶ However, Detective Seay also reported another projectile "recovered at the scene" which had "4 lands and 4 grooves" and a "right hand twist."¹²⁷ These two pieces of evidence could not have come from the same firearm. Detective Vickers, however, only presented the projectile found in Louis' head; he did not inform the Grand Jury about the second projectile. Omitting the second projectile found elsewhere at the scene could have misled the Grand Jury into believing that Mr. Bogues was the only possible suspect.

By omitting this piece of evidence, Detective Vickers also deprived the Grand Jury of a chance to inquire about the precise location of this projectile. As noted in Table 2 above, the officers that collected this projectile reported it as found "at the scene."¹²⁸ The evidence collection record did not clarify any further. Without a precise location, this projectile can only open the possibility of another suspect shooter. The location could reveal the suspect's position—which could differ from Bogues' position, and further support the possibility of another suspect

shooter. Without the introduction of the second projectile, the Grand Jury had no reason to question its location or the possibility of a secondary shooter.

(2) Evidence of an Unfired .45 Caliber Live Round and Spent Cartridge

On December 22, 1993, two days after Louis' death, Officer Timothy A. Smith and Officer Mayfield H. Holiday collected three shells found by an employee while cleaning the alley between 97 and 99 Waldeck Street.^{129, 130} The officers who initially collected evidence missed this during their investigation on the day of the incident. Officers Smith and Mayfield reported finding two spent cartridges and one live round, all marked .45, and forwarding this evidence to the Ballistics Unit for further investigation.¹³¹ However, there is no indication that the Ballistics Unit ever processed this, as it was not mentioned in Detective Seay's report on December 30th, just over a week after it was collected. Further, Detective O'Shea reported in 2006 that an "extensive search" was made for this evidence, but it was not found in Archives or at the Ballistics Unit.¹³² These reports indicate more .45 caliber evidence outside of the seven cartridges collected on the intersection of Geneva and Tonawanda Street, and more than one individual with a .45 caliber firearm at the scene.

Based on Detective Vickers' testimony, the jurors could have inferred that there was only one .45 caliber firearm at the scene, and since Mr. Bogues possessed one, it must have followed that Mr. Bogues was responsible for Louis' death. Additional .45 caliber evidence, particularly the projectile with four lands and grooves, would have called into question the number of .45 caliber weapons and therefore the number of suspect shooters. Without this critical evidence, the jury had no reason to press for more information. Further questioning by the Grand Jury could have led to the revelation of the exact location of the other .45 caliber evidence recovered. If

Detective Vickers had mentioned both the additional .45 caliber evidence and its potential exact location, the jury could have determined that there had been another individual firing a .45 caliber weapon—in short, that Mr. Bogues was not the only possible suspect.

(vi) Implications of These Omissions

Prosecutors have broad discretion in choosing what evidence to present at a Grand Jury hearing. Here, the prosecutors charged Mr. Bogues despite evidence of another .45 caliber firearm at the scene and witness statements implicating an alternate suspect. At the Grand Jury hearing, Mr. Tochka did not present evidence establishing a possibility of more suspect shooters. By omitting this evidence, Mr. Tochka presented a misleading story and gave the impression that Mr. Bogues—and only Mr. Bogues—was responsible for Louis’ death. From a legal standpoint, it is unlikely that Mr. Tochka violated any rules. While the .45 caliber evidence is important, prosecutors have the discretion to choose which evidence to omit. Mr. Tochka’s actions, however, toed the line between prosecutorial discretion and misconduct. Detective Vickers only presented ballistic evidence that made Mr. Bogues appear as the sole possible suspect. However, the presence of two .45 caliber projectiles that do not match, and a lost .45 caliber cartridge that cannot be tested, opens the possibility that someone else could be responsible for Louis’ death. Without this evidence, the Grand Jury never saw the full picture of what happened that day.

C. The Prosecution Minimized Witness Testimony and Omitted Key Details

In addition to the ballistics evidence, the BPD and prosecutors relied on information provided by four eyewitnesses: “William,” Tamara Acevedo, Margarida Duarte, and Daniel Leite. Although the BPD identified each of the witnesses above, we do not have any record of

Mr. Leite's interview. The three interviews conducted, however, provided three critical pieces of information:

- (1) The description of Louis' killer contradicted Mr. Bogues' physical appearance,
- (2) There were potentially two .45 caliber guns at the scene, and
- (3) Another individual was selected from a police photo lineup.

WHAT EACH WITNESS SAW	GOLD TOOTH	BLACK CLOTHING	PERPETRATOR WAS A YOUNG, BLACK MALE	MORE THAN ONE GUNMAN PRESENT	OTHER POTENTIAL WITNESSES	YOUNG BLACK MALE, PURPLE CLOTHING
WILLIAM	X	X	X	X	X	
MS. ACEVEDO				X	X	
MS. DUARTE		X	X	X		
MR. BOGUES' APPEARANCE THAT DAY						
MR. BOGUES						X

William, whose last name does not appear in the record, was inside the travel agency on Geneva Avenue when he saw the gunman who shot Louis.¹³³ Detective Kenneth Dorch and Detective Richard Ross interviewed William at the Homicide Unit in South Boston three days after the murder.¹³⁴ He told the detectives that the perpetrator was a young, “black male” wearing a “black knit hat,” “black low boots,” and had a gold tooth.¹³⁵ He noted that the perpetrator “carried a silver .45,” and that, although he could not identify the make, the other men at the scene also carried guns.¹³⁶ William also told detectives that he saw the perpetrator two days after

the shootout on Columbia Road, and reiterated that the shooter had a distinctive gold tooth.¹³⁷ Notably, this description contradicted Mr. Bogues' claim that he wore a purple Karl Kani designer jean suit that day; he also did not have a gold tooth.¹³⁸ Moreover, William confirmed that several cars were passing by and that a school bus had stopped, which suggested that there were many more witnesses than the four noted by the BPD.¹³⁹ There is no evidence, however, that the detectives attempted to track down witnesses who drove by the crime scene, or that they ever returned to Columbia Road to inquire about the anonymous gunman with a gold tooth.

During his interview, William admitted that he was suffering mentally and physically since the shootout.¹⁴⁰ He explained that he had nightmares, had difficulty falling asleep, and that his "heart ha[d] been beating faster and faster."¹⁴¹ William's testimony suggested that he was sleep-deprived and mentally drained. Since contemporary research suggests that poor sleep may impair memory retention it is possible that William's lack of sleep inhibited his ability to recall important details from the murder.¹⁴² As a key eyewitness who saw Louis' killer twice, William's testimony is critical. But neither Detective Dorch nor Detective Ross conducted a follow-up interview to confirm the reliability of William's initial interview or account for the possibility of previously inaccessible memories resurfacing.

Although Ms. Acevedo did not have a clear view of the perpetrator, she witnessed several shooters from her apartment window on 97 Waldeck Street.¹⁴³ Detective Dorch initially interviewed Ms. Acevedo in the days following the murder; Detective Merner interviewed her again in 1997, in preparation for the Grand Jury hearing.¹⁴⁴

According to Detective Merner’s interview in 1997, Ms. Acevedo saw “five to seven black males on the opposite corner” when Louis was shot.¹⁴⁵ She purportedly claimed “that they *all* pulled out guns.”¹⁴⁶ Existing records, however, only specify three armed individuals: Mr. Bogues, Mr. Turner, and Mr. Miller.¹⁴⁷ Thus, assuming the men were indeed *all* armed, it is unclear what types of weapons the remaining two to four individuals carried. The presence of multiple firearms poses the same question as William’s testimony: whether there was another .45 gun at the scene. This ambiguity reinforces the possibility of a different perpetrator; it is possible that the anonymous gunman with the gold tooth also carried a .45 gun.

Lastly, it is unclear whether the BPD attempted to contact other residents in Ms. Acevedo’s building to see if they too witnessed the shootout. According to Detective O’Leary, “There were dozens and dozens of interviews done . . . a number of people were brought in to be spoken to because at 4:00 [pm] Christmas week on Geneva Ave., it’s a busy area.”¹⁴⁸ It is unclear why the BPD never referenced the purported “dozens and dozens of interviews,” to the Grand Jury, and it is unknown what information these additional witnesses provided—or if these interviews ever took place. It would be helpful to know whether these additional witnesses also saw an anonymous gunman with a gold tooth or if they identified multiple .45 guns at the scene.

Detective Dorch also interviewed Ms. Duarte, one of the four witnesses to testify at the Grand Jury hearing.¹⁴⁹ As a passenger in Mr. Leite’s car, she was able to provide BPD with a description of the man that shot Louis.¹⁵⁰ She described him as a young, black man holding his “handgun . . . close to his body as if trying to conceal it.”¹⁵¹ Additionally, she said he wore “a long black coat and hood.”¹⁵² Her description of the shooter matches William’s testimony; it did

not, however, match Mr. Bogues' claim that he wore a purple jean suit that day, creating a discrepancy in evidence.¹⁵³

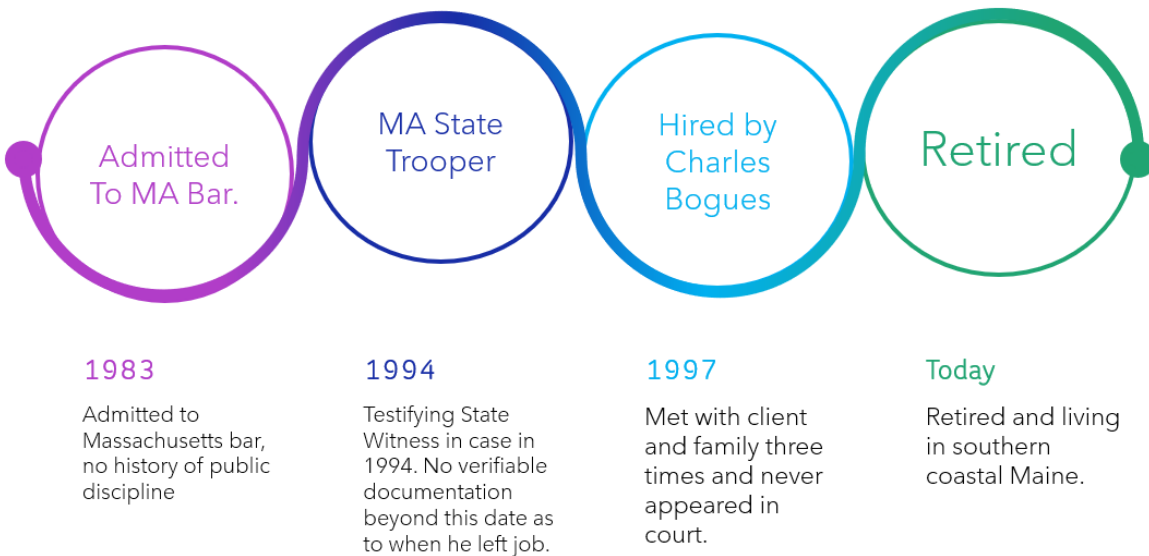
The BPD also showed Ms. Duarte a photo lineup of suspects.¹⁵⁴ According to Detective Dorch's notes, Ms. Duarte was unable to point out the perpetrator on her first attempt; on her second try, she picked a suspect that appeared "similar to the person she observed at the shooting."¹⁵⁵ Although the reporting officer did not specify the photo lineup suspects in the investigation report, Mr. Bogues clarified that Ms. Duarte selected Mr. Turner's photo.¹⁵⁶ Plainly, Ms. Duarte picked out Mr. Turner, not Mr. Bogues—so why did the police and prosecution make Mr. Bogues their main suspect?

Although prosecutors have discretion to control the framing of the story, the investigation remained narrow in scope—Mr. Bogues was the sole suspect despite evidence pointing to a different perpetrator.¹⁵⁷ Prosecutors only selected two eyewitnesses to testify at the Grand Jury hearing: Ms. Duarte and Mr. Leite. But prosecutors failed to question Ms. Duarte about the perpetrators' physical description or about the photo lineup of suspects; Mr. Tochka only asked her about the shooter's location and his gun.¹⁵⁸ And Mr. Leite's testimony, although he identified two different guns, did not include a description of the shooter's physical appearance or the possibility of multiple .45 guns.¹⁵⁹ Moreover, in lieu of calling on Ms. Acevedo to testify herself, Detective Merner recited Ms. Acevedo's testimony at the hearing.¹⁶⁰ Detective Merner relied on an account given by Ms. Acevedo three years, one month, and fourteen days after she witnessed the crime.¹⁶¹ The credibility of an interview conducted several years after Louis' murder is potentially suspect: there is a heightened risk of distortion in eyewitness memory.¹⁶²

Prosecutors, understandably, present information that strengthens their case; but a prosecutor's duty to seek justice and convict is theoretically tempered by his obligation to follow ethical guidelines outlined by the American Bar Association (ABA).¹⁶³ These guidelines are designed to empower a Grand Jury to act as an independent legal body and to limit the opportunity for injustice. Here, however, Mr. Tochka's exclusion of discrepancies in physical descriptions of the perpetrator, key witnesses, and the potential of multiple .45 guns presented a misleading and oversimplified version of Louis' murder. It appears as if the prosecution honed in on one suspect and prioritized a quick indictment over the administration of justice which could have happened from a more thorough probe into who was there the day Louis was killed. Thus, a deeper ethical question emerges: why did Assistant District Attorney Tochka settle on charging Mr. Bogues as a scapegoat, and overlook other potential suspects when evidence existed to the contrary?

D. Defense Attorney John Sprague Failed to Provide Adequate Legal Representation

JOHN SPRAGUE



In addition to Mr. Bagues' claim that the prosecution presented missing or inconsistent information to the Grand Jurors, he also believed that his attorney did not adequately represent him. In our interview with him he claimed that: (1) Mr. Sprague never requested discovery; (2) Mr. Sprague never appeared in court to represent him; and (3) Mr. Sprague had an undisclosed conflict of interest due to his continuing employment as a Massachusetts State Trooper at his time of representation.¹⁶⁴

Through our investigation, we established that Mr. Sprague did not request evidence on behalf of his client nor did he appear in court.¹⁶⁵ Had Mr. Sprague requested discovery, the evidentiary failings explored above, namely the second .45 caliber handgun on scene and the witness descriptions of Louis' killer, could have provided fertile ground for a defense.¹⁶⁶ This information would be vital to any defense attorney properly advising their client. Because the

prosecution has the burden to prove their case beyond a reasonable doubt, the complications presented by this evidence could raise doubt to a jury.¹⁶⁷ Additionally, instead of directly representing his client, Mr. Sprague employed other lawyers to appear at Mr. Bogues' arraignment and plea hearings.¹⁶⁸ Mr. Sprague's failure to appear in court on behalf of Mr. Bogues suggests either an indifference to his client, or a conflict of interest.

As part of our investigation, we briefly spoke with Mr. Sprague. He stated he retired in 1994—three years before Mr. Bogues hired him. Mr. Sprague declined to comment further, and we could not independently verify his retirement date. Regardless, Mr. Sprague did not adequately represent his client. He failed to appear in court and advised Mr. Bogues to accept a plea deal without requesting discovery. As a result, Mr. Bogues had no one to support and advise him during the investigation, indictment, and subsequent plea-bargaining process.

E. The Prosecution Manipulated the Plea Bargain Process

(i) Prosecutorial Discretion and Overcharging Tactics

Not only did Mr. Sprague fail Mr. Bogues by not requesting discovery, but his lack of representation allowed the prosecution to manipulate the plea process without oversight by Bogues' counsel. Prosecutors have broad discretion to charge defendants and offer plea bargains.¹⁶⁹ It is up to the prosecutor to decide who to charge and what level of offense to charge with.¹⁷⁰ However, an acknowledged problem with plea bargains is that defendants may be coerced into pleading guilty to a crime they did not commit.¹⁷¹ Prosecutors may do this by “overcharging” a defendant.¹⁷² For example, a prosecutor may charge a defendant for an offense with a mandatory minimum sentence; then, they may offer a plea bargain to a lesser offense with a shorter sentence.¹⁷³ Prosecutors can use their discretion in charging and plea bargaining with

little accountability. If prosecutors abuse their power, they are rarely named if their convictions are overturned, and almost never professionally disciplined.¹⁷⁴

Here, prosecutors charged Mr. Bogues with federal and state charges that both carried long mandatory minimum sentences. Then, prosecutors offered him a plea bargain—with a shorter sentence and the opportunity for parole—if he pleaded guilty to Louis' murder. They pressured him to make a decision by agreeing to remove the federal charges—and the chance of federal prison far away from his family—if he pleaded guilty.¹⁷⁵ Although this type of plea bargaining is a typical prosecutorial technique, it was inappropriate in a case like this with so much conflicting evidence and witness testimony. Because of the multiple shooters involved, it was not clear that a bullet from Mr. Bogues' gun killed Louis. Presenting Mr. Bogues this plea bargain encouraged him to plead guilty to a crime where there may not have been enough evidence to convict him at trial.¹⁷⁶ This is an injustice to Mr. Bogues, his family, and to Louis' family, all of whom deserved a complete investigation and answer as to who killed Louis.

III. Systemic Failures Post-Conviction

A. Judges Denied Charles Bogues' Appeals

Mr. Bogues attempted to appeal his guilty plea multiple times. He told us that he began looking into the evidence after whispers from people in prison who told him he did not shoot Louis.¹⁷⁷ He stated he did not know why people thought this, but it encouraged him to investigate his conviction. After reviewing his conviction files, he discovered the inconsistencies in evidence collection and the Grand Jury proceedings.¹⁷⁸ In 1999, Mr. Bogues filed a motion for a new trial, a motion to withdraw his guilty plea, request for appointment of new counsel, and a request for an evidentiary hearing.¹⁷⁹ The court denied all motions.¹⁸⁰

Following this denial, Mr. Bogues filed numerous requests for the discovery of evidence.¹⁸¹ The court granted Mr. Bogues' motion for funds so he could hire his own ballistics expert, who found evidence contradictory to what the prosecution had presented.¹⁸² Mr. Bogues alleged the following in his 2007 appeal: ineffective assistance of counsel, the prosecution's failure to present exculpatory evidence, and prosecutorial misconduct.¹⁸³ The Appellate judges denied his second appeal in 2007, and a third appeal in 2012.¹⁸⁴ The judges stated one of the reasons for denying the appeals was because the evidence was not "newly discovered" since it was "reasonably discoverable" earlier.¹⁸⁵ Additionally, the judge decided the evidence cited by Mr. Bogues did not "cast 'real doubt' on [his] culpability."¹⁸⁶ Furthermore, the judge wrote that Mr. Bogues' "claim is barred by his 'admi[ssion] in open court that he is in fact guilty of the offense.'"¹⁸⁷

Despite his lawyer's missteps, Mr. Bogues' appeals requests were denied. This prevented Mr. Bogues from presenting evidence at trial that his prior attorney omitted. In the end, Mr. Bogues did not have the opportunity for a new trial to fight to overturn his conviction.

B. District Attorney's Office Refused to Reopen Case

Chaplain Chéry informed us that she attempted multiple times to get the case reopened over the years, and that former Suffolk County District Attorney Rachel Rollins expressed interest.¹⁸⁸ However, before Ms. Rollins reopened the case, she left the office to become a United States Attorney. More recently in 2022, District Attorney Kevin Hayden's office declined to reopen the case. The Integrity Review Bureau, a division of the District Attorney's office tasked with investigating claims of wrongful conviction, found that the evidence supports Mr. Bogues' conviction.¹⁸⁹ The Integrity Review Bureau stated, "after a thorough review of Mr. Bogues'" files and submission, "the facts of the case amply support Mr. Bogues' conviction."¹⁹⁰ Additionally, the letter added that the Integrity Review Board was "not persuaded that Mr. Bogues' plea... was unreliable or unjust."¹⁹¹ At this point, there is no indication that Bogues' case will be reopened.

Conclusion

One word defines this investigation: failure. The failure of the Boston Police Department to accurately document, collect or process evidence. The failure of both the police and prosecutors to follow up with witnesses and follow the evidence. The failure of Mr. Bogues' lawyers to adequately represent him in court. And the failure of the media to call for justice, instead dramatizing Louis' death. As a result of these systemic failures, we are left with more questions than answers, and an unclear picture of what really happened on December 20, 1993.

The consequences of these failures are three-fold. First, Mr. Bogues faced an impossible choice: he could admit to murder for a reduced sentence or risk a lifetime in prison far away from home. Instead of a full and fair trial with his guilt assessed by a jury of his peers, Mr. Bogues was essentially forced into admitting his guilt by the prosecution's manipulation of evidence to portray him as the killer, and his counsel's inadequate advice. We do not argue that Mr. Bogues was innocent of his involvement in the murder of Louis Brown. Instead, we question if the bullet that killed Louis came from Mr. Bogues' gun. We question why he never received a fair trial. We question whether the aftermath and ensuing investigation created a mystery that will never be uncovered. We question why the other shooters were not charged. Consequently, Mr. Bogues will be on parole for the rest of his life and forever bear the title of murderer.

Second, as animated through this investigation, the failures of the criminal justice system threaten its legitimacy. Our investigation demonstrates numerous issues, ranging from the abuse of plea bargaining to the difficulty of victims in accessing support. In partnership with our investigation, we present a companion paper, [One Size Does Not Fit All: Transforming the](#)

Approach to Survivors of Homicide Victims in Massachusetts, detailing our recommendations to strengthen victims' rights and their access to resources.

Finally, Chaplain Chéry and her family are deprived of closure and certainty that the man who killed their loved one is held accountable. As noted above, Chaplain Chéry's doubts about Mr. Bogues' guilt pervade her life. Walking by the site of her son's murder every day, Chaplain Chéry is reminded of the life Louis could have lived and what was stolen from her.¹⁹² A seat that will never be filled remains at the dining room table. Her great loss cannot be mourned fully without resolving these lingering questions.

Appendix

A. Call to Action Flyer

Who Killed Louis?

New Evidence Sought in Local Murder
Louis D. Brown killed 29 years ago



December, 20 1993 at 3PM
On Geneva Ave, where Tonawanda and Waldeck Meet
If you or someone you know has any information
please contact

WhoKilledLouis@LDBpeaceinstitute.org

REFERENCES

- ¹ The Massachusetts' Victim Support System includes services to victims and their families in the wake of violence. More information about the system can be found here: <https://www.mass.gov/topics/victim-assistance>. Mass.gov, Victim Assistance (February 25, 2023, 12:30 pm), <https://www.mass.gov/topics/victim-assistance>.
- ² Interview with Charles Bogues, in Boston, Mass. (Oct. 12, 2022).
- ³ John Ellement, Plea bargain reported in Dorchester Slaying, *The Boston Globe*, Feb. 11, 1997.
- ⁴ Id.
- ⁵ Television Interview of Charles Bogues by Jim Braude (Greater Boston News Channel broadcast Feb. 7, 2022).
- ⁶ Commonwealth v. Bogues, 72 Mass. App. Ct. 1109 (2008).
- ⁷ Interview with Charles Bogues, in Boston, Mass. (Oct. 12, 2022).
- ⁸ John Ellement, Plea bargain reported in Dorchester Slaying, *The Boston Globe*, Feb. 11, 1997.
- ⁹ Interview with Charles Bogues, in Boston, Mass. (Oct. 12, 2022).
- ¹⁰ Harry A. Chernoff, Christopher M. Kelly, John R. Kroger, The Politics of Crime, 33 *Harv. J. On Legis.* 527, 551 (1996).
- ¹¹ See, e.g., Ewing v. California, 538 U.S. 11 (2003), (holding that sending a black shoplifter to prison for 25 years to life under the Three Strikes law did not violate the cruel and unusual punishment provision of the Constitution).
- ¹² Director Hemali Gunaratne, 2008 Crime Summary Report, The Boston Police Department Office Research and Development, 2008 at 5.
- ¹³ Deonna S. Turner, Crack Epidemic United States history [1980s], *Encyclopedia Britannica*, <https://www.britannica.com/topic/crack-epidemic>.
- ¹⁴ Police officers failed to track down one of the shooters involved in the 1991 Boston Chinatown massacre—a gang-related shooting that left five men murdered execution-style in an underground gambling den. Thirty years later, one shooter, Hung Tien Pham, roams free. Boston Chinatown Massacre, Federal Bureau of Investigation (Jan. 12, 2021), <https://www.fbi.gov/news/stories/30000-reward-for-fugitive-on-anniversary-of-1991-boston-chinatown-massacre-011221>.
- ¹⁵ Despite then-Mayor Raymond Flynn's attempts to examine allegations of brutality against the BPD, a “code of silence” or an unwillingness to report on a colleague's misconduct undermined efforts to create accountability or implement reform. Shielded from Justice: Police Brutality and Accountability in the United States, Human Rights Watch (June 1, 1998), <https://www.hrw.org/legacy/reports98/police/uspo46.htm>.
- ²⁰ John Ellement, Roxbury man who spent 7,380 days in prison for murder he says he did not commit looks toward new life, *The Boston Globe*, May 14, 2020.
- ¹⁷ Adrian Horton, Trial 4: how a teen spent 22 years in prison for a crime he didn't commit, *The Guardian*, Nov. 11, 2020.
- ¹⁸ Jeremy Siegel and Daniel Medwed, Shawn Drumgold's case had the hallmarks of a wrongful conviction, *GBH News*, July 19, 2022.

- ¹⁹ Toni Locy, Poor Police Work, The Boston Globe, Apr. 7, 1991.
- ²⁰ L. Kim Tan, 30 Years On, Carol DiMaiti Stuart's murder continues to haunt us, The Boston Globe, Oct. 20, 2019.
- ²¹ Id.
- ²² Toni Locy, Poor Police Work, The Boston Globe, Apr. 7, 1991.
- ²³ Telephone Interview with Toni Locy (Nov. 18, 2022).
- ²⁴ Toni Locy, A question of preparation: Inadequate groundwork by DA's office dooms some cases, The Boston Globe, Apr. 9, 1991, at 2.
- ²⁵ Id.
- ²⁶ Id. at 3.
- ²⁷ St. Clair Commission, Report of the Boston Police Department Management Review Committee, 1991 at 82.
- ²⁸ Id.
- ²⁹ Id. at 74.
- ³⁰ Id. at 7.
- ³¹ Id.
- ³² Telephone Interview with Toni Locy (Nov. 18, 2022).
- ³³ Id.
- ³⁴ Id.
- ³⁵ Sam T Levin, Polly Klaas's murder fueled the 90s crime panic. Her sisters fear 'we're repeating history.' The Guardian, Oct. 6, 2022.
- ³⁶ Arthur L. Sutton, Jr., Louis D. Brown Out of Violence Comes Inspiration, The People's Voice, Vol. 3, Issue 34, Apr. 18, 1997- May 1, 1997.
- ³⁷ John Ellement, Plea bargain reported in Dorchester slaying, The Boston Globe, Feb. 11, 1997.
- ³⁸ During Mr. Bogue's 1997 plea hearing at the Suffolk Superior Court, "Bogue said he wasn't aiming at Brown; he was just shooting [at the adversarial group of men firing at him]" and that he never saw Louis that day. John Ellement, Guilty plea given in gang-fight murder, The Boston Globe, Mar. 13, 1997.
- ³⁹ Interview with Charles Bogue, in Boston, Mass. (Oct. 12, 2022).
- ⁴⁰ See Id.
- ⁴¹ See Transcript of Grand Jury Re: Charles Bogue at 51:10, 60:5-6, 61:5-6, Commonwealth v. Bogue, SUCR97-10281 (Suffolk Super. Ct.) (1997).

- ⁴² See Id. at 60:21-23
- ⁴³ See Interview with Charles Bogue, in Boston, Mass. (Oct. 12, 2022).
- ⁴⁴ See Jason B. Johnson, Civic Minded Teen Caught in Crossfire, The Boston Globe, Dec. 23, 1993.
- ⁴⁵ See Interview with Chaplain Clementina Chéry, in Boston, Mass. (Sept. 28, 2022).
- ⁴⁶ See Jason B. Johnson, Civic Minded Teen Caught in Crossfire, The Boston Globe, Dec. 23, 1993.
- ⁴⁷ See Id. at Line 23.
- ⁴⁸ See Id., at 64, Lines 12-13; 65, Lines 20-22.
- ⁴⁹ See Id. at 16, Lines 1-6.
- ⁵⁰ See Id.
- ⁵¹ See Tr. of Interview by Det. Kenneth Dorch with Eyewitness “William”, in Boston, Mass (Dec. 23, 1993).
- ⁵² See Id.
- ⁵³ See Id.
- ⁵⁴ Interview with Charles Bogue, in Boston, Mass. (Oct. 12, 2022).
- ⁵⁵ Id.
- ⁵⁶ Confirmation Hearing on the Nominations of Ralph F. Boyd, Jr. and Robert D. McCallum, Jr. to be Assistant Attorneys General, May 23, 2001, 23.
- ⁵⁷ Id.
- ⁵⁸ Id.
- ⁵⁹ John Ellement, Plea Bargain Reported in Dorchester Slaying Bogue to Admit Shooting Youth: City Edition. The Boston Globe, Feb. 11, 1997, 1.
- ⁶⁰ Interview with Charles Bogue, in Boston, Mass. (Oct. 12, 2022).
- ⁶¹ Br. for the Commonwealth at 10, Commonwealth v. Bogue, 51 Mass. App. Ct. 1114 (2001) (No. 2000-P-387).
- ⁶² Id.
- ⁶³ MASS. GEN. LAWS ch. 265, § 2.
- ⁶⁴ Tr. of Plea Colloquy at 3, Bogue, No. SUCR97-10281 (Suffolk Super. Ct.).
- ⁶⁵ Interview with Charles Bogue, in Boston, Mass. (Oct. 12, 2022).
- ⁶⁶ Id.

⁶⁷ Mr. Sprague denied that he was a State Trooper at the time of his representation of Mr. Bogues and stated that he had retired from the police force before taking on Mr. Bogues's case. Telephone Interview with John Sprague (January 27, 2023).

⁶⁸ Interview with Charles Bogues, in Boston, Mass. (Oct. 12, 2022).

⁶⁹ Id.

⁷⁰ Id.

⁷¹ Br. for the Commonwealth at 12, Bogues, 51 Mass. App. Ct. 1114 (No. 2000-P-387).

⁷² Interview with Charles Bogues, in Boston, Mass. (Oct. 12, 2022).

⁷³ Id.

⁷⁴ Id.

⁷⁵ Tr. of Grand Jury Re: Charles Bogues at 29, Bogues, SUCR97-10281 (Suffolk Super. Ct.).

⁷⁶ Id.

⁷⁷ Police Rep. of Sergeant Detective Daniel J. Downey at 2, Bogues, 72 Mass. App. Ct. 1109 (No. 07-P-512).

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ Id. at 2-3.

⁸¹ Ballistic Rep. of Bos. Police Off. John C. Seay at 1-2, Bogues, 72 Mass. App. Ct. 1109 (No. 07-P-512).

⁸² Police Rep. of Sergeant Detective Daniel J. Downey at 2-3, Bogues, 72 Mass. App. Ct. 1109 (No. 07-P-512).; Ballistic Rep. of Bos. Police Off. John C. Seay at 1, Bogues, 72 Mass. App. Ct. 1109 (No. 07-P-512).

⁸³ Police Rep. of Sergeant Detective Daniel J. Downey at 1-3, Bogues, 72 Mass. App. Ct. 1109 (No. 07-P-512).

⁸⁴ Det. John C. Seay. Ballistic Rep. of Bos. Police Off. John C. Seay at 1, Bogues, 72 Mass. App. Ct. 1109 (No. 07-P-512).

⁸⁵ Cracking the Case: The Crime-Solving Promise of Ballistic Identification provides the listed terms, definitions, and graphic. The Educational Fund to Stop Gun Violence, Cracking the Case: The Crime-Solving Promise of Ballistic Identification, The Educational Fund to Stop Gun Violence, 3 (June, 2004), <http://efsgv.org/wp-content/uploads/2013/06/Cracking-the-Case-Report.pdf>.

⁸⁶ Ballistic Rep. of Bos. Det. John C. Seay at 1-2, Bogues, 72 Mass. App. Ct. 1109 (No. 07-P-512).

⁸⁷ Grand Juror Instructions and Information at 1, Commonwealth of Massachusetts Office of Jury Commissioner (Dec. 2021).

⁸⁸ Linda M. Poulos, Massachusetts Grand Jury Primer: A Glimpse of Grand Jury Practice, Boston Bar Association, (July, 2015).

⁸⁹ Id.

⁹⁰ Id.

⁹¹ Id.

⁹² Id.

⁹³ Id.

⁹⁴ Mass R. Crim. P. 5.

⁹⁵ Commonwealth v. O'Dell, 392 Mass. 445, 450-52 (1984).

⁹⁶ O'Dell, 392 Mass. at 450-51.

⁹⁷ Mass R. Crim. P. 5.

⁹⁸ Commonwealth v. McCarthy, 385 Mass. 160, 160-164 (1982).

⁹⁹ This version of the Mass. Rules of Criminal Procedure applies to cases after 2004. We could not find an earlier version. But McCarthy is a 1982 case and O'Dell is a 1984 case, so we rely on case law for this guideline to apply to the 1997 Grand Jury proceeding.

¹⁰⁰ O'Dell, 392 Mass. at 450-52.

¹⁰¹ McCarthy, 385 Mass. at 160-164.

¹⁰² Tr. of Grand Jury Re: Charles Bogues at 1, Bogues, SUCR97-10281 (Suffolk Super. Ct.).

¹⁰³ Ballistician, Merriam-Webster.com, (last visited Feb. 19, 2023), <https://www.merriam-webster.com/dictionary/ballistician>.

¹⁰⁴ Ballistic Rep. of Bos. Police Off. John C. Seay at 1-2, Bogues, 72 Mass. App. Ct. 1109 (No. 07-P-512).

¹⁰⁵ Tr. of Grand Jury Re: Charles Bogues at 73, Bogues, SUCR97-10281 (Suffolk Super. Ct.).

¹⁰⁶ Id. at 74.

¹⁰⁷ Id.

¹⁰⁸ Tr. of Grand Jury Re: Charles Bogues at 77-79, Bogues, SUCR97-10281 (Suffolk Super. Ct.).

¹⁰⁹ Id. at 74:18-23, 81:17.

¹¹⁰ Ballistic Rep. of Bos. Police Off. John C. Seay at 1-2, Bogues, 72 Mass. App. Ct. 1109 (No. 07-P-512).

¹¹¹ Aff. of James McGuinness at 2, Bogues, 72 Mass. App. Ct. 1109 (No. 07-P-512).

¹¹² Aff. of James McGuinness at 2, Bogues, 72 Mass. App. Ct. 1109 (No. 07-P-512).

¹¹³ Tr. of Grand Jury Re: Charles Bogues at 74, Bogues, SUCR97-10281 (Suffolk Super. Ct.).

- ¹¹⁴ Serg. Det. James O'Shea Ballistics Unit Rep., Bogues, 72 Mass. App. Ct. 1109 (No. 07-P-512).
- ¹¹⁵ Id. at 2.
- ¹¹⁶ Id. at 3.
- ¹¹⁷ Ballistic Rep. of Bos. Police Off. John C. Seay at 1-2, Com. v. Bogues, 72 Mass. App. Ct. 1109 (2008) (No. SUCR97-10281).
- ¹¹⁸ Antonio E. Boschetti, M.D., Forensic Pathologist, Autopsy Report of Louis D. Brown at 3-4, Com. of Mass. Office of the Chief Medical Examiner (Dec. 21, 1993).
- ¹¹⁹ Id. at 3.
- ¹²⁰ See Ballistic Rep. of Bos. Police Off. John C. Seay at 2, Com. v. Bogues, 72 Mass. App. Ct. 1109 (2008) (No. SUCR97-10281); See also Police Rep. of Sergeant Detective Daniel J. Downey at 3, Com. v. Bogues, 72 Mass. App. Ct. 1109 (2008) (No. SUCR97-10281).
- ¹²¹ Serg. Det. James O'Shea Ballistics Unit Rep. at 2, Com. v. Bogues, 72 Mass. App. Ct. 1109 (2008) (No. SUCR1797-10281).
- ¹²² Antonio E. Boschetti, M.D., Forensic Pathologist, Autopsy Report of Louis D. Brown at 3-4, Com. of Mass. Office of the Chief Medical Examiner (Dec. 21, 1993).
- ¹²³ Grand Jury Suffolk County Re: Charles Bogues at 74, Com. v. Bogues, 72 Mass. App. Ct. 1109 (2008) (No. SUCR1797-10281).
- ¹²⁴ Id. at 78.
- ¹²⁵ Ballistic Rep. of Bos. Police Off. John C. Seay at 2, Com. v. Bogues, 72 Mass. App. Ct. 1109 (2008) (No. SUCR97-10281).
- ¹²⁶ Grand Jury Suffolk County Re: Charles Bogues at 77, Com. v. Bogues, 72 Mass. App. Ct. 1109 (2008) (No. SUCR1797-10281).
- ¹²⁷ Ballistic Rep. of Bos. Police Off. John C. Seay at 1, Com. v. Bogues, 72 Mass. App. Ct. 1109 (2008) (No. SUCR97-10281).
- ¹²⁸ Id.
- ¹²⁹ Bos. Police Rep. of Police Off. Timothy A. Smith at 1, Com. v. Bogues, 72 Mass. App. Ct. 1109 (2008) (No. SUCR97-10281).
- ¹³⁰ Bos. Police Rep. of Police Off. Mayfield H. Holliday at 1, Com. v. Bogues, 72 Mass. App. Ct. 1109 (2008) (No. SUCR97-10281).
- ¹³¹ See Bos. Police Rep. of Police Off. Timothy A. Smith at 1, Com. v. Bogues, 72 Mass. App. Ct. 1109 (2008) (No. SUCR97-10281); See also Bos. Police Rep. of Police Off. Mayfield H. Holliday at 1, Com. v. Bogues, 72 Mass. App. Ct. 1109 (2008) (No. SUCR97-10281).
- ¹³² Serg. James O'Shea Ballistics Unit at 2, Com. v. Bogues, 72 Mass. App. Ct. 1109 (2008) (No. SUCR1797-10281).

133 Exhibit 5 - Statement of Eyewitness “William” to Homicide Detectives, Dec. 23, 1993, at 2.

134 Id.

135 Id. at 6, 14.

136 Id. at 9-16.

137 Exhibit 5 at 14.

138 Exhibit 2 - Boston Police Report of Eyewitness Margarida Duarte (Exhibit 2).

139 Exhibit 5 at 13.

140 Id. at 15.

141 Id.

142 See generally Steven J. Frenda, Kimberly M. Fenn, Sleep less, think worse: The effect of sleep deprivation on working memory. *J. of Applied Rsch. in Memory and Cognition*, 5(4), 463–469 (2016); See also Alice G. Walton, How Sleep Deprivation Messes with Your Memory: Study, *Forbes*, October 2, 2018 (explaining that lack of sleep is a major reason for human error) at <https://www.forbes.com/sites/alicegwaltton/2018/10/02/sleep-deprivation-makes-it-harder-to-deal-with-distractions/?sh=11da3d76788d>.

143 Grand Jury Minutes, 64:13-16.

144 Id.

145 Id. at 65:13-22.

146 Id. at 66:2-7 (Emphasis added).

147 Id. at 51:10, 61:23.

148 Id. at 37:9-12.

149 Id. at 16:1-6.

150 Exhibit 2 at 5.

151 Id. (Internal quotations omitted).

152 Id.

153 Id. at 4.

154 Id.

155 Id. at 5-6.

156 Id. at 4.

157 Id. at 13.

158 Id. at 13.

159 Tr. of Grand Jury Re: Charles Bogues at 14:8-9, Bogues, SUCR97-10281 (Suffolk Super. Ct.).

160 The BPD purportedly interviewed Ms. Acevedo twice—once shortly after the murder and again, years later, in preparation for the Grand Jury hearing. The detective who initially interviewed Ms. Acevedo (Detective Dorch) and documentation of the original interview transcript was absent from the Grand Jury hearing. Hence, there was no way to cross-reference or corroborate the information from both interviews.

161 Grand Jury Minutes at 64:13-16.

162 See Annabel Rodriguez, NOTE: SEEING IS BELIEVING: SHOULD MASSACHUSETTS COURTS ADOPT SJC RECOMMENDATIONS FOR EYEWITNESS TESTIMONY?, 21 Suffolk J. Trial & App. Adv. 85, 99-100 (2016) (Citing several factors that affect the reliability of eyewitness testimony including (1) memory loss, (2) the amount of time between the event and the identification, and (3) if a witness is exposed to opinions, descriptions, or other information that could influence the identification).

163 See CRIMINAL JUSTICE STANDARDS Prosecution Function, American Bar Association, Standard 3-4.5(a) & (c) Relationship with a Grand Jury.

164 Interview with Charles Bogues, in Boston, Mass. (Oct. 12, 2022).

165 See Com. v. Bogues, Case Summary Criminal Docket, SUCR 1997-10281 (May 24, 2010).

166 See Transcript of Grand Jury Re: Charles Bogues at 64, Supra, Lines 12-13, Commonwealth v. Bogues, 72 Mass. App. Ct. 1109 (2008) (No. SUCR1797-10281).

167 See Patterson v. New York, 432 U.S. 197, 202 (1977)

168 See Interview with Charles Bogues, in Boston, Mass.; see also Transcripts of Proceedings Plea Colloquy, page 2, March 12, 1997, SUCR97-10281, and see Bogues, Case Summary Criminal Docket (named defense attorney Underhill).

169 Elizabeth Hinton, An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System, Vera Institute of Justice, 2018, at 8.

170 Id.

171 Angela J. Davis, The Power and Discretion of the American Prosecutor, Droit et cultures, 2005, at 4.

172 Id.

173 Id.

174 Shawn Musgrave, Prosecutors Who Break the Rules Go Unpunished, at 2, April 3, 2016.

175 Interview with Charles Bogues, in Boston, Mass. (Oct. 12, 2022).

¹⁷⁶ If this went to trial, there is a possibility that Mr. Bogue could have been convicted under the felony-murder doctrine. To prove felony-murder, the prosecution must prove the defendant committed or attempted to commit a felony, and in doing so the defendant (or a person participating with him) caused the death of the victim, and the defendant created the likelihood that the victim's death would occur. See Model Jury Instructions on Homicide: IV. Murder in the first degree, Massachusetts Court System (April, 2018) <https://www.mass.gov/info-details/model-jury-instructions-on-homicide-iv-murder-in-the-first-degree#c.-felony-murder-in-the-first-degree->.

¹⁷⁷ Interview with Charles Bogue, in Boston, Mass. (Oct. 12, 2022).

¹⁷⁸ Id.

¹⁷⁹ Exhibit 1 at 2.

¹⁸⁰ Id.

¹⁸¹ Appeals Court Brief at 3, 2007.

¹⁸² Id. at 8.

¹⁸³ Id. at 1-2.

¹⁸⁴ Commonwealth v. Bogue, 463 Mass. 1106, 2012.

¹⁸⁵ Appeals Court Rule 1-28 Decision – 2008 at 2.

¹⁸⁶ Id.

¹⁸⁷ Id.

¹⁸⁸ See Interview Notes.

¹⁸⁹ Integrity Unit Denial Letter, 2022 at 1 (2022).

¹⁹⁰ Id.

¹⁹¹ Id.

¹⁹² See Interview Notes.



LOUIS D. BROWN PEACE INSTITUTE

Center of Healing, Teaching and Learning



Northeastern University
School of Law

This report was produced by Northeastern University law students in partnership with the Louis D. Brown Peace Institute.

For more information, please visit
www.ldbpeaceinstitute.org.