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## **CONVICTION REVIEW UNIT MEMORANDUM**

**FROM:** Arielle Demby Berger  
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Conviction Review Unit (CRU)

**DATE:** **April 2, 2020**

**RE:** State v. Leonard Cure  
Case No.:03-019405CF10A  
CRU 2019-03  
Original Charge(s): Robbery with a Firearm  
Count II: Aggravated Assault with a Firearm  
Original Sentence November 3, 2004: Life in Prison

### **Leonard Cure 03-019405CF10A**

**Recommendations:** Recommendation to modify the original sentence of life in prison. Defendant sentence modified to 16 years HOQ with 10 years min/man possession of firearm count 1, 15 years count 2- credit for all time served (need to waive PRR for count 1, count 2 has been satisfied) this will not be used against Mr. Cure in his subsequent case review and/or presentation to the Independent Review Panel (IRP) by the CRU. The case review/presentation to the IRP will consider all forms of remedy through and including possible exonerations on one or both counts. This will allow for the Defendant to be released after serving a significant amount of time, 16 years + in prison, while we can fully assess his case.

\* See **Statement of Facts** for Details and Timelines

### **EYEWITNESS IDENTIFICATION**

The only evidence tying Leonard Cure to the crime was witness identification.

### **Witnesses:**

**1. Deputy Connie Bell:** Approximately 2 weeks to 2 months prior to the robbery, Deputy Bell was reviewing all new criminal registrants/prison/jail releasees in Dania Beach and she was assigned Leonard Cure. Cure was required to register in Broward County as he recently moved here from Miami-Dade. She met him at his residence without incident (she would go through a list of registrants daily as part of her duties.)

On the morning of the robbery, November 10, 2003, Deputy Bell was assigned to monitor the school zone in front of Dania Elementary School which was one business south of Walgreens, [Trial Transcript p. 241-242.] Approximately between 7-8AM she sees a black male walk in front of her patrol car. She sees him walking with a boy that she is familiar with. The boy typically walks this route to school with his sister daily, however on this date the boy was without his sister and was walking with the black male, [Deposition p.6.] The black male is wearing blue jean shorts, a blue jean jacket and a red baseball cap, [Trial Transcript p. 243.] At approximately 7:24 AM a dispatch regarding a robbery went out. Deputy Bell arrives at the scene of the robbery. The description is a black male wearing blue jeans and a jacket. Deputy Bell does not mention seeing the man match the BOLO walk past her that day. It isn't until a few days later that she puts two and two together that she saw the suspect walk by, [Deposition p. 14.]

A few days after the crime occurred, Bell stated that she and her boss Lt. Barbara Stewart worked to find the suspect looking through records until they found the right person, [Trial Transcript p. 250.] (see section on the "TRAP" program below.) It was then a few days later that Bell said it was Leonard Cure, whom she had met before. She then contacted Detective Jeff Mellies and told him the name and that she could help ID him, [Bell Deposition p. 15-16.] She did not initially realize that the suspect was the person she saw walk in front of her car, nor did she realize that it was Leonard Cure until Lt. Stewart gave her the name, [Trial Transcript p. 250.]

**CRU Investigation:** Deputy Bell is deceased and therefore we can only rely on her statements, deposition, and both trial testimonies.

**2. Victim Rizk:** Ashraf Rizk was the manger of the Walgreens. On the morning of November 10, 2003, he arrived around 7:00AM and saw the suspect outside of Walgreens wearing long jean shorts, a long denim jacket and a red baseball cap. Rizk approached the man and asked if he needed anything and the man referred to getting his kid on the bus, [Trial Testimony p. 350.] Rizk then began his normal routine of opening store.

At approximately 7:15 AM, Rizk began to open the door for his clerk, Kathy Venhuizen. Venhuizen began to make a commotion to close the door and during that time the suspect started to push his way into the door. Rizk began to push and punch the suspect to keep him from entering. Despite Rizk's efforts, the suspect got in. Rizk was still punching him and Venhuizen was screaming about him having a gun. The perpetrator showed his gun and said that he would blow Rizk's head off, [Trial Transcript p. 250-253.]

The robbery ensued and Rizk was the one to open the safe for the suspect and give him approximately \$1,700.00. At approximately 7:24 AM, the perpetrator left through the front exit and Venhuizen called the police. Rizk was understandably very shaken up.

On November 12, 2003, both Rizk and Venhuizen met with Detective Fernando Gajate to work on a composite sketch of the suspect. They ended up working on it together with Det. Gajate, who was not a trained sketch artist. Rizk and Venhuizen argued over it, [Trial Transcript p. 296.] "Kathy did most of the talking," in relation to the composite, [Trial Transcript p. 359.]

On November 19, 2003, Rizk was asked to view a photo lineup. Detective Jeff Mellies from BSO was the robbery detective assigned this case. They met outside of Davie Police Department (it was near Venhuizen's home.) He first met with Venhuizen and then after with Rizk in his BSO patrol

car in the Davie PD parking lot, [Trial Testimony p. 361.] Rizk was shown the lineup and he narrowed it down between number 3 and number 6, [Trial Testimony p. 362] (Leonard Cure is number 3.) It took Rizk at least a few minutes and he was not 100% sure.

Det. Mellies said that Rizk said the complexion was off, so he went to his folder and got a second batch of photos, [Trial Transcript p. 517.] The second batch of photographs were all 4 photos of Leonard Cure from DAVID (Driver and Vehicle Information Base.) Rizk looked at the same copy of the second set that Venhuizen looked at first but Det. Mellies bent it down and only showed Rizk the top three on the page since Venhuizen circled number 4 on the bottom half, [1<sup>st</sup> Trial Transcript Excerpt of Mellies p. 14.] When Mellies showed the 2nd set of pictures to Rizk, he said he had 2 pieces of paper to cover the DAVID markings and Venhuizen's signature, [Trial Transcript p. 523.] Rizk didn't even know that the second set was all the same person, Leonard Cure. Rizk said "I thought they are 3 different people," [Trial Transcript p. 343-345.]

Rizk testified that he did not select a photo from the first lineup<sup>1</sup>, [Trial Transcript p. 362.] Det. Mellies said he circled it and put initials, [Trial Transcript p. 519.] During rebuttal testimony of Det. Mellies he says "his wife," (Rizk's wife) was in the backseat during the identification, [Trial Transcript p. 514.]

**CRU Investigation:** It should be noted that Rizk was called as a State witness in the Motion to Suppress and the first Trial. He was not called as a witness by the State in the second trial, but rather as a defense witness. It is clear from all of the transcripts that he had a more difficult time with identification. I, along with our Victim Advocate, Nancy Tanner, called and spoke to Mr. Rizk. He made it very clear that he does not want to speak to us. He has no opinion about Leonard Cure and that we should never contact him again.

**3. Victim Venhuizen:** Kathy Venhuizen was a clerk for Walgreens. On the morning of November 10, 2003, Venhuizen arrives at approximately 7:15AM for work. She sees her boss's car (Rizk), and the suspect standing in the parking lot. He asked what time the store opened and Venhuizen said 8:00AM, [Trial Testimony p. 275.] Venhuizen goes to the door and the suspect does too, she again says that the store doesn't open until 8AM but then he pulled out a gun. He is wearing long blue jean shorts (not shorts but not pants), a long denim jean jacket with pockets (something she describes as "painter's coat,") white gym shoes and a red baseball cap, [Trial Transcript p. 278.]

When Venhuizen saw Rizk coming to the door, she tried to signal to him that she was being held at gun point, [Trial Transcript p. 280.] Venhuizen's efforts were unsuccessful as Rizk proceeded to open the door; at which time Ms. Venhuizen ran in yelling at him to close, and lock, the door quickly, [Trial Transcript p. 281.] However, this was to no avail because the perpetrator made entry anyway. The robbery ensued and Rizk was the one to open the safe for the suspect and give him approximately \$1,700.00.

While the robbery occurred Venhuizen stated that she continued to take a look at the suspect so she could remember his face. He saw her looking and yelled "I told you to put your fucking face on that floor," which is when she noticed he had missing teeth. Mr. Rizk did not remember seeing any missing teeth, [Trial Transcript p. 286.] At approximately 7:24 AM, the perpetrator left through the front exit and Venhuizen called the police.

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<sup>1</sup> Rizk's confusion may have been a result of the fact that he testified at sworn statements, a deposition, a Motion to Suppress and two trials.

On November 12, 2003, both Rizk and Venhuizen met with Detective Fernando Gajate to work on a composite sketch of the suspect (see above.) Venhuizen said parts of the composite were inaccurate. She said the cheeks were too full, not accurate, her Deposition p. 34. "I told him the face was not full like that at all," [Trial Transcript p. 292.] Rizk and Venhuizen argued over it. She says he was missing teeth on left side of face, [1<sup>st</sup> Trial Transcript Excerpt p. 39.] Venhuizen in her own words describes him as Black, American, male, no accent, 5'8-5'9 stocky, [Taped Statement with Police, p. 15.] She was very certain that he was missing teeth. "Missing teeth on this side, like a vicious animal," [Trial Transcript p. 286.]

Venhuizen was the first to meet with Det. Mellies on November 17, 2003. They met in the Davie Police Department parking lot in his car. He showed Venhuizen the line-up and she had an easier time of identifying Leonard Cure. While she picked Cure, she was concerned that it was not the right skin tone. "It took me seconds, as soon as I got to the 3<sup>rd</sup> picture I told Det. Mellies this is the face, this is the man but the skin is darker than the picture is showing," [Trial Transcript p. 299.] It was then when Det. Mellies showed her the DAVID line-up for Cure with all 4 photos of him. She said, "that's the face," talking about skin color, [Trial Transcript p. 301.]

**CRU Investigation:** Kathy Venhuizen is deceased and therefore we can only rely on her statements, deposition, and both trial testimonies. I reached out to her husband. He was very friendly and stated that Venhuizen did not express any doubts to him.

### **Motion to Suppress:**

On May 10, 2004, Judge Backman heard both the Motion to Suppress Identification and Motion to Suppress Physical Evidence. The Defense's Motion to Suppress Physical evidence was regarding the search of Cure's residence after his arrest. Items seized were "Black Jean Bugle Boy Jacket and Shorts," according to the evidence log from the Clerk's Office. After the Motion to Suppress the Physical Evidence was granted, the items were returned and no picture was retained of them.

The Motion to Suppress the Identification included statements from both Rizk and Venhuizen. Judge Backman ruled that the line-up was unnecessarily suggestive, but not so suggestive as to cause a substantial likelihood of misidentification. He wrote in his Order Denying the Motion to Suppress the Identification:

"Based on the evidence presented, which includes the photo arrays and the testimony of the witnesses, this Court finds that the photo lineup at issue was **unnecessarily suggestive**. In the photo array, the Defendant was the only subject wearing a gray shirt. Additionally, the two eyewitnesses, Ashraf Rizk and Kathy Van Heusen (sp), prepared a sketch of the robbery suspect together. However, both testified that **they disagreed with each other regarding specific features of the sketch**. Because this Court finds suggestiveness in the identification procedure, this Court must determine whether there exists a substantial likelihood of misidentification, the second prong of the *Neil v. Biggers* test. This Court finds that Ms. Van Heusen's (sp) out of court identification was reliable . . . . This Court also finds that Mr. Rizk's out of court identification was reliable . . . . Having considered

all the circumstances, this Court finds that Mr. Rizk's photo array identification did not give rise to a substantial likelihood of irreparable misidentification.”

Order Signed July 26, 2004.

**CRU Investigation:** I went to the Clerk’s Office to view all the evidence and only a piece of paper describing the “Black Jean Bugle Boy Jacket and Shorts,” remains. Cure states that he did not want the items to be suppressed since they bear no resemblance to the clothing worn by the perpetrator, as described by witnesses. He wanted to use the clothing in support of his innocence claim. He further describes them as a “black designer jacket with paint splatter design.” We do not have any proof other than the Clerk’s log of black jacket and shorts. All the State witnesses describe a blue jean jacket (long like a painter’s coat) and long blue jean shorts. The defense attorney never asked about this clothing in either witness depositions or the suppression hearing. Officers seized these clothes, November 20, 2003, 10 days after the crime occurred. Relevancy could have been argued. Further the prosecutor agreed that the manner in which the clothing was found was not due to exigent circumstances and should not have been seized, as there was no warrant and no other warrant exceptions applied. He was very upfront with the Court and conceded, “and it's the State's position at this time, that legally and strategically we don't even want this to be an issue if there is a conviction on this case. So, we're going to concede to the motion to suppress physical evidence and not object to the granting of that motion,” [Motion to Suppress Argument Excerpt p.16.]

As of 2020, photo lineup procedures have greatly improved. There would likely be a single photo of 6 individuals shown one after each other in a double-blind lineup. Some police departments would videotape the lineup.

### **“TRAP” PROGRAM:**

How Cure was identified as the perpetrator was the most contested issue of this case. After the robbery occurred, Lt. Barbara Stewart stated that she went onto the computer to search a program called TRAP, which is a program that had the information and photographs of people that have been arrested, or were on prisoner release, and lived in the area, [Stewart Deposition p. 4-6.] Lt. Stewart stated that the female victim, Venhuizen, was very impressed by how well the man was dressed and how neatly he kept himself, so she went through pictures until she found a man who looked like he really cared about his appearance; that man happened to be Cure, [Stewart Deposition p. 7-8.] Lt. Stewart then contacted Detective Jeff Mellies, the detective assigned the robbery, and informed him of the picture she had found and also informed Deputy Bell of the picture.

**CRU Investigation:** In the course of figuring out what the TRAP program was I reached out to both current and former employees of BSO. I have spoken to Captain Sileo on several occasions as he is currently employed by BSO and was tasked with assisting me. He advised that retired Chief Peter Sudler helped design the program and could assist, so I reached out to him. I also spoke to retired Captain Barbara Stewart (she was a Lieutenant during this case.)

TRAP stood for “Track Repeat Arrestees Program.” They believe the program started during the early 2000’s and ended shortly after the Powertrac scandal, approximately 2004. The atmosphere at the time was described as a “relentless follow-up of people.” Powertrac caused pressure to be felt by all districts especially when it came to solving burglaries and robberies. TRAP was made with the use of IT to develop a system in which a list of known offenders and recent probable cause affidavits were entered into a Microsoft Access database. It was described that before BSO had its own internal data collection, they needed something to track or watch the whereabouts of repeat offenders.

Captain Sileo has a version of TRAP that was archived available to him, similar to microfiche. Sileo has searched for Leonard Cure in their archived TRAP program on two occasions with me on the phone. He was never able to find Leonard Cure in their TRAP program. He also thought that maybe Lt. Stewart was mistaken about searching TRAP based on the following exchange during her Deposition p.6.

A. I went up on to Sergeant Green's computer, we have a program called TRAP and it's comprised of photographs of people we've arrested and prisoner releasees.

Q. What is the program TRAP? How does it work and who gives you the information to put into the program?

A. It's put in by either the probable cause affidavits that we have in the office of people we've arrested and prisoner releasees come from the corrections website.

Both Captain Sileo and Chief Sudler said you could not search TRAP by a keyword. In addition, there was an earlier program called Legacy. Legacy data is saved as well similar to microfiche. Captain Sileo checked Legacy, TRAP, and FI (Field Interview Data) and the name Leonard Cure with any variation of his name and he does not appear in any of those systems. I had Captain Sileo review all of the photos in evidence. Leonard Cure’s lineup photo is from DOC (the Department of Corrections) website. He can recognize the blue background as standard DOC.

Captain Sileo was able to locate pictures of Leonard Cure in the current search system “BSOinformant.” There are two pictures. One is a criminal registrant picture and the other is BSO Pics. These photos are dated September 11, 2003. Both are similar to mug shot photo which shows only a small portion of his shirt. One is a black shirt and the other is black and white striped shirt. Neither of these pictures reflect a “man who cares about his appearance or neatly dressed.” In fact, the black and white striped shirt is open and an undershirt can be seen, the opposite of appearing neat.

Additionally, there were no probable cause affidavits for Leonard Cure in Broward County to scan into any local program. He became a criminal registrant because he re-located to Broward County after his prior cases. (Miami-Dade and Orange County.) That would be the explanation for his photo being in any database. The facts of his prior robbery have no similarities to this crime. It was a Robbery by Sudden Snatching, he grabbed a woman’s purse and fled. (It became a third-degree crime in 1999 but in 1990 it was a second degree, hence his 10-year prison sentence.)

Finally, I contacted Captain Stewart. She was very helpful and reviewed her deposition. It did not jog her memory about the search for Cure and the TRAP program. She did mention this program to another retired officer. She suggested that they did have a program called the "RAP" program and maybe the stenographer wrote "TRAP" instead of "RAP." I followed up with Captain Sileo. He advised:

We did have a RAP program at the time, but it was not a database per se...it was an acronym for Robbery Apprehension Program whereby convenience stores were required to either have two people working at all times, or cameras in certain places that recorded events. Our RAP specialist would keep merchants in compliance by inspections.

His explanation clears up that Cure was not identified through the RAP program either. It is clear that Leonard Cure was not identified through the "TRAP" program. There may have been another database that was searched or that DOC photos were reviewed. I am not sure how he was identified based on the statements of searching for a well-dressed, neat, male who cared about his appearance. We do not have the full specifics of the TRAP program. I have requested any formal SOPs and documentation on the program. I believe the system of searching criminal registrants is legal, F.S.775.13. However, I do not know how this particular search was conducted. Cure's Defense Counsel asked during Stewart's Deposition if they have received any complaints from ACLU, which to the best of Stewart's knowledge, they did not. The defense should have pursued this identification and program more thoroughly. The data at the time could have led to questions about a lawful identification and subsequent line-ups.

## **MISSING EVIDENCE, INCONSISTENT EVIDENCE, AND ADDITIONAL QUESTIONS:**

**The "Boy":** An eye witness to the identification of the suspect was a school-aged boy who attended Dania Elementary School. He could provide a vital piece of information in this case.

On the morning of the robbery, November 10, 2003, Deputy Bell was assigned to monitor the school zone in front of Dania Elementary School (300 block of South Federal Highway) which was one business south of Walgreens, [Trial Transcript p. 241-242.] Approximately between 7-8AM she sees a black male walk in front of her patrol car. She sees him walking with a boy that she is familiar with. The boy typically walks this route to school with his sister daily, however on this date the boy was without his sister and was walking with the black male, [Deposition p.6.-7.]

**Q.** Was he with someone?

**A.** There was a little boy he came into contact with later.

**Q.** Tell me how that happened?

**A.** What happened was, the subject was walking northbound when he passed the front of my car. There is a little boy that walks passed my unit every morning with his sister. So he stopped and talked to the little boy and I thought that was odd and I was wondering where this kid's sister was because he's never by himself.

Q. You see this little boy every day or almost every day?

A. Almost every day.

Q. You didn't see the little boy with the sister on this day?

A. No. And I thought it was odd.

[Bell Deposition p. 7.] Bell goes on to explain that the boy is elementary school aged and she believes that he goes to Dania Elementary School. She was asked if she or any other officer went to school to look for the boy and she says she didn't. She also indicated that if she saw the boy again that she would recognize him.

Q. Have you seen him since?

A. No. I haven't seen him since that time, no.

Q. Is that unusual? You saw him all the time before.

A. Yes. I wondered what happened to him, but I haven't seen him since this incident.

Q. So that little boy would be a crucial witness as to who the person was who he came in contact with?

A. Yes.

[Bell Deposition p. 7-8.] Rizk also mentions a boy. In his sworn statement to police Rizk saw the suspect in the parking lot. He asks what time the store opens and Rizk answers 8AM. The suspect says "He's watching for his kid... His kid is getting on the bus." Rizk approached the man and asked if he needed anything and the man referred to getting his kid on the bus, [Trial Testimony p. 350.]

On the same day that Bell gave her deposition, Det. Mellies gave his deposition as well. It directly contradicted Bell's statement regarding the boy.

Q. Did she ever tell you that there was a young boy that she believed the person came into contact with in front of her car?

A. Yes.

Q. Did you ever do an investigation with respect to that young boy?

A. Yes.

Q. What was the investigation?

A. I went to the school and I made contact with the boy.

Q. The boy?

A. Yes.

Q. Who is that boy?

A. You need to certify that.

Q. Why?

A. I made contact with the child. He's a young child. I don't believe he has any bearing on this case. I don't believe the State is going to call him as a witness, so I would rather not reveal that information.

ASA: Just so the record is clear because you and I have discussed this. Did you ever write down his name?

**THE WITNESS:** No.



Q. What did the young boy tell you?  
A. He told me he made contact with this man.  
Q. About what?  
A. The man came up to him and said, don't worry, your sister will be right back.  
Q. Did he know who that person was?  
A. No, he'd never seen him before.  
Q. Did you show him a photographic array?  
A. Yes.  
Q. Was he able to pick the person out of the photographic array?  
A. Yes.  
Q. Who did he pick out?  
A. Mr. Cure.  
Q. How come I don't have that in my investigation?  
A. I am not including that in the case file. I am not going to reveal this child's name and I believe the State is not going to use him as a witness.  
Q. Where did his sister go?  
A. I don't know.  
.....  
Q. And the Child attends the school in that area?  
A. Yes.  
ASA: Just so the record is clear. Was anyone with the child that morning?  
THE WITNESS: Yes, his sister was.  
Q: But you didn't make contact with the sister?  
THE WITNESS: The sister never saw the guy.  
Q.: Did you make contact with the sister?  
THE WITNESS: No. Can we go off the record for a second?  
(Thereupon, a discussion was had off the record.)  
Q. Back on the record. How were you able to identify or find the little kid that Ms. Bell came into contact with?  
A. Deputy Bell provided me with a name.  
Q. And with that name you went to the school and contacted the kid?  
A. Yes.  
Q. Now, you're certifying as to the identify of the child?  
A. Yes.

[Mellies Deposition p. 27-30.] There is no information about the boy in the State file. There is also no picture in which Det. Mellies says that the boy identified Cure. Bell's statement is more credible in terms of the boy as she is assigned to that school zone and regularly made contact with the children. Of all the line-ups mentioned, there was no documentation for this one.

**CRU Investigation:** Leonard Cure does not have any children. His girlfriend at the time, Enid Roman has 3 children. Ashley Moncur (female) who was 4 at the time, Jamie Roman (male) who was 8 at the time and Oleciano Riley (male) who was 16 at the time. I have subpoenaed their school enrollment records (will update once I get the information.) Roman said, "I drop my kids off to school first," [Trial Transcript p. 384.] She goes into more detail in her deposition. She drives all 3 children in the morning. She drops off Jamie (8-year-old) and Oleciano (16-year-old)

in front of Dania Elementary School. She drops off Oleciano so he can wait with his brother until the gates open for the elementary school and then he walks himself to the high school (South Broward High School), [Roman Deposition p. 13.] The youngest girl was not in school yet, she was enrolled in daycare. “She would have to drive, because she has a four-year-old who attends daycare, [Trial Transcript p.460.]

Deputy Bell said that the little boy walked to school every day with his sister. Jamie Roman never walked to school with his sister in 2003 as she was in daycare. Deputy Bell said that after the date of this robbery she never saw the little boy walk there again, which was unusual. The school records will show that Jamie Roman was enrolled in Dania Elementary School long after the robbery occurred. It will also confirm that his sister was not school aged nor walking with him. It is my belief that the boy who Deputy Bell saw was not Roman’s son. The boy was a definite eye witness to the man who walked him to school that day and subsequently committed the robbery. The inconsistent statements between the 2 officers are troubling. The Defense never followed up with questions about the boy or facts to disprove that it was Jamie Roman.

In addition, I have reached out to Det. Mellies. He does not have “any independent recollection,” of the case so I gave him reports and his deposition to review. After he refreshed his recollection he again reiterated that he does not remember much and nothing about the boy. He searched the Broward Sheriff’s Office files as well as his own personal records and nothing mentions the name of the boy. The police department records have been destroyed. I specifically asked him if the boy was Jamie Roman (Enid Roman’s son) and again he said, “honestly I have no idea who the kid was.” He did mention a few times that he “wishes he did things differently.” He especially wishes that he had videotaped the lineups.

I was able to get in touch with both Enid Roman and her son Jamie Roman. Enid advised that her son never mentioned having the police come question him at school. Since he was a minor there would have been some parental consent. She stated that she would have remembered if the police came and she is certain that they did not. Jamie Roman says that the police never came to question him at school or show him a lineup.

Finally, I reached out the trial prosecutor to see if he remembered anything about the boy. He does not have any memory about who the boy is. He did point out that he did not think the boy was significant at the time. He called it more of a “red herring.” The boy was only really mentioned in Bell’s and Mellie’s Depositions and never became an issue at trial.

**Cure’s Alibi:** Leonard Cure maintains that he was not at the Walgreens that day, as he was at an ATM followed by work the morning of the robbery. He has maintained his innocence the entire time while admitting to his prior crimes. (The prior robbery was Robbery by Sudden Snatching, no similar facts.) The ATM receipt shows 6:52AM and there is testimony that he was at work at approximately 7:00AM.

On the morning of November 10, 2003, Enid Roman, Cure and her children left her home, an apartment at 441 SE 10<sup>th</sup> street, Dania 33004, [Roman Deposition p.3.] They leave the house at around 6:00AM, the latest she could ever leave would be 6:25 AM, [Roman Deposition p. 8.] She

dropped Cure off at the bus stop. She dropped her children off (all 3 at two different locations) then proceeded to work at Memorial Regional Hospital, [Trial Transcript p. 378-383.] On days that she works she has to drop Cure off at the bus stop because she has to be at Memorial by 6:45AM, [Trial Transcript p. 382.]

Roman dropped him off at the bus stop in Dania on 7<sup>th</sup> Street (SE) and Federal, [Roman Deposition p. 12.] He would take two buses to get to work, [Roman Deposition p. 16.] He got on the # 1 bus on SE 7<sup>th</sup> and 10<sup>th</sup>, [Trial Transcript p. 459.] He rode the bus to Young Circle and got off. He went to the Wachovia ATM at Young Circle (1909 Tyler Street), the ATM withdrawal was marked 6:52 AM. He took out \$20 for lunch, [Trial Transcript p. 459- 464.] He proceeded back to Young Circle in front of the Greyhound Station and gets on the bus # 28. That bus takes him right in front of Presidential Towers (Cure's place of work) around 7AM, [Trial Transcript p. 466.] Co-worker Wayne Knox said in his sworn statement that he got to work at 7AM, Cure got there after him. It could have been 7, 7:15 or even 7:20AM, [Knox Sworn Statement p. 4.]

He was working through Dixie Staffing assigned to a construction work (Bainbridge) at the Presidential Towers, 2501 South Ocean Drive, Hollywood, [Trial Transcript p. 422.] Within a few days of working the construction manager, Marty Weiss, immediately know that Cure was a keeper and kept him working full-time, [Trial Transcript p. 422-423.] Cure would also work some Saturdays as he was one of the better employees, [Trial Transcript p. 423.] He was paid from 7AM on November 10, 2003, however it was a handwritten time sheet not always filled out contemporaneously. Not many other employees are there at 7AM. Cure was the only one who was trustworthy to come in early, [Trial Transcript p. 429.] "He was.. our main guy, I mean as far as dependability, his ability to get the job done. and his attitude to be there on time, show up, get the job done and never gave me any slack," [Trial Transcript p. 431.]

He worked Monday through Friday (occasional Saturdays) doing construction work. He wore construction boots and construction type clothes, [Trial Transcript p. 381-382.] He would always wear long pants to work and he would come home dirty, [Roman Deposition p. 24.] "He always wore construction shoes," from Marty Weiss the manager, [Trial Transcript p. 441.] Weiss got there by 8AM and Cure was there and already working. No one noticed anything unusual about Cure that day and nothing was unusual until his arrest on November 20, 2003.

**Missing evidence:** There are some key pieces of evidence that were never obtained that would greatly impact Cure's conviction and would have been potentially exculpatory or possibly inculpatory.

**Video from Walgreens:** Walgreens has 24-hour video surveillance. They had a policy of re-winding the tape to record for that next day. Rizk was in the process of re-winding the video tape when the robbery occurred, [Trial Transcript p. 351.] So, there is no video tape of the event despite there being a camera just for those purposes.

**No fingerprints:** All the testimony describes a commotion at the front door. Rizk and Venhuizen are trying to shut the door and keep the suspect out. The door is repeatedly touched and pushed. No one says the perpetrator is wearing gloves. Five prints were lifted and brought for comparison and they were of no value, [Trial Transcript p.232.]

**No videotape from ATM:** There is the ATM receipt from 6:52AM on November 10, 2003. The prosecutor subpoenaed all documents to include anything that reflects the time of the withdrawal. (By the time the Assistant State Attorney got the alibi information and sent the subpoena it was past 90 days, industry standard for retention. We can depose Wachovia experts now as to the time limits but it would likely not resolve this issue with this particular video.)

**CRU investigation:** Cure states that his mother and brother went to the Wachovia to view surveillance but were told that because other individuals were on the tapes, they could not let them view the surveillance. He told his lawyer at the time but the record is not clear if the defense ever followed up. Mary Cure's deposition confirms this, "I spoke with the head teller who told me at the time that the surveillance tapes were there. And I wanted to know what procedure do I have to go through to get it. I was told that I couldn't, that an attorney would have to file a form of some type for them to get it," [Mary Cure Deposition p. 30.]

**No markings on Cure:** When the suspect tried to enter the store, Rizk violently punched and pushed the suspect. Despite Rizk's efforts, the suspect got in. Rizk was still punching him and Venhuizen was screaming about him having a gun. The perpetrator showed his gun and said that he would blow Rizk's head off, [Trial Transcripts p. 250-253.] Several times the witnesses mention how badly the suspect was punched and hurt. None of the witnesses at Cure's work nor Enid Roman noticed anything unusual about Cure that day. He was not described as hurt in any way.

**Enid Roman's Work Records:** Enid Roman stated that she had to be at work on 6:45AM that day and that she dropped off Cure at the bus stop because of that. Roman's work records could have confirmed the times in which she clocked into work.

### **Additional concerns:**

**Left Hand:** Both Venhuizen and Rizk stated that the suspect held the gun in his left hand. "Venhuizen advised the suspect then retrieved from his left front jacket pocket a silver/grey revolver with his left hand," [PC Affidavit p.7.] Cure claims in subsequent letters that he is right-handed. (We can have an expert review this in the future.)

**Car Theory:** The only remotely viable way for Cure to get to the ATM at 6:52AM, commit the crime from 7:15AM until 7:24AM, and to change and show up for work between 7AM and 8AM would be for him to be driving a car. Even with a car based on the mileage, traffic, and school zones during that time, it still most likely would not have been possible.

Det. Mellies clocked the mileage from the Walgreens to the Wachovia ATM as approximately 3.2miles, Walgreens to the Presidential Towers approximately 7 miles, [Trial Transcript p. 509-510.]

However, it should be noted that all the state witnesses say the suspect was walking. Deputy Bell goes into great detail on how the suspect WALKED past her car between 7-8AM. "He was walking," [Trial Transcript p. 243.] Both Rizk and Venhuizen describe only their cars in the parking lot. Rizk even sees the perpetrator walk out of the store and describes which direction he was headed.

We know that Cure had access to Roman's car. However, they both testify to him being dropped off at the bus that day. Roman had a reddish/maroon 2000 Toyota Corolla and Cure had a 1970 Lincoln Marquis that had not been working for a while, [Trial Transcript p. 379-380.] Cure's car wasn't working. The brakes and starter weren't working and the car was parked in the yard. It had been giving him a hard time for a while, [Roman Deposition p. 11-14.] Cure testified, "the starter and the brakes are gone, completely" [Trial Transcript p. 455.] There were days that Cure would drive Roman's car, [Roman Deposition p. 22-23.] He would drop her off at Memorial by 6:45AM and then he would drive her car to work. On the day of his arrest, November 20, 2003, Cure had driven her car to work, [Trial Transcript p. 400.] He would borrow her car around twice a week, [Trial Transcript p. 403.] On days that he didn't have to be at work until 8AM, he would borrow Roman's car. He would drop her off then would drive himself to work, [Trial Transcript p. 460.] On November 10, 2003, he was scheduled to be at work by 7AM. Confirmed by his supervisor Marty Weiss.

**Teeth:** A large portion of the Defense case was in relation to teeth. Venhuizen was very certain that the perpetrator was missing teeth. "Missing teeth on this side, like a vicious animal," [Trial Transcript p. 286.] She mentioned throughout all the statements that he was missing teeth on the side of his mouth.

Leonard Cure is missing a front tooth and a side tooth but always wore his partial bridge. "During the time I know him he always wear his teeth where ever he go. Always.... The only time he take it out is when he have to go bed. He will normally clean them or brush it and put in in a jar," [Roman Deposition p. 11.] Cure was very self-conscious about his teeth. When they first started dating, she didn't know that he was missing teeth. He always wore his bridge, [Roman Deposition p. 28.] "He never leaves home without it," [Trial Transcript p. 386.] He's missing a front tooth and one on the side. He wears his partial plate, [Trial Transcript p.471.]

**Alibi Witnesses Time Lapse:** All of Cure's witnesses from work were not interviewed until February 24, 2004. Marty Weiss, Wayne Knox, and Allen Johnson gave sworn statements. All of them were present at work on November 10, 2003, the date of the robbery, and November 20, 2003, when Cure was arrested but none were interviewed by deputies until February 2004.

Wayne Knox said in his sworn statement that he got to work at 7AM, Cure got there after him. It could have been 7, 7:15 or even 7:20AM, [Knox Sworn Statement p. 4.] Perhaps the statements of the witnesses could pinpoint a more accurate timeframe if they were interviewed before

## **Conclusion:**

It is very difficult to reexamine a crime 17 years after it occurred. While we do have the transcripts of the trial, we don't have the impact it impressed upon the jury nor do we know the jury's deliberative process. We are also cognizant that this matter was affirmed on appeal and all post-conviction relief has been denied.

In reviewing this case we are also cognizant that there is no additional new evidence that points to an exoneration. However, the facts in evidence that we have reviewed under contemporary standards of evidence are troubling,

The issues we find most troublesome are those surrounding how Cure became a suspect in the first place. Seemingly, a man who had no connection to a Walgreen's robbery became the main suspect after someone reviewed photos of well-dressed/neat appearing African American males. That was it, there was no physical evidence, no witnesses who knew him, nothing but an alleged search in the questionable "TRAP," Program. The case became questionable at the very onset. If the identification was bad, then everything that comes after is bad as well.

The original prosecutor also saw the weaknesses in this case. Once one of the two victims had a difficult time identifying Cure in the lineup and after the first jury came back hung, he offered a below guidelines sentence of 7 years. Cure has now served significantly more time than that, over 16 years. After the hung jury, he continued to maintain his innocence. A second jury convicted him and he was then sentenced by the Judge to life in prison.

After considering all the facts and circumstances of this case, it is our conclusion that it is in the best interest of justice to release Cure as soon as possible. We would like to modify his sentence and give time served for his 16 years plus in Florida State Prison. This will allow for the Defendant to be released after serving a significant amount of time while we can thoroughly review his case for a potential exoneration.

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