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MEMO

TO: Stephen B. Russell, State Attorney

FROM: Dean R. Plattner, Assistant State Attorney

DATE: June 3, 2010

RE: State vs. Adrian Powell and David Newsome, 09-18094CF A&B

This memo is a review of the current status of this case based on discussions with ASA Orion Wright and ASA Anthony Kunasek, as well as Investigator Charles Lawson. This was prompted by new information received by our office within the last 2 weeks from the victim/complainant of the burglary in this incident.

The defendants, Powell and Newsome, were charged with second degree felony murder even though they did not actually kill the deceased victim, Mr. Mateo. The second degree felony murder statute places legal responsibility on those who are committing or escaping from the immediate scene of certain specified felony crimes for a death that is inflicted during the event by a non-perpetrator of the felony. Burglary is one of the specified crimes.

The charge in this case was based on the reports provided which indicated that Powell and Newsome were in immediate flight from a residential burglary, and that Mateo was killed in a crash with a sheriff's vehicle that was responding in an attempt to assist in their apprehension.

The investigative reports provided by the sheriff's office advised that the vehicle Powell and Newsome were in, a short time after the burglary, matched the description of the vehicle provided by the burglary victim. It was further indicated that the burglary victim was "unable" to identify the suspects, but that one of the suspects made admissions to

being involved in the burglary. We have now learned that the information in the reports was incomplete or inaccurate.

Although the burglary victim reported the burglars as being in a black Nissan SUV, which is what Powell and Newsome were in, the victim actually provided further detailed information. Specifically, the victim advised that the vehicle was a black Nissan Pathfinder, and provided a license plate number. Powell and Newsome were in a Nissan Armada, with a different license plate. Further, when the burglary victim was brought to the location where the Armada was stopped, he was not merely “unable” to identify Newsome, but directly indicated that Newsome was not one of the people involved in the burglary of his home.

As Powell had already been taken from the scene to the hospital, the burglary victim never viewed him directly. Unknown from the reports, however, he was apparently taken to the Lehigh substation to view a photographic lineup. Unfortunately, this lineup was not preserved as evidence or provided to us, nor can we positively determine which detective was directly involved with this. The victim now indicates to us that he could not identify anyone from the photographs he viewed.

What we do know is that despite the similarity of vehicle, and regardless of any other criminal offenses that Powell and Newsome may have been involved in on this or other occasions, the burglary victim said on the day of the offense, and continues to say now, that Newsome is not one of the burglars he saw at his home. He further indicates now that the Armada they were in was not the vehicle the burglars had at his home. The alleged “confession” made by Newsome is now also shown to be inconsistent with the physical evidence at the crime scene.

The felony murder charge requires us to prove beyond a reasonable doubt that Powell and Newsome committed the burglary. Based on the evidence now known, especially the burglary victim’s testimony that Newsome was not involved, and the vehicle they were in was not the same as the one he saw at the scene, we cannot meet this burden and therefore cannot go forward with the charge.

Had the totality of the facts been known at the time of the charging decision, this charge would likely not have been brought to begin with. Even if the Armada they were in was stolen (as was alleged, but not proven by the reports) this would not be one of the specified felonies that could legally support the murder charge. While Powell and Newsome may have committed other criminal offenses, our inability to prove that they committed the specific burglary involved in this case legally precludes the felony murder charge.