

2016-2017
Wisconsin High School
Mock Trial Tournament
Case Materials

State of Wisconsin v. Tristan H. Marks

Prosecution Witnesses:

Nic Stevens

Parker Avery

Dr. Devin McDonnell

Defense Witnesses:

Tristan H. Marks

Dr. Shelley Frankenstein

Charlie Davis

Stipulations for Trial

1. All of the exhibits as included in these case materials are authentic, and the authenticity of an exhibit is never at issue. Authentic exhibits are not necessarily admissible at trial. Please see “Exhibits” section for rules pertaining to the printing of exhibits for trial.
2. All witness affidavits have been properly signed and notarized. A copy of any affidavit which does not bear a signature or is not notarized is to be treated as though it is signed and notarized. This stipulation does not apply to exhibits. Names of the notary publics are not relevant to the presentation of the case.
3. Each witness affidavit/report is intended to be gender-neutral and should be interpreted as such.
4. Each witness has reviewed his or her affidavit the morning of trial, attested that it was true and accurate, and attested that there was nothing that he or she had forgotten or wanted to add.
5. While certification pages were not provided, both sides agree that Exhibit D was properly certified. Additionally, both parties provided proper pretrial notification regarding the use of Exhibit D under Rule 803(6m).
6. Exhibits I, J, K, L, M, and N are photographs taken of the scene. The photographs were taken after the deceased was removed from the scene. The following items were also removed from the scene (for evidentiary purposes) prior to the photographs being taken: vomit, cigarette butts, and pill bottle. Exhibits I, J, K, L, M, and N otherwise accurately depict the scene at the time of Riley Thomas’s death. DNA located on cigarette butts at the scene was tested and matched to Thomas.
7. Prior to the completion of the investigation in this matter Tristan Marks’ grandmother, Kristine Marks, moved to Tahiti with Tristan Marks’ new step-grandfather. Both parties attempted to serve her with a subpoena prior to the trial, however Kristine Marks is outside of the jurisdiction of the United States, so both parties have been unable to procure her attendance at trial.
8. Both parties agree that Exhibit E is a true and accurate representation of an email exchange between Tristan Marks’ mother, Diana Marks, and Tristan Marks’ grandmother, Kristine Marks. Like the other exhibits, it is authentic, however, subject to the rules of evidence with regard to admissibility.
9. Riley Thomas was pronounced dead at 2:52 AM on June 3, 2016. A sample of Thomas’s blood was drawn at 2:56 AM and provided to the state crime lab for processing. Both parties stipulate to the chain of custody of this blood sample, that it did, in fact, belong to Riley Thomas, and that it does accurately reflect Thomas’s BAC and oxycodone-hydrochloride levels at the time of his death.

Disclaimer

The 2016-2017 mock trial case is a hypothetical case. All names used in the mock trial case are fictitious and were created to be gender-neutral. Any similarity to an actual event or to the name of an actual person is strictly coincidental.

Exhibits

Please note that exhibits, including affidavits, are pre-marked. The pre-marking of exhibits is solely a convenience. It is not intended to suggest the order in which exhibits should be used nor is it intended to suggest anything about their admissibility. In addition, the pre-marking of exhibits is not intended to suggest that all exhibits must or should be used. Exhibits may be printed by teams in black and white, color, or grayscale, but cannot be enlarged in any way beyond what is provided in the materials. Exhibits in this year's case materials may be laminated, but need not be laminated. On pages that include two exhibits, teams may separate the exhibits by cutting between the exhibits.

STATE OF WISCONSIN

CIRCUIT COURT

CLEARWATER COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 16-CF-152

TRISTAN H. MARKS,
205 Spring Street
Clearwater, Wisconsin, 53333
DOB: 2/18/1998

Defendant,

Criminal Complaint

Walter B. Strand, of the Clearwater County Sheriff's Department, being first duly sworn, states that:

Count 1: FIRST DEGREE RECKLESS HOMICIDE

The above-named defendant between June 3, 2016 and June 4, 2016, in the village of Clearwater, Clearwater County, Wisconsin, did cause the death of Riley V. Thomas, by the delivery or manufacture of a Schedule I or II controlled substance, of a narcotic drug (Oxycodone), in violation of secs. 961.41 and 961.16(2)(a)11 Wis. Stats., which Riley V. Thomas used, dying as a result of that use, contrary to sec. 940.02(2)(a), 939.50(3)(c), a Class C. Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars (\$100,000), or imprisoned not more than forty (40) years, or both.

PROBABLE CAUSE:

Complainant states that at approximately 2:15am in the morning on June 4, 2016, emergency medical staff responded to a 911 call from 340 Maple Road, Village of Clearwater, Wisconsin, of a young adult suffering from an apparent drug overdose. The 911 caller reported that the victim was making "choking sounds," had vomited, and was now unconscious and unresponsive.

Emergency Medical Technician Parker Avery arrived first on the scene and observed Riley V. Thomas, DOB 05/04/1998 lying on the floor in the basement of the residence. Thomas had vomited and Thomas' lips were bluish black. EMT Avery reported that Thomas was unresponsive. EMT Avery did find lying on the floor roughly 4 feet away from Thomas a prescription bottle for "Kristine L. Marks" of Oxycodone HCL Extended Release, 40 mg tablets. EMT Avery did notice that the prescription bottle contained a date of the prescription as May 15, 2016 and further that the prescription was for 60 pills, to be taken every twelve hours. At the scene, EMT Avery heard the defendant state, "I never should have given Riley those pills."

EMT Avery did attempt to administer Naloxone (Narcan) but it was unsuccessful. Thomas was pronounced dead at 2:52am.

Two other young adults were present with Thomas in the basement when emergency medical staff arrived: Nic Stevens and the defendant. While EMT Avery was attempting to revive Thomas, both young adults were visibly upset. The defendant was screaming, and at one point yelled: "I never meant for this to happen."

Upon my arrival at the scene, I did speak with the defendant. The defendant advised that the home where they were located was the defendant's grandmother's, Kristine Marks. The defendant further stated that Kristine Marks allowed the defendant to stay at the home due to disagreements the defendant was having with the defendant's parents.

The defendant stated that his/her grandmother had prescription medication. The defendant further stated that he/she told Thomas about the prescription, but did not tell Thomas where the prescription was located. The defendant was adamant that he/she did not give the pills to Thomas and had no knowledge that Thomas had taken any of the pills. The defendant stated that the three had been drinking alcohol that night and that the defendant fell asleep and woke up to Thomas making "choking" and "gargling" sounds.

I did also speak with Nic Stevens at the scene. Stevens advised that the three had been drinking alcohol that evening. Stevens stated that he/she fell asleep and when he/she woke up later in the evening noticed that neither the defendant nor Thomas were in the room, though that is where they had been "hanging out" the whole evening. Stevens estimated that Thomas and the defendant were gone for about twenty minutes, and that when they returned to the basement, Thomas appeared "out of it." Stevens further stated that he/she knew that the defendant sold marijuana to other people at their high school, and that he/she "has no doubt that Tristan gave Riley the Oxy." Stevens stated that earlier in the evening the defendant said to Thomas that he/she "has something fun to try later," and Stevens stated that he/she believes that the defendant was referring to the Oxycodone pills.

The Complainant further states that the medical examiner did subsequently perform an autopsy on Thomas. The medical examiner advised that while Thomas suffered from cystic fibrosis, there was no indication from the autopsy that cystic fibrosis caused the death. The medical examiner advised the Complainant that a 40 mg tablet of Oxycodone (extended release) was a substantial factor in causing the death of Riley Thomas.

Based on the foregoing, the complainant believes this complaint to be true and correct.

Complainant

Subscribed and sworn to before
me and approved for filing on
this 1st day of July, 2016
Kevin Lonergan
Notary Public, Clearwater County, Wisconsin
My Commission is Permanent

STATE OF WISCONSIN : CIRCUIT COURT : CLEARWATER COUNTY

STATE OF WISCONSIN,

Plaintiff,

CASE NO. 16-CF-152

v.

TRISTAN H. MARKS,

Defendants.

JURY INSTRUCTIONS

1021 FIRST DEGREE RECKLESS HOMICIDE – 940.02(2)

Statutory Definition of the Crime

First degree reckless homicide, as defined in § 940.02(2) of the Criminal Code of Wisconsin, is committed by one who causes the death of another human being by delivery of a controlled substance in violation of § 961.41 which another human being uses and dies as a result of that use.

State’s Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following four elements were present.

Elements of the Crime that the State Must Prove

1. The defendant delivered a substance.

“Deliver” means to transfer something from one person to another.

2. The substance was Oxycodone.

3. The defendant knew or believed that the substance was a controlled substance. A controlled substance is a substance the delivery of which is prohibited by law.

You cannot look into a person's mind to determine knowledge or belief. You may determine knowledge or belief directly or indirectly from all the evidence concerning this offense. You may consider any statements or conduct of the defendant which indicate state of mind. You may find knowledge or belief from such conduct or statements, but you are not required to do so.

4. Riley Thomas used the substance alleged to have been delivered by the defendant and died as a result of that use.

This requires that the use of the controlled substance was a substantial factor in causing the death.

It is not required that the defendant delivered the substance directly to Riley Thomas. If possession of the substance was transferred more than once before it was used by Riley Thomas, each person who transferred possession of that substance has delivered it.

Jury's Decision

If you are satisfied beyond a reasonable doubt that the defendant delivered Oxycodone, that the defendant knew that the substance was a controlled substance, that Riley Thomas used Oxycodone delivered by the defendant, and that Riley Thomas died as a result of that use, you should find the defendant guilty of first degree reckless homicide.

If you are not so satisfied, you must find the defendant not guilty.

STATE OF WISCONSIN : CIRCUIT COURT : CLEARWATER COUNTY

STATE OF WISCONSIN,

Plaintiff,

CASE NO. 16-CF-152

v.

TRISTAN H. MARKS,

Defendants.

VERDICT FORM

We, the jury, duly impaneled and sworn, for our verdict in the above-entitled action, find the Defendant, TRISTAN H. MARKS, _____ (NOT GUILTY/GUILTY) of first degree reckless homicide.

Dated at Clearwater, Wisconsin, this ____ day of _____, 2017.

JURY FOREPERSON

Printed Name of Foreperson

AFFIDAVIT OF NICOLLETTE/NICHOLAS STEVENS

Nicollette/Nicholas Stevens, being first duly sworn upon oath, states as follows:

- 1 1. My name is Nic Stevens. I am seventeen years old. I am a senior at Clearwater High School.
2 I live with my dad and my younger sister. My older brother also lives with us when he is
3 home from college. In school, I am second-chair oboe in the band and I am a theater techie.
4 I wanted to be stage manager for our school's production of *Little Shop of Horrors* this year
5 but with everything that happened, I just haven't been able to focus enough for such a big
6 responsibility.

- 7 2. I've never had a lot of close friends – I have a hard time feeling like I really “fit in”
8 anywhere. When I am working on a play, I feel at home with the theater kids, but we don't
9 really hang outside of school. It makes me too nervous to ask to join them when they are
10 doing things together, like going to Perkins after a show. Sometimes I go to the local game
11 store and play Dungeons & Dragons, Magic: The Gathering or Settlers of Catan, but the
12 people I play games with aren't people who would really want to hang out anywhere else
13 besides sci-fi conventions, which I can't afford to go to.

- 14 3. On June 3, 2016, I was almost finished with my junior year. Finals were the next week and
15 then I was home free for the summer. I was going to spend Friday night relaxing before
16 studying for exams the rest of the weekend. In gym class that day, Tristan had asked me
17 about my weekend plans. I told Tristan that my brother was home from college, and that I
18 planned to hang out with him and study. Tristan asked if my brother was 21, and I said that
19 he was.

- 20 4. The next thing I knew, Tristan was inviting me to spend the night at his/her grandma's
21 house. I wasn't super close with Tristan because he/she was a year ahead of me in school,
22 but he/she was friends with a person I had a crush on. I figured if Tristan and I became
23 friends it would give me a better chance of being around my crush over the summer. And it
24 might make me look cool to be hanging out with someone who was a year ahead of me in
25 school. Plus, I won't lie, I heard Tristan had a “hookup” for marijuana and I was wondering
26 if he/she would give me some – I had heard it might help me unwind. I also overheard
27 him/her telling Fletcher from gym class that he/she had a “hookup” for oxy because his/her
28 grandma always left hers in the back of the cabinet above the microwave—“like she thought
29 she was hiding it” from him/her. While the oxy didn't interest me, I didn't think it would be
30 a good move to turn down an offer to hang from Tristan, so I said I was interested. After I
31 told Tristan I would join, he/she asked if my brother could get us some beer. I didn't have a
32 problem with that – our stage manager from *The Wiz* last year asked me the same thing and
33 my brother made it happen.

- 34 5. After school that day, Tristan, Riley and I went to my apartment. I had texted my brother
35 about picking up some beer, and he was there when I got home to hook us up. My dad
36 wasn't home from work yet but I knew he wouldn't mind if I spent a night away. He was
37 always encouraging me to stop playing video games and leave the house on the weekends.
38 Well, I guess I didn't stop playing video games but at least I left the house. Tristan saw I
39 had *Call of Duty: Black Ops III* and asked if I could bring it with me. After gathering some

40 things at my place, we stopped at Kwik Trip, bought some snacks and headed over to
41 Tristan's grandma's place.

42 6. We stayed in Tristan's grandma's basement basically the whole time. Tristan's grandma
43 wasn't even home, it turned out. I wasn't really sure what the deal was or why we were
44 there instead of Tristan's parents' house, but it wasn't my business. I just went with the
45 flow. Tristan had a bunch of his/her stuff there and the basement seemed pretty homey to
46 him/her, so I figured he/she must spend a lot of time there. We played video games and
47 drank beer all night. I passed out at some point. I was kind of a lightweight and had a hard
48 time keeping up with them. It was a little embarrassing.

49 7. After passing out, I woke up at some point to go to the bathroom. Tristan and Riley were
50 both gone when I got up and they were still gone when I got back to where I was sleeping. I
51 was feeling a little left out, thinking they waited to smoke weed without me. I had heard
52 Tristan tell Riley earlier that he/she had "something fun to try" later and at the time I thought
53 he/she meant weed. I was still awake when they came back to the basement about 20
54 minutes later, and Riley seemed kind of out of it so I assumed they "had fun" and got high
55 without me. It kind of hurt my feelings that they wouldn't ask me to join (after all, I did
56 hook them up with their beer for the night!). I didn't really feel like talking to them
57 anymore so I just fell back asleep and didn't say anything.

58 8. Suddenly, I woke up to a cough-y, gurgly sound. I actually thought it was me until I came
59 further out of sleep and realized I was fine. But then I looked around. The TV was still on
60 so I could see. I found Riley covered in vomit, choking and struggling to breathe. I
61 screamed. I didn't know what to do. I saw a prescription bottle just a few feet from Riley
62 (between him and Tristan) and realized Riley didn't just have beer and marijuana. I later
63 saw that the bottle had a woman's name on it – not Riley's name. Tristan kept saying "I
64 never meant for this to happen!" Right away I knew that Tristan had given Riley the pills. I
65 am not sure if I called 911 or if it was Tristan. I was still foggy from waking up and I was
66 still a little buzzed. I just remember Riley's lips turning blue as the choking stopped and
67 he/she stopped moving. I kept hoping for the ambulance to get there faster. After what
68 seemed like forever, the medical people came. They tried to help Riley breathe and even
69 gave him/her a shot of something. It didn't work. Riley was dead.

70 9. It makes me so mad that Tristan gave Riley those pills. I didn't know Riley super well, but I
71 know he had battled illness his whole life and was a fighter. They used to bring people into
72 school to talk about Riley's condition, calling it "sixty-five roses." I couldn't spell it for the
73 life of me but I remember they said it affected Riley's breathing and digestion. He was had
74 to go to the hospital for pneumonia a lot. That night, Riley did have to take some pills before
75 we had pizza and had to do some kind of "therapy" that didn't look therapeutic at all but was
76 supposed to loosen mucus or something? He complained about being in pain when he
77 breathed. For Tristan to give pills to someone in Riley's condition was just too far. I hope
78 he pays.

FURTHER AFFIANT SAYETH NOT

By: /s/Nicollette/Nicholas Stevens
Nicollete/Nicholas Stevens

Subscribed and sworn to before me
this 26th day of September , 2016

 /s/ Kristen Lonergan
Notary Public, Clearwater County, WI
My Commission expires: permanent

AFFIDAVIT OF PARKER AVERY

Parker Avery, being first duly sworn upon oath, states as follows:

- 1 1. My name is Parker Avery. I am 31 years old and a licensed Emergency Medical Technician
2 (EMT) with the State of Wisconsin. I have volunteered with the Clearwater County Fire
3 Department part-time for six years.
- 4 2. My usual full-time job is a teller at Clearwater Community bank. I wish that Clearwater was a
5 larger community with paid EMT positions. If I didn't love Clearwater so much, I would move
6 to do my EMT work full-time and make good use of my license.
- 7 3. I love working as an EMT, it is never dull. I respond to calls for chest pain, car accidents, fire
8 calls, etc. I have a pager that I wear while I am on call that alerts me to come in for a call. You
9 never know until you get in what you are going to respond to. I wish working as a teller was
10 half as exciting, but realistically the only time it would be exciting is if the bank was robbed!
- 11 4. I am a bit of an adrenaline junkie: skydiving, base jumping, and scuba diving with sharks are all
12 some of my favorite activities. I even have a trip to Spain planned next year to run with the
13 bulls!
- 14 5. I was on call for the whole weekend Friday, June 3 through Sunday, June 5, 2016. The early
15 morning of June 4, 2016 I received a page just before 1 AM. I was asleep when the page first
16 came in, so it took me a little longer than usual to get in to the station. I had to stop for a coffee
17 on the way in because I was so tired.
- 18 6. Once I arrived at the station, I was dispatched to a residence at 340 Maple Road, Village of
19 Clearwater, Wisconsin for a potential drug overdose with fellow EMT Doug Jones. We were
20 the first responders on the scene. Upon arrival we were contacted by the defendant, Tristan
21 Marks, and another young man/woman, Nic Stevens, who led us down into the basement. As
22 we headed down to the basement, I heard Tristan Marks mumble "I never should have given
23 Riley those pills. . ."
- 24 7. Both Tristan Marks and Nic Stevens appeared anxious, jittery and slightly intoxicated. Nic
25 Stevens said a few times that they "had so much to drink tonight."
- 26 8. Once we were in the basement I found the victim, Riley Thomas, laying on the floor
27 unresponsive surrounded by multiple cigarette butts. There was vomit on the floor next to Riley
28 Marks. His lips were bluish black which indicated to me he hadn't been breathing for a
29 significant amount of time.
- 30 9. I asked the defendant, Tristan Marks, what had happened and he/she said they had been drinking
31 that night. He/she said Riley had also been smoking a lot of cigarettes. Tristan Marks awoke to
32 Riley Thomas making choking and gurgling sounds. He/she also found a prescription pill bottle
33 next to the body, but was unsure if Riley had taken any pills.

- 34 10. While I began to assess Riley Thomas, Tristan Marks continued to talk rapidly about being “so
35 sorry” and “I can’t believe this happened.” Tristan Marks continued to scream throughout my
36 attempts to revive Riley Thomas. He/She said multiple times “I never meant for this to
37 happen.”
- 38 11. Riley Thomas was unresponsive; having observed that the prescription bottle was an opiate, I
39 immediately suspected a potential overdose. I administered a Narcan shot (Naloxone), but Riley
40 Thomas had no measurable or visible response.
- 41 12. I checked Riley Thomas’ vital signs and did not find a pulse. He was not breathing. I did not
42 observe any external injuries. I inspected Riley’s airway and found no obstructions so I
43 attempted intubation. This was not successful.
- 44 13. I attempted CPR. Unfortunately Riley Thomas did not resume breathing and I still did not
45 detect a pulse. I ceased further efforts at 2:52 AM. What a shame for such a young life to end
46 so tragically.
- 47 14. While I was attempting CPR, the police arrived and spoke with Tristan Marks and Nic Stevens,
48 so I was unable to get any further information from them about what Riley Thomas may have
49 ingested. Unfortunately it was too late for me to do anything to prevent this tragic death
50 anyway. At the request of the police officers on scene, I did draw a vial of blood from Riley
51 Thomas at 2:56 AM, which I turned over to the custody of the police.
- 52 15. After I realized there was nothing more I could do for Riley Thomas, I inspected the
53 prescription pill bottle further. The prescription was for a “Kristine Marks.” The date of the
54 prescription was May 15, 2016 for 60 pills.
- 55 16. I did overhear Tristan Marks mention something about grandma’s “stash” usually kept in the
56 back of the cabinet above the microwave. So while things were wrapping up, I took it upon
57 myself to check the cabinet and found another prescription pill bottle and marijuana. I turned
58 these items over to the police officers as well.

FURTHER AFFIANT SAYETH NOT

By: /s/Parker Avery
Parker Avery

Subscribed and sworn to before me
this 20th day of July, 2016

 /s/ Ashley Richter
Notary Public, Clearwater County, WI
My Commission expires: permanent

AFFIDAVIT OF DR. DEVIN MCDONNELL

Devin McDonnell, being first duly sworn upon oath, states as follows:

- 1 1. I am an adult resident of the state of Wisconsin, and I make this affidavit based on personal
2 knowledge and medical expertise. I am the Chief Medical Examiner for the City of
3 Clearwater, Clearwater County, Wisconsin. I have held this position for thirteen years. I
4 graduated from the University of Wisconsin School of Medicine and Public Health in 1993.
5 I did my internship in internal medicine, but soon realized that I was more interested in dead
6 patients than living ones, so I changed my focus to forensic pathology.

- 7 2. After my residency I worked for the World Health Organization in Nigeria, where I lived in
8 a small village and helped identify communicable diseases contracted by the recently
9 deceased. I was part of a team that worked to contain deadly diseases from spreading. After
10 two years, I returned to UW where I pursued a masters degree in Epidemiology and taught
11 courses in disease containment.

- 12 3. During my time at UW, I became very interested in the drug epidemic amongst young
13 people in Wisconsin. I saw the proliferation of illegal narcotics and prescription painkillers
14 just as I saw highly contagious diseases in Africa: drug abuse left unchecked spreads like
15 wildfire and destroys families and communities, particularly when children and teenagers
16 are the ones abusing drugs.

- 17 4. I wrote my Masters thesis on containment of abuse of prescription narcotic painkillers. I
18 researched what communities were doing to successfully curtail drug abuse, and wrote
19 guidelines for communities to follow in order to implement plans of containment. The plan
20 generally included a combination of education, prescription drug take-back campaigns,
21 working with the medical and dental community to stop over-prescribing, keeping death-toll
22 statistics and providing those to the public as a deterrent, and providing drug-free
23 community events for teens.

- 24 5. Except for my time in medical school, my internship, and examination of dying patients in
25 Nigeria, I have never treated live persons. I have never treated a patient with cystic fibrosis,
26 although I have performed a few autopsies on patients inflicted with the disease.

- 27 6. Prior to drafting this affidavit, I did review Exhibits C-N, as well as the medical records of
28 the victim, Riley V. Thomas. Riley V. Thomas, arrived at the ME's office on June 4, 2016.
29 Thomas had died about 14 hours previous of a suspected overdose of the prescription
30 narcotic Oxycodone. It was also reported that Thomas had consumed alcohol and smoked
31 cigarettes the night of June 3, 2016. Thomas was inflicted with Cystic Fibrosis, and had
32 been for ten years.

- 33 7. The autopsy was unremarkable except for the clear presence of the effects of Cystic
34 Fibrosis. Thick mucus can obstruct airways in people with the disease, but I found no such
35 obstruction. I would expect that Thomas could have lived at least ten more years, if not
36 more. With proper treatment, exercise, and nutrition, Thomas could have lived much

37 longer. I found no indication that cystic fibrosis, itself could cause a sudden death in
38 Thomas, even with the presence of cigarettes and alcohol.

39 8. Oxycodone can cause severe illness or death by itself, but so can the combination of drugs
40 and alcohol in the decedent's system even if the oxycodone was not there. However, in this
41 case, I believe that without the oxycodone, Riley Thomas would not have died. While
42 nobody can ever be 100% certain in these cases involving multiple substances what
43 ultimately caused the death, I can say to a reasonable degree of medical certainty that
44 Thomas died because of the oxycodone. There are a few things that lead me to this
45 conclusion:

46 9. First, the timing. Based upon a text message sent to Charlie Davis, it appears that Thomas
47 had obtained the oxycodone by 11:36 pm. The first observed signs of dying occurred
48 around 12:45 am, shortly before Marks and Stevens called for emergency assistance.

49 10. I confirmed through toxicology that Thomas had orally ingested 40 mg of oxycodone-
50 hydrochloride, in an extended release form. While I cannot be certain when Thomas
51 ingested the oxycodone, based on the timing of the text message, which is not inconsistent
52 with the recollections of Marks and Stevens, it appears that Thomas took the pill
53 approximately one hour prior to the severe respiratory distress that led to death. The quick
54 death is consistent with death by oxycodone.

55 11. Second, Thomas was observed with severe respiratory distress. Oxycodone and other
56 opiates typically cause death by respiratory depression. The patient then goes into a coma,
57 has anoxic brain injury due to lack of oxygen to the brain, then dies. Lack of oxygen
58 caused Thomas to fall into a coma, then die a few hours later. This cause of death is
59 consistent with death by opiates.

60 12. Third, the amount of opiate in Thomas' system has been known to cause death. We know
61 from the prescription bottle that the pills were 40 mg, extended release. 40 mg is typically a
62 safe, therapeutic dose for a full-grown adult *who has a history of taking the medication*. In
63 prescribing opiates, doctors typically start with lower doses, usually 10 or 20 mg. For those
64 taking the medication long term, such as the grandmother, 40 mg is a safe dose because she
65 was an adult who had developed a tolerance for the drug. However, Thomas was not a full-
66 grown adult. Thomas's medical records did not indicate that he had ever been prescribed
67 opiates, so he would not have had a tolerance. I do not know if Thomas took opiates
68 without a prescription. Without a tolerance for the drug, it is more dangerous in higher
69 doses.

70 13. The safe amount of opiate drugs really depends upon the person. What is safe for one
71 person may not be safe for another. That is why it is always dangerous to take someone
72 else's prescription drugs. I have seen overdose deaths in teenagers when only 40 mg were
73 taken. It's rare, but taking one pill can kill.

74 14. These findings are consistent with death caused by an overdose of narcotic painkillers.

- 75 15. I also considered a few items of evidence that were not consistent with death by opiates.
76 First, Thomas was gasping for air and appeared to be choking. He had vomited. Vomiting
77 and choking are more consistent with alcohol poisoning. However, during the autopsy, I
78 inspected Thomas's esophagus and throat. I did not see any obstruction, which leads me to
79 believe that respiratory distress and low oxygen to the brain was not caused by choking on
80 vomit. Inebriated people may also choke on their tongues. I did not see any signs of this.
81 Although Thomas's blood alcohol concentration was high for someone his size--it was .16,
82 he had a history of drinking alcohol, which means he would have a tolerance to it. Also, .16
83 BAC is typically not enough, on its own, to cause death. In the several thousand autopsies I
84 have conducted, I have only seen three people who died as a result of alcohol poisoning with
85 a BAC below .2. All of them were teenagers.
- 86 16. In this case, it is my professional opinion to a reasonable degree of medical certainty that
87 Thomas did not die as a result of alcohol poisoning.
- 88 17. I also considered that I found no foaming around the mouth or in the lungs. Very often,
89 overdose victims have white, frothy foam in their mouths, lungs, and trachea. This is
90 typically seen in decedents who have trouble breathing. Opiates slow the heart. When the
91 heart is not functioning well, the lungs fill with fluid. When one tries to breath with fluid in
92 the lungs, a foamy substance is created. Thomas' lungs were very full of fluid. They were
93 also scarred and full of mucus, which would be a result of the Cystic Fibrosis. Lack of
94 foaming at the mouth did not change my opinion that the death was respiratory depression
95 caused by opiates, because the lungs were full of fluid and my examination of Thomas
96 concluded that his heart had not been functioning properly in the hours before death. About
97 80-90% of people who die of opiate overdose have foaming at the mouth.
- 98 18. From the investigating officer on the scene, I received a blood sample drawn from Riley
99 Thomas, and I provided it to the state crime lab for processing. That sample was drawn at
100 2:56 AM, and as such is, in my opinion, an accurate indicator of Thomas's BAC and
101 Oxycodone levels at the time of his death. I received the results within two weeks. The
102 toxicology revealed Oxycodone and alcohol in Thomas's blood. Thomas' Blood Alcohol
103 Content (BAC) at the time of death was .16. While this BAC is high for a person of
104 Thomas' age and size, in my medical opinion that amount of alcohol alone would not be
105 enough to cause alcohol poisoning or death.
- 106 19. The toxicology report indicated the presence of Oxycodone in Thomas' blood was .491
107 mg/L (milligrams per liter). While this is on the relatively low side, I have personally
108 performed several autopsies on teenagers who died from a drug overdose who had the same
109 amount or less of the drug in their blood.
- 110 20. I can say to a reasonable degree of medical certainty that Oxycodone caused Thomas's
111 death; without it, he would have lived. I also believe, to a reasonable degree of medical
112 certainty, that the combination of alcohol with Oxycodone was not a significant factor in
113 Thomas' death. It was the Oxycodone alone. That drug is just that powerful and dangerous.
- 114 21. I have seen so many young people taken way too soon because of Oxycodone and other
115 similar prescription drugs. The teenagers, teachers, parents, and the medical community

116 need to know lethal prescription drugs can be. Too many people think that because a drug
117 came from a doctor's office, that means it's safe, and anyone can take it. That's just not true.

FURTHER AFFIANT SAYETH NOT

By: /s/Devin McDonnell, M.D.
Devin McDonnell, M.D.

Subscribed and sworn to before me
this 15th day of July, 2016

 /s/ Anne Bensky
Notary Public, Clearwater County, WI
My Commission expires: permanent

AFFIDAVIT OF TRISTAN MARKS

Tristan Marks, being first duly sworn upon oath, states as follows:

- 1 1. My name is Tristan Marks. I am now eighteen years old. I was eighteen when Riley Thomas
2 died. I still feel like I am in shock. It has been really hard. Not only have I lost one of my
3 closest friends, but I also feel like I have lost my life too. Before this happened, I was
4 admitted to attend Clearwater State. I even got a small scholarship. I was so excited to start
5 college, but this has all put an end to that, at least for now. I hope just for now.
- 6 2. Riley and I really only became friends senior year. We just didn't really cross paths until
7 then. Senior year, we were in the same math class, and we immediately hit it off. Riley was
8 funny, opinionated, and liked to have a good time. I know Riley had what my mom said was
9 a "really serious" disease, but honestly Riley never seemed that sick to me. Riley also never
10 talked about it. Maybe Riley just didn't want to think about it.
- 11 3. June 3rd was a Friday. My friend Nic Stevens and I talked in gym class about hanging out
12 that night. Nic mentioned that his/her brother was old enough to buy us alcohol and was
13 home from college. I asked Nic if he/she would want to come over at my grandmother's
14 place. I thought it was a good idea because she's got a pretty nice basement. She also never
15 goes into the basement because she says walking down the stairs hurts her knees and hips, so
16 I never would have to worry there that I was being spied on. Honestly, I had a pretty good
17 set-up in her basement. There's not a bed down there, but there is a couch and a bathroom. I
18 would stay over there a lot senior year. I was getting into a lot of fights with my parents, and
19 they were getting into a lot of fights with each other, and so it was nice to have a place to go
20 and escape.
- 21 4. During lunch, I told Riley about my plan with Nic and Riley said he/she wanted to join.
22 Riley was always up for things like that.
- 23 5. After talking with Nic and Riley, I called my grandma and asked her if it was cool for me to
24 stay there that night. My mom later showed me the email exchange between her and my
25 grandma about me saying my parents were fighting. To be honest, I did lie and told her that
26 my parents just had a really big fight. She said she was going to be gone for the weekend—
27 my uncle was taking her on "weekend getaway" as she put it—but she said I was welcome
28 to stay there. I didn't tell her I'd be bringing friends over. I know that isn't very nice,
29 especially because she had been feeling sick for a while and wasn't thrilled at too many
30 people in her house. Riley had been over there before, I think only once though.
- 31 6. After school, Riley, Nic and I all walked to Nic's house to get the beer from Nic's brother.
32 We grabbed a video game from Nic's, and a frozen pizza and chips from a gas station and
33 went to my grandma's house. We spent the entire night in the basement, eating, drinking,
34 talking, and playing games. We were having a great time. I still can't believe how the night
35 ended.
- 36 7. At one point, after we had all had a few beers, Riley asked me whether my grandma had
37 anything fun in the house. I asked Riley what he/she meant, and Riley said "pills." I said that

- 38 I knew my grandma took prescription pills, but I didn't know what they were or where they
39 were. I would just see her taking them with meals. Riley didn't ask any other questions and
40 we did not talk about my grandma's medications other than that. I thought it was a little
41 funny that Riley was asking, since I had never really thought that Riley would be interested
42 in anything like that. Honestly, I just thought Riley was just trying to seem cool or tough or
43 whatever because we were all drunk.
- 44 8. I had no idea that Riley would go find and take the pills. It's crazy for people to think that I
45 would have given those pills to Riley. I've seen the commercials. I know that taking
46 prescription pills like that can kill you. Plus, I made sure we all stayed in the basement so we
47 wouldn't make a mess of the upstairs of my grandma's house. Once we hit the basement, I
48 didn't go upstairs the whole rest of the night—well, at least, not until the EMT and police
49 arrived.
- 50 9. I've never taken prescription pills other than when I got sick as a kid and was given pills by
51 a doctor. Other than alcohol, the only thing else I've tried is weed. If I was smoking, I'd
52 share it with friends, but I never sold weed. I've never sold any drugs, and never given
53 anyone any drugs other than weed.
- 54 10. At some point that night, I passed out on the couch. I'm not sure exactly when it was. The
55 next thing I remember, I woke up to what sounded like choking and gargling sounds. I
56 looked down on the floor, where Riley and Nic were laying, and saw Riley. Riley's whole
57 body was shaking, and it sounded like he couldn't breathe. It looked like he had puked all
58 over himself.
- 59 11. I rushed over to Riley. Though he was moving, he did not appear to be awake. It was really
60 scary. When I kneeled down next to Riley, I saw by Riley's pillow a prescription pill bottle
61 with my grandma's name on it. I have no idea when, how, or where Riley got it. He must
62 have gone looking after I passed out. I freaked out when I saw the bottle and immediately
63 called 911. Nic woke up and started screaming too.
- 64 12. It seemed like it took forever for the EMT to get there. When he did, he asked what
65 happened. I said we had been drinking, and that I found a pill bottle next to Riley. I said I
66 didn't know whether he had taken any of the pills. I was freaking out and screaming. I said
67 that I never meant for this to happen. I felt so guilty that I had told Riley that my grandma
68 had pills in the house.
- 69 13. I know that the EMT has since said that I said that I never should have *given* Riley pills.
70 That's not true. I was just freaking out and kept saying "I never meant for this to happen." It
71 was all so scary. But I am 100% sure I never said that I *gave* Riley pills. Why would I say
72 that? It's not true.
- 73 14. The EMT gave Riley some sort of shot, but it did not seem to help. Riley's lips were blue.
74 I'll never forget that. I kept asking the EMT whether Riley would be okay, but the EMT did
75 not say anything.

- 76 15. A little while after the EMT arrived, police arrived. The officer took Nic and I upstairs and
77 talked with us. He talked with me first and had Nic sit in the next room. I told him that we
78 were in my grandma's house, and that I was there because of fights I was having with my
79 parents. I told him that I knew my grandma took pills but I didn't know what or where they
80 were. I was honest with him and told him that I had told Riley that my grandma had pills in
81 the house, but that I did not give Riley the pills and that I didn't even know that Riley had
82 taken them.
- 83 16. When I found out that Riley was dead, I could not believe it. I kept crying and saying that it
84 could not be true. I just wanted to have a fun night with my friends. I still feel bad that I told
85 Riley that my grandma had pills in the house. I still feel like it's my fault.

FURTHER AFFIANT SAYETH NOT

By: /s/Tristan Marks
Tristan Marks

Subscribed and sworn to before me
this 15th day of September, 2016

 /s/ Hannah Schieber Jurss
Notary Public, Clearwater County, WI
My Commission expires: permanent

AFFIDAVIT OF DR. SHELLEY FRANKENSTEIN

Shelley Frankenstein, being first duly sworn upon oath, states as follows:

- 1 1. My name is Dr. Shelley Frankenstein. I am fifty-five years old and have been practicing
2 medicine for thirty years. I am Board Certified in Internal Medicine and Pulmonary
3 Disease. My qualifications are more fully detailed in the attached CV. I have a particular
4 interest and specialty in the diagnosis and treatment of cystic fibrosis due to the death of my
5 younger brother, Victor, from the disease. As listed on my CV, I have written several
6 publications and lectured frequently on the care and treatment of cystic fibrosis. I like to
7 think that I am a nationally known expert on cystic fibrosis.

- 8 2. I was retained by the attorneys for Tristan Marks on August 1, 2016. Since that time, I have
9 reviewed all of the witness affidavits, police reports, State Laboratory reports, the affidavit
10 of Dr. Devin McDonnell, all pictures taken in this case, the text message exchange between
11 Riley Thomas and Charlie Davis, the email exchange between Kristine Marks and Diana
12 Marks, the toxicology reports, and the medical records for Riley V. Thomas. Based upon
13 my review of all of the evidence, it is my opinion to a reasonable degree of medical certainty
14 that any Oxycodone ingested by Riley Thomas on June 3 or 4, 2016, was not a substantial
15 factor in Riley Thomas' death.

- 16 3. Cystic fibrosis is a disease that causes severe damage to the lungs and also to the digestive
17 system. Specifically, it affects cells that produce mucus, sweat, and digestive juices.
18 Normally these bodily secretions are thin and slippery, and act like a lubricant. In people
19 with cystic fibrosis, however, they become thick and sticky. In the lungs, this can cause
20 breathing issues because the thicker and stickier mucus clogs the bronchial tubes that carry
21 air in and out of the lungs. The respiratory symptoms associated with this are a persistent
22 cough with thick sputum, wheezing, breathlessness, intolerance to exercise, more frequent
23 lung infections, and inflamed nasal passages.

- 24 4. With proper treatment today, people with cystic fibrosis can live into their twenties and
25 thirties. Some even live longer. However, it is not a disease that can be ignored. There are
26 numerous potential respiratory and digestive complications. It can also lead to osteoporosis,
27 electrolyte imbalances, and dehydration. Thus, it is extremely important for a cystic fibrosis
28 patient to regularly followed by a doctor, take his medications, and engage in appropriate
29 therapy.

- 30 5. Riley Thomas was diagnosed with cystic fibrosis when he was seven years old. From a
31 review of the medical records, in the last three to four years prior to his death, his lung
32 function test results had shown a steady decrease. For example, one of the lung function
33 flow rates, his FEV1 levels, had decreased from 70% of normal to 45% of normal. More
34 recently, Riley was diagnosed with bronchiectasis, which is damage and scarring to the
35 airways, making it even more difficult to breathe. Both the decreased lung function and the
36 bronchiectasis are not at all uncommon in cystic fibrosis patients, but it means that he should
37 have been even more careful about his health and environment. Riley should have been
38 engaged in exercise training, strict nutritional guidelines, and pulmonary therapy.

- 39

- 40 6. In the most recent medical record, Riley’s doctor again recommended that Riley engage in
41 daily physical chest therapy. Often, a caregiver will perform various therapy modalities
42 using their hands in either a percussive effect and/or vibration to loosen the mucus in the
43 lungs. Since Riley was getting older and needed to be able to perform therapy himself,
44 Riley’s doctor recommended purchasing equipment that Riley could use himself. There are
45 many different types of electrical or non-electrical palm percussors and vibrators available at
46 a medical supply store. It’s not clear from the record, but Riley’s insurance probably would
47 have covered the cost.
- 48 7. Unfortunately, from the medical records, it does not appear that Riley was faithfully
49 engaging in the recommended physical therapy. This was then exacerbated by Riley’s
50 lifestyle. Smoking and drinking are among the worst possible things that he could have
51 been doing.
- 52 8. Being a cystic fibrosis patient can be quite difficult, frustrating, and stressful. This can be
53 especially so for teenagers because most teenagers want to fit in with a group. It is difficult
54 for someone with CF to engage in activities that other teens are engaged in. Thus, a
55 significant number of my teenage patients also suffer from depression. I have seen a
56 number of patients, like Riley, who engage in behavior that has negative health
57 consequences for them. Fortunately, most of them get through this phase and live longer
58 lives (albeit shorter than an average person of good health). Unfortunately, however, some
59 like Riley do not make it through this negative phase in their lives and they live much
60 shorter lives—some even commit suicide.
- 61 9. It is my opinion to a reasonable degree of medical certainty that Riley Thomas’ heavy
62 drinking and smoking caused his death. He already had a diminished lung capacity.
63 Smoking and being in an environment where others were smoking overwhelmed his lungs
64 and led to respiratory failure. This was the cause of the “choking” sounds that his friends
65 reported.
- 66 10. I acknowledge that Riley did have Oxycodone-hydrochloride in his system. While the
67 ingestion of Oxycodone did not help his condition, the levels present in his blood would not
68 have been enough to cause an overdose and death. According to the ME, he only took one
69 40 mg tablet. This is within the normal therapeutic dosage, although on the upper end for an
70 adult. Granted, Riley was only a teenager and as a non-user the dosage could have had a
71 stronger effect, but he was not far from being an adult with a similar size as an adult. 40 mg
72 just should not have caused an irreversible overdose. Even with the CF, if Riley had not
73 been drinking and smoking, he could have survived an overdose at those levels. The EMT’s
74 administration of Narcan did not have the desired effect, because Riley’s lungs had shut
75 down. Oxycodone or no Oxycodone that night, Riley would have died due to the drinking
76 and smoking. Therefore, it is my opinion that the Oxycodone was not a substantial factor in
77 Riley’s death.

FURTHER AFFIANT SAYETH NOT

By: /s/Shelley Frankenstein
Shelley Frankenstein, M.D.

Subscribed and sworn to before me
this 15th day of November , 2016

 /s/ Michael Rosenberg
Notary Public, Clearwater County, WI
My Commission expires: permanent

AFFIDAVIT OF CHARLOTTE/CHARLES DAVIS

Charlotte/Charles Davis, being first duly sworn upon oath, states as follows:

- 1 1. My name is Charlotte/Charles Davis. I graduated from Clearwater High on June 22, 2016. I
2 was the valedictorian of my class, and now I attend UW-Madison. I even got the Academic
3 Excellence Scholarship for being valedictorian, which helps with the tuition costs. I just
4 love being a Badger. I'm hoping to be a housefellow once I get a little further along in
5 college—I heard that housefellows get room and board for free!

- 6 2. One thing I'd like to do once I graduate and get a job is start some kind of scholarship fund
7 for my friend Riley Thomas. His death was a horrible tragedy. To be honest, I still haven't
8 recovered, and I'm not sure I ever will. Riley and I were friends since we were three. Our
9 moms got to know each other in some kind of jazzercise class or something and they
10 became fast friends, and after that Riley and I were always hanging out together, whenever
11 our moms wanted to get together to go shopping or have coffee. Our families became really
12 good friends. Riley had two little brothers the same age as my little brothers, so our families
13 would get together a lot. Some of my best memories as a kid were with Riley, exploring the
14 woods and building sand castles on the beach during our annual camping trips.

- 15 3. As we got older, we started hanging out in separate circles at school. We were still good
16 friends, and we still hung out very regularly, but we sort of went our separate ways at
17 school. I became very focused on my schoolwork and my extra-curricular activities: Mock
18 Trial, Student Council, Robotics Club, Academic Decathlon, Peer Helpers, Marching Band,
19 Jazz Band, Debate, Forensics, Key Club, German Club, and Badger Boys/Girls State. Mock
20 Trial was of course my favorite of all of my activities. I also met regularly with my teachers
21 to make sure I was understanding the class materials and preparing adequately for my tests,
22 papers, and course projects.

- 23 4. Riley, on the other hand, started to hang with a group of people that enjoyed a different type
24 of extra-curriculars. Tristan Marks, for example, was one of Riley's good school friends
25 senior year. Tristan was kind of a popular person in our high school. He was good-looking,
26 and always knew what to say in social situations. But, everyone in school knew Tristan had
27 a bit of a reputation. I heard that Tristan could throw some great parties, and could always
28 get everyone's older siblings to get beer and liquor for the parties. I also heard a rumor that
29 Tristan was into more than just alcohol and weed. I tried not to pay too much attention to
30 those rumors because I wasn't into that stuff—I was always worried it would distract from
31 my studies. But, even though I didn't drink or do drugs, Tristan was always really nice to
32 me senior year because of my friendship with Riley. I was always worried people wouldn't
33 like me very much because of how committed I was to my studies and my extra-curriculars,
34 but people always treated me really well in school and I think that was because of Riley.
35 Popular kids sometimes have that kind of influence over people.

- 36 5. Even though I like Tristan, I was a little bit worried about Riley hanging out with him so
37 much senior year. I never wanted to be Riley's babysitter, but Riley was supposed to be
38 extra-cautious because of his cystic fibrosis. I still remember when Riley was diagnosed.
39 We were seven, but Riley's eighth birthday was just around the corner. Riley was always

40 coughing, and sometimes he would cough up blood, which was really scary. He had a hard
41 time breathing, and if he would try to run around playing capture the flag he would always
42 wind up wheezing and unable to catch his breath. He was always sick, and seemed to have
43 constant sinus infections, bronchitis, and even pneumonia when we were just little kids. He
44 was also always really skinny.

45 6. I remember Riley telling me how he was going in for testing. He said the doctors were
46 testing for lots of things, and he had to get x-rays and blood tests, and some kind of
47 breathing test. I still remember when my parents brought all three of us kids into their
48 bedroom to sit us down and tell us about Riley's diagnosis. At seven, I don't think I really
49 comprehended the seriousness of it, but I started to understand as Riley and I got older. He
50 was always in and out of the hospital, and the symptoms he had as a kid continued. What
51 really hit home though was when we were about 12 and Riley told me that a lot of people
52 with cystic fibrosis only live until they are in their 20s or 30s.

53 7. At that point I started doing all of the research I could about cystic fibrosis. I tried to attack
54 it the same way I attack my school studies. I learned that with therapy, training, and some
55 dietary/nutritional guidelines, some people with CF are living into their 40s and even 50s! I
56 also knew that if Riley was going to be smoking and drinking (or worse) with Tristan Marks,
57 it would do a lot more damage to Riley than to someone without CF. So, Riley and I
58 sometimes got into arguments about the way he was taking care of himself. He knew it was
59 only because I cared about him, and our friendship stayed strong despite our disagreements.

60 8. In high school was when Riley really stopped taking care of himself. When I would catch
61 him smoking a cigarette, I would usually bicker with him, but Riley would usually respond
62 something to the effect of, "I've got a short life to live; nothing's gonna stop me from living
63 it to the fullest!" I think the reality of his diagnosis of CF really got to him. I always had a
64 hard time responding, because I know I can't even imagine what a diagnosis like CF must
65 have felt like to him from an emotional standpoint. I probably saw him smoking cigarettes
66 ten times total during high school, starting around freshman year and spread out up until a
67 month or so before his death—Riley told me he didn't smoke all the time, just occasionally.

68 9. I assume that Riley was drinking, too, at least during senior year, based on the fact that
69 Tristan's reputation is that he likes to hold parties, and Riley and Tristan were very close
70 senior year. I never actually saw Riley drinking, because I never wanted to go to a party and
71 get peer-pressured into drinking. I did have one conversation with Riley about drinking,
72 where I said "You know, Riley, you shouldn't be drinking—that's not the way to take care
73 of yourself." Riley laughed and responded, "You need to quit worrying about me, Charlie,
74 it's not good for YOUR health to be constantly worrying about me."

75 10. I do also know that Riley was doing a lot of therapy right after he was diagnosed. On our
76 camping trips and when we were at his home, his mom would have Riley lay down on his
77 side. His mom would then do what looked like patting or clapping him along the side, and
78 Riley would usually cough up a bunch of mucus. I know Riley was embarrassed about that,
79 especially as we got older; I think I'm the only friend who was allowed in the same room
80 when that was happening—usually we'd just be watching a movie during the therapy.

- 81 11. During high school, I didn't really see Riley's mom doing the therapy with Riley, but I also
82 wasn't at his house as much at bedtime and in the morning, which is when it happened when
83 we were younger. One time in high school, Riley and I were hanging out after school until
84 around 5:00 pm, when we went back to Riley's house for dinner. Riley's parents asked how
85 his physical therapy had gone after school that day, and Riley responded, "It went great." I
86 knew Riley was lying to his parents, because I had been with Riley the whole time after
87 school and he didn't go to physical therapy. But, I didn't say anything to his parents,
88 because I didn't want to be a snitch and I figured maybe Riley had just skipped that one
89 session. His mom also asked whether Riley had "used the vest" that morning, whatever that
90 means, and Riley said that he had. I wasn't with Riley in the morning, so I'm not sure
91 whether or not he was telling the truth on that.
- 92 12. I do think Riley started looking worse and worse in high school; he was very skinny and just
93 didn't look that healthy. I also noticed that Riley's breathing was getting worse. He had a
94 hard time breathing just in everyday activities, not just during gym class or after walking up
95 a flight of stairs.
- 96 13. On June 3, 2016, I had decided to stay in and study, because finals were just around the
97 corner, and I wanted to make sure I would maintain my high GPA and status as first in my
98 class. I wound up going to bed around 11:00 pm that night. The next morning, I saw that I
99 had received a text message on my phone from Riley the night before, at 11:36 pm. The text
100 was a picture of a pill bottle. When I made the image bigger on my phone, I could tell it was
101 for a prescription that was not Riley's, and I could see it was for "Oxycodone HCL" and
102 then something that looked like "Extend," but I couldn't read the rest of it because of the
103 angle. Riley also had sent a message saying "Hey... check out what I scored tonight" along
104 with a sunglasses-face emoticon.
- 105 14. A day or two later I took a screenshot of the text message I had received and turned it over
106 to the police. In the screenshot you can see part of an earlier text message exchange
107 between Riley and me, but that was from a week or two before Riley passed.
- 108 15. I am so upset that I didn't see the text message until after Riley had already passed away. I
109 just wish I had seen that message; I sort of feel like Riley texted it to me because he was
110 calling for help—he knew that if I saw it I would have replied and told him not to take it!
111 Maybe I even could have called Riley's parents and told them about it. While I know Riley
112 would have been upset with me if I had done that, maybe it would have saved his life!
- 113 16. After everything that has happened, I really wish I had spoken up to Riley's parents about
114 the way s/he was taking care of himself. If only I had brought up to his parents when he lied
115 about going to therapy that one time, maybe that would have opened up the conversation to
116 talking about how he was treating his body when they weren't watching. Riley was like a
117 brother to me, and I can't help but feeling like I let him down by not taking better care of
118 him while he was still here.

FURTHER AFFIANT SAYETH NOT

By: /s/ Charles/Charlotte Davis
Charles/Charlotte Davis

Subscribed and sworn to before me
this 25th day of September, 2016

/s/ Emily Lonergan
Notary Public, Clearwater County, WI
My Commission expires: permanent

CURRICULUM VITAE OF SHELLEY FRANKENSTEIN, M.D.

1060 W Addison St
Chicago, IL 60613
(312) 214-1970

Sfrankenstein1818@gmail.com

Education

- John Hopkins University, Baltimore, MD
 - Post-graduate fellowship, 1985-87, Pulmonology
 - Residency, 1984-87
- University of Chicago, Chicago, IL
 - M.D., May, 1984
 - B.S., May, 1981

Certifications

- Board Certified in Internal Medicine, 1987
- Board Certified in Pulmonary Disease, 1989

Professional Experience

- University of Chicago Pritzker School of Medicine
 - Professor, Pulmonary Diseases, 2007-
 - Assistant Professor, Internal Medicine, 2003-2007
 - Lecturer in various areas, 1995-2003
- Chicago Institute of Pulmonary Medicine
 - Partner, 2005-
 - Associate, 1995-2005
- Tinker, Evers, Chance, S.C., Chicago, IL, 1987-95
 - Internal Medicine and Pulmonary Care physician

Community Activities

- Chicago Cystic Fibrosis Society
 - Chair, 2009-11
 - Board, 1999-11
 - Volunteer, 1987-
- Boys and Girls Club, Board Member and Volunteer, 1995-

EXHIBIT

A

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- Mayor's Committee on Pulmonary Health of City Residents, 2007-10
- Cubs Booster Club, 1987-

Publications

“Incidence of Mesothelioma among Sparrows Point Shipbuilders during WWII,” *Literature and Medicine*, June 1987.

“Pulmonary Disease in Urban Centers in America,” *New England Journal of Medicine*, November, 1990.

“An Epidemiological Analysis of Cystic Fibrosis in the Midwest,” *American Journal of Respiratory and Critical Care Medicine*, April, 1995.

“Care and Treatment of Cystic Fibrosis in Teenagers,” *Journal of American Medical Association*, September, 1998.

“Cystic Fibrosis Treatment can extend Life Spans,” *New England Journal of Medicine*, January, 2001.

“Bronchiolitis obliterans in former workers of a microwave popcorn plant in Jasper, Missouri,” *The Lancet Respiratory Medicine*, March, 2004.

“Is this the Year?” Curse of the Goat, May, 2007.

“A Shocking Comparison of Respiratory Health of Inner City Children in American Cities with Children in Undeveloped Countries,” *Stanford Journal of Global Health & Development*, July, 2010.

“A Call to Arms: the Medical Crisis in Syria,” *International Journal of Medical Sciences*, August, 2014.

“Maybe this Year, Finally?” Curse of the Goat, April, 2016.

CURRICULUM VITAE

Devin McDonnell, MD

Licensed to Practice Medicine in: Wisconsin, Minnesota

Professional Experience

- Chief Medical Examiner, Office of the Chief Medical Examiner, Clearwater, WI, 2003 – present
- World Health Organization, Nigeria

Education

- MD, 1993, University of Wisconsin School of Medicine and Public Health
- MS, Epidemiology, 1999, University of Wisconsin School of Medicine and Public Health

Professional Training

- Fellowship in Forensic Pathology, 2003-2003
 - Office of the Chief Medical Examiner, Clearwater, Wisconsin
- Forensic Fellowship Program, 2000-2001
 - Milwaukee County Medical Examiner's Office, in conjunction with the Medical College of Wisconsin
- Residency in Pathology and Laboratory Medicine 1995-1997
 - University of Wisconsin, School of Medicine and Public Health
- Internship, Internal Medicine, 1994
 - University of Minnesota Medical School

Board Certification

- Diplomate of the American Board of Pathology in Anatomic and Forensic Pathology

Professional Memberships

- National Association of Medical Examiners
 - Member: Forensic Toxicology Committee
- Wisconsin coroner and Medical Examiner's Association
- Wisconsin Association of Homicide Investigators
 - Member of Board of Directors, 2011 – 2014
- American Society for Clinical Pathology
- Association for Molecular Pathology

EXHIBIT

B

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Submitting Agency:

Chief Medical Examiner Devin McDonnell
Clearwater County Medical Examiner's Office
521 Regent Road
Clearwater, Wisconsin

Date: June 20, 2016

Case No: R16-864

Agency No: 16-798753

Laboratory Analyst:

Eddie Lacy
(Toxicology)

Case Name: Thomas, Riley V.

I do hereby certify this document, consisting of 1 page(s), to be a true and correct report of the findings of the State Crime Laboratory on the items, examined as shown by this report. This report contains the conclusions of the above signed analyst.

Brad D. Schimel
ATTORNEY GENERAL

DESIGNEE

Item A1(blood), reportedly recovered from Riley V. Thomas on June 4, 2016 at 256 hours, was received at the State Crime Laboratory on June 7, 2016.

Item A1(blood) Toxicologist	Drug	Result	Uncertainty (99.73% coverage probability)
<i>Volatiles Analysis by Headspace Gas Chromatography</i>			
Eddie Lacy	Oxycodone-hydrochloride	0.491 mg/L	#0.009 mg/L
Eddie Lacy	Ethanol	0.160 g/100mL	#0.009 g/100mL

Toxicology analysis of the above item(s) is complete. Upon the completion of all requested analyses, the item(s) will be returned to the submitting agency.

CLEARWATER COMMUNITY MEDICAL CENTER

Date: May 1, 2016

Patient: Riley V. Thomas

DOB: 05/04/1998

Soc Sec No.: [REDACTED]

Physician: Dr. Stanley Owsley, M.D.

History: Riley Thomas has been treated for cystic fibrosis for approximately ten years. Generally Riley's cystic fibrosis manifested itself in the lungs with extremely minimal affectations in the digestive system. I first began treating the patient about five years ago. At that time the patient's cystic fibrosis was being managed adequately with minimally aggressive therapy. Riley's caretakers were his parents, with his mother performing more of the therapy since to my understanding she stayed at home. This office provided literature and videos on performing respiratory therapy, such as clapping and vibration therapy by hand. In 2011, although his lung function was slightly reduced as would be expected for a cystic fibrosis patient, Riley's FEV1 rates were still close to the normal range at 77%. The occasional infections were treated successfully with normal antibiotics. In 2012, FEV1 had dropped to 70%, below normal range but still not seriously low. Nevertheless, we started to monitor Riley more frequently and discuss alternative respiratory therapy with the patient's parents. The trend, however, became more concerning. In 2013, FEV1 readings ranged from 60-65% of normal. In 2014, the readings were 55-60%. A vibrating vest was recommended to help break up the mucus more than just manual physical therapy. My understanding is that they purchased such and it was covered by insurance, but as Riley got older he started to balk at all of the "abnormal" measures. Infections also started to increase and x-rays showed increased scarring and mucus. In 2015, testing became more serious. FEV1 was down to 50% and x-ray showed scarring in 50% of the lungs.

Current testing: FEV1 is reduced at 45% of normal. Total Lung Capacity (TLC) was slightly increased at 110% due to air trapping. X-rays show lung scarring in 60% of the lungs and shadowing indicating large amounts of mucus.

Examination: Examination shows a generally well-formed teenage patient, but with a borderline sickly pallor. Patient is underweight. Lungs have diminished breath sounds in lower lungs, rasps, and a clear difficulty breathing. Fingernails have mild cyanosis indicating lack of oxygenation of the blood. There also appears to be the beginnings of clubbing in the fingers indicating the same.

Discussion: Patient is now 17 and here without parent. We had a frank discussion about his condition. Patient admits to smoking cigarettes occasionally which I in the strongest possible way recommended against. Given patient's current lung functioning and disease, cigarettes by themselves could lead to an early death. Patient expressed "but all my friends smoke." I responded that it was not healthy for them, but could be deadly for patient due to condition. Patient's lungs are currently borderline and I explained that the additional strain from cigarette smoking (or indeed any environmental contaminant) could pose



serious problems for patient. This includes second-hand smoke. Patient appears to be suffering from depression in addition to normal teen-age angst. I prescribed 5 mg Escitalopram to start and referred patient to the Psychiatry department for follow up and treatment.

I also discussed with patient the physical respiratory therapy. Patient has not been engaging in therapy on a consistent basis. As noted above, when younger patient's mother performed therapy daily. As patient has aged, he has balked at mother performing the therapy but patient admits that he does not do the therapy on a daily basis. Indeed, Riley admitted that in a week he only does the therapy three or four times. Riley said it was not that bad when younger, most of the kids were nice to him. Now that patient is older he expresses frustration not being able to take part in most of the normal teenage activities. I tried to express sympathy, but it is always easier said. I again stressed that patient make use of the vibrating vest purchased a couple of years ago. It will help break up the mucus and hopefully at the very least stabilize lung functions. Without it, I'm very concerned that patient will end up hospitalized. Although patient acknowledged the need and seemed to indicate assent, I am skeptical that patient will follow through. A light aerobic exercise program is also helpful.

Recommendations:

- F/u with psychiatry.
- Re-engage in respiratory therapy, including using vibrating vest daily
- Begin light aerobic exercise, such as moderate walking on treadmill. Gave referral to our physical therapy department.
- Cease smoking and being around anyone smoking.
- Healthy diet. Literature and referral to nutritionist given.
- Prescription for inhaler to use as needed.
- Return visit in two months.



kristine.l.marks@gmail.com

this weekend

2 messages

Diana Marks <dianamarks40@gmail.com>
To: kristine.l.marks@gmail.com

Sat, June 4, 2016 at 2:25 PM

Kris-

We tried calling, but Eric said your phone was being worked on and that you were talking with some detective who was asking questions. What happened this weekend? I didn't even know Tristan was staying with you; I thought you were on your weekend getaway? I can only get bits and pieces out of Tristan and I'm just trying to get some answers. People have said something about oxycodone and that it was yours, but Dr. Rodgers said you were supposed to be taking it every 12 hours--didn't you bring it with you for the weekend? If it was yours, are you missing some? John and I are going to come over for dinner on wed like usual but if you do get this before then, maybe you could come over or we could talk???

Diana

Kristine Marks <kristine.l.marks@gmail.com>
To: **Diana Marks** <dianamarks40@gmail.com>

Sun, June 5, 2016 at 12:32 AM

Diana-

Sorry to be responding so late! Its been a long day! As you know we came home early when we found out what happened! I've been talking with the police men and and trying to make sense of it all! Yes it looks like that poor child took my medicine! I can't even believe it! Had I known, I would have taken all of it with me! I just took the pill organizer Johnny picked up for me after he took me to that last appointment and left the rest at home! It looks like I am missing 2 of the pills but I don't know if they were both missing from this weekend or if it could have been before that! I thought Tristan told you that s/he was staying with me! Tristan said you and Johnny were fighting again--is that true? Are you and Johnny okay?

P.S. Dinner on wednesday sounds great with you and Johnny. I'm making casserole so don't bring anything!

Kris.

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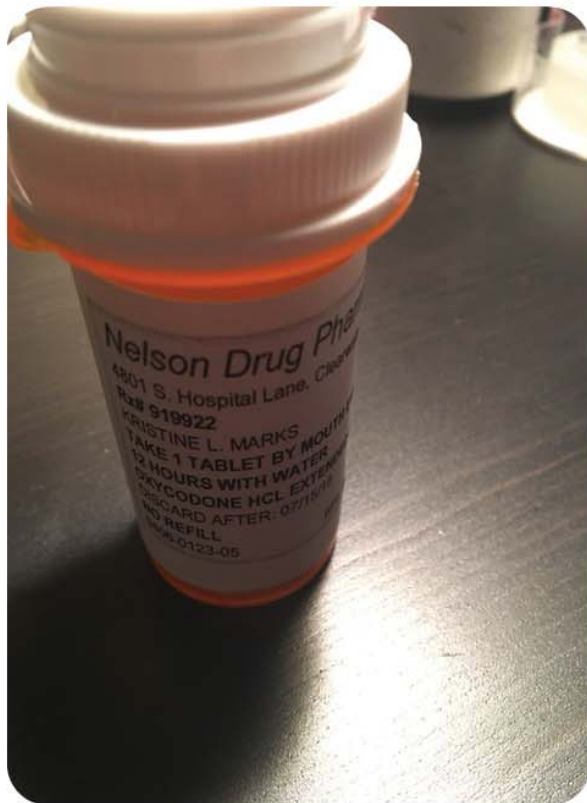
Riley Thomas

making me go... 😡👎

No worries! Next time for sure. 😊

Delivered

June 3, 2016 at 11:36 pm



Hey... check out what I scored tonight! 😎



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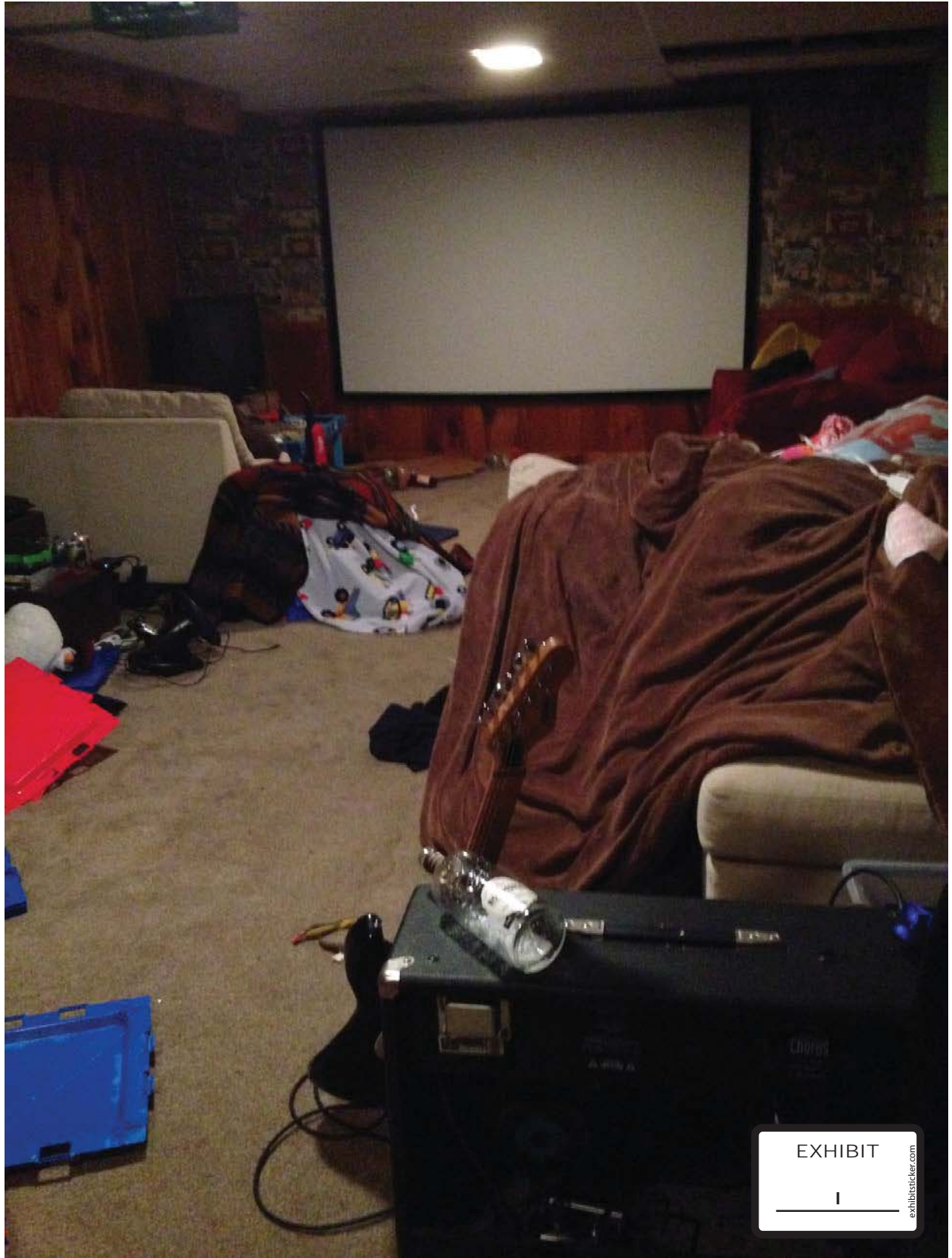
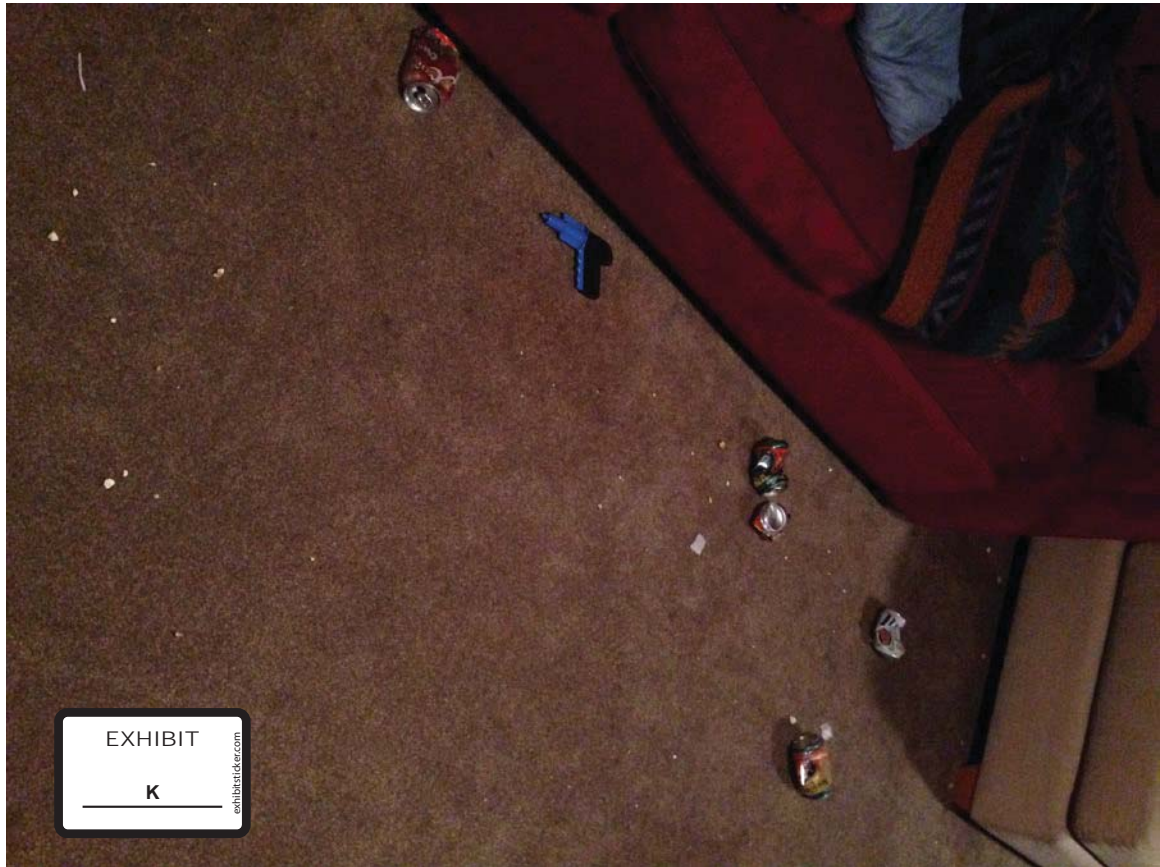


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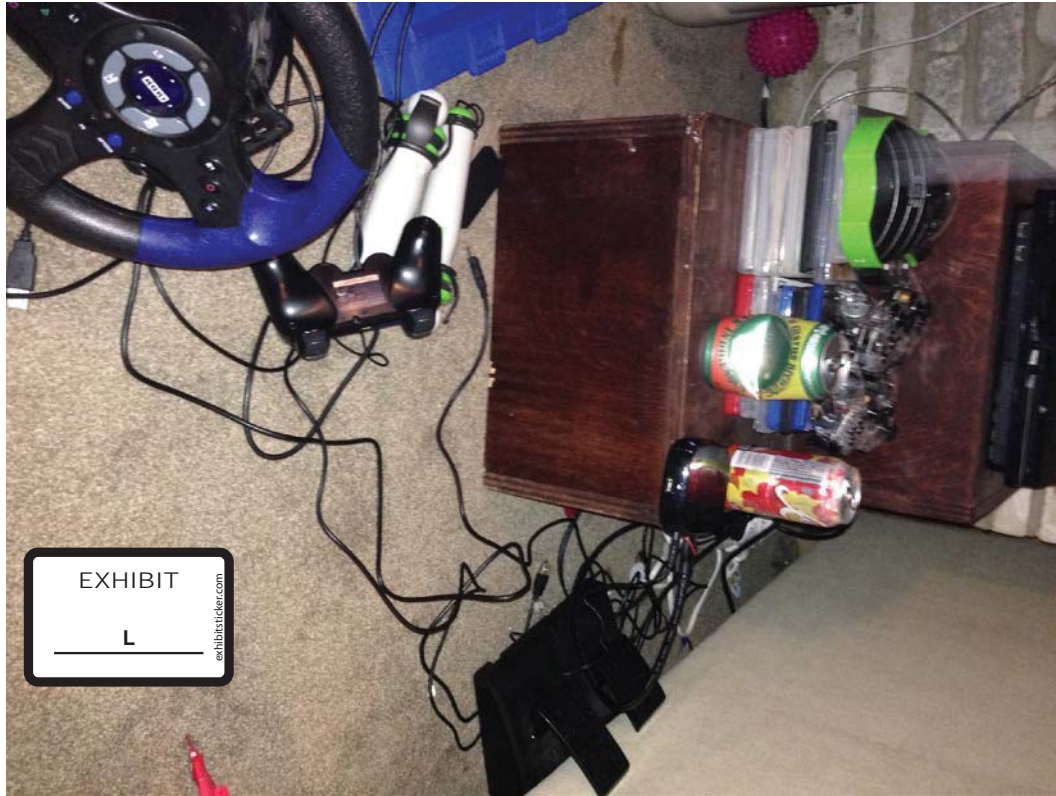


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