

## **Were the Tippit crime scene shell hulls fired from the revolver of Lee Harvey Oswald?**

**Gregory Doudna**

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*“...[T]hose four cartridge cases ... were fired in the revolver, Commission Exhibit 143 [revolver of Lee Harvey Oswald], to the exclusion of all other weapons...”* -- Cortlandt Cunningham, Firearms Identification Unit, FBI Laboratory, Washington, D.C., Warren Commission testimony

At approximately 1:15 pm on Friday, November 22, 1963, less than an hour after the assassination of President John F. Kennedy at Dealey Plaza, Dallas Police officer J.D. Tippit was gunned down and killed by an assailant near the corner of Tenth and Patton in the Dallas suburb of Oak Cliff.

After shooting officer Tippit, the gunman was seen manually taking out spent shell hulls from a revolver, then manually reloading, as he began a controlled walk and then lope away from the dead body of officer Tippit on E. Tenth and turned south on S. Patton.

Four shell hulls were recovered where the gunman was seen ejecting them. Two were found within minutes by a citizen who turned them over to arriving police. A third was found less than an hour later by a woman at the house at whose front yard the first two were found, and handed over to an officer. And a fourth was found later that afternoon by another woman in the same yard, and turned over to police.

About thirty minutes after the killing of Officer Tippit, Lee Harvey Oswald was arrested on the main floor of the Texas Theatre on Jefferson Boulevard after the

gunman who had killed Tippit entered the theater and went into the balcony. When arrested, Oswald had on his person a snub-nosed .38 caliber Smith & Wesson revolver, the same caliber which had killed officer Tippit.

Oswald was taken downtown to the Dallas Police station and that evening charged with the murder of Officer Tippit, and later that night, the assassination of President Kennedy.

Neither of the cases came to trial. On Sunday morning, November 24, 1963, Oswald was shot and killed in the parking garage of the Dallas Police station by mob-associated Dallas night club operator Jack Ruby, as Oswald was being transferred to the Sheriff's Department.

On Thursday, Nov 28, 1963, the Dallas Police Department conveyed four shell hulls identified as the four from the crime scene, to the Dallas FBI. From there they were conveyed to Washington, D.C. and received by the FBI lab on Saturday, Nov 30, 1963 (Warren Commission testimony of Cortlandt Cunningham on the timeline). There the hulls were analyzed and compared with hulls fired from Oswald's revolver.

The FBI lab found conclusively that the four hulls identified by the Dallas Police as found at the Tippit crime scene—Q74, Q75, Q76, Q77—had been fired from Oswald's revolver to the exclusion of any other weapon (3H466).

In 1979 a distinguished firearms panel assembled by the House Select Committee on Assassinations (HSCA) undertook its own examination of the four evidence hulls and also found that the evidence hulls had been fired from Oswald's revolver (HSCA vol. VII, 380).

That finding of the FBI lab, confirmed by the HSCA firearms panel, has been regarded as the physical evidence *par excellence* that Oswald was Tippit's killer.

The purpose of this study is narrowly focused on a single question: whether that finding of the FBI lab and HSCA firearms panel, with respect to the match of the evidence shell hulls to Oswald's revolver, establishes that Oswald's revolver was the Tippit murder weapon.

## **Were the hulls received by the FBI lab the hulls found at the Tippit crime scene?**

Five Dallas Police officers were said to have marked their initials on one or more of the shell hulls found at the Tippit crime scene. Officers testifying to identification of their marks is the way chain of custody is authenticated.

But in this case, although the hulls received by the FBI lab had initials marked on them, four of those five officers never gave sworn testimony or signed a statement identifying any of the marks on the evidence hulls as theirs.

Only one of the five testified under oath identifying his marks on evidence hulls examined by the FBI lab. That officer testified to the Warren Commission that he marked two hulls at the crime scene and he testified those marks of his were on evidence hulls Q74 and Q75.

However the FBI and the Warren Commission rejected as flatly untrue that officer's testimony that he had marked Q75, and that removes confidence in the security of that officer's identification of Q74 as well.

In short, as will be further developed, there is no instance among the Dallas police officers who marked the hulls found at the Tippit crime scene, of even one officer who, in sworn testimony to the Warren Commission, or other firsthand testimony, signed statement or affidavit, clearly, straightforwardly, and credibly identified finding, on one or more of the evidence hulls, marks they had made on hulls at the crime scene. (There are three cases of *unsworn, thirdhand reports of officers'* identifications of marks, in one case contradicting that officer's sworn testimony, none confirmed by the officers themselves, which will be taken up below.)

It is an odd lacuna, easily missed. Once the systematic nature of this lacuna is realized, the question is raised whether it can be excluded that there was corruption in the handling of this physical evidence prior to its receipt by the FBI lab, in the form of substitutions in the hulls before they were received by the FBI lab.

## **Method**

One way to test theories is to ask: if this theory were true, what would one expect to happen, if so?

If, for example, there *had* been substitutions in the shell hulls prior to their receipt by the FBI lab on Thu Nov 30, 1963, one might expect to see in the known evidence and testimony:

- Officers noticing otherwise-unidentified marks on the evidence hulls which somewhat resembled their own but looked like they were made by a different hand than their own, while at the same time being unable to find marks they did clearly recognize as their own, causing confusion and uncertainty in identifications of marks.
- Officers when asked prior to their testimony if they were prepared or willing to make a positive identification of their mark on a specific evidence hull under oath, might express uncertainty or reluctance to do so, and responsive to that, either would not be called to testify, or if they were, might not be questioned on that point if it could be avoided.
- One way of dealing with an inability to obtain clear testimony under oath of officers identifying their marks on evidence hulls would be to “conceal” that by workarounds (e.g. thirdhand reporting of unsworn claims not known to and not verified by the officers so reported).

On the other hand, if the four shell hulls handed over by the Dallas Police Department crime lab and FBI Dallas field office to the FBI lab in D.C. for examination *were* the same four hulls found at the scene of the crime as represented—a straightforward, clean handling and conveyance of those four hulls—one might expect:

- Officers who marked those hulls, in their testimony before the Warren Commission, would be shown a specific hull and asked if they could identify their mark on that hull, would answer “yes” and then do so clearly and unambiguously under oath, as part of the vast quantity of Warren Commission testimony taken under oath.
- Officers who had marked hulls would normally be expected to be able to find and identify their own marks without difficulty, and be willing to so testify under oath.

Following is an examination of the testimonies of each of the five officers said to have first marked the four cartridge hulls found at the Tippit crime scene. None provided unambiguous, credible firsthand testimony identifying evidence shell hulls as the same ones they had received and marked at the Tippit crime scene.

Photographs and hand-drawings of the marks on the four evidence hulls can be seen at Dale Myers, *With Malice: Lee Harvey Oswald and the Murder of Officer J.D. Tippit* (2013; 1<sup>st</sup> edition 1998), 324-30, 654.

*Patrolman J. M. Poe*

Mr. POE. He [witness Domingo Benavides] told me, give me the same, or similar description of the man, and told me he was running out across this lawn. He was unloading his pistol as he ran, and he picked the shells up.

Mr. BALL. Domingo told you who was running across the lawn?

Mr. POE. A man, white man.

Mr. BALL. What was he doing?

Mr. POE. He was unloading his pistol as he run.

Mr. BALL. And what did he say?

Mr. POE. He said he picked the two hulls up.

Mr. BALL. Did he hand you the hulls?

Mr. POE. Yes, sir.

Mr. BALL. Did you put any markings on the hulls?

Mr. POE. I couldn't swear to it; no, sir.

Mr. BALL. What did you do with the hulls?

Mr. POE. I turned the hulls into the crime lab [Barnes], which was at the scene.

Mr. BALL. Do you know the name of the man with the crime lab or from the crime lab?

Mr. POE. I couldn't swear to it. I believe Pete Barnes, but I wouldn't swear to it.

(...)

Mr. BALL. Now, I have here a package which has been marked "Q"—FBI lab. Q-74 to Q-77. Would you look those over and see if there is any identification on there by you to indicate that **those** were the hulls given to you by Benavides?

Mr. POE. **I want to say these two are mine, but I couldn't swear to it.**

Mr. BALL. Did you make a mark?

Mr. POE. I can't swear to it; no, sir.

Mr. BALL. But there is a mark on two of these?

Mr. POE. **There is a mark. I believe I put on them, but I couldn't swear to it. I couldn't make them out any more.**

Mr. BALL. Now, **the ones you said you made a mark on are—you think it is these two? Q-77 and Q-75?**

Mr. POE. **Yes, sir; those two there.**

Mr. BALL. Both marked Western Special? They both are marked Western Special. How long did you stay there?

Mr. POE. At the scene?

Mr. BALL. Uh-huh.

*Comment One:* there is a discrepancy in Mr. Ball's reference to Q-77 as a "Western Special". The HSCA firearms panel in 1979 identified Q-77 as a Remington-Peters, not Western Special (vol. 7, p. 375; <https://www.maryferrell.org/showDoc.html?docId=82#relPageId=385>), and that is the identification of Myers, *With Malice*, 326. Yet the transcript indicates Mr. Ball spoke that identification as he was looking at Q-77. I can find nowhere in the Warren Commission's Report or Exhibits where the evidence hulls are identified other than as Mr. Ball states.

The firearms panel of HSCA, and Myers who examined and photographed the evidence hulls firsthand, say the correct identifications are: Q-75 and Q-76 are Winchester-Westerns, and Q-74 and Q-77 are Remington-Peters.

On the assumption that the evidence shells in 1979 were the same and labeled the same as in 1964, and that the HSCA firearms panel and Myers are each independently highly credible in accuracy and in agreement with each other on this point, the only conclusion is Mr. Ball must have misspoke or there was a typo in the transcript. If so, it was an error that would not be corrected until 1979.

*Comment Two:* Poe picks two marks he "want[s] to say" are his, although he says he "couldn't swear to it" (saying that disclaimer while under oath). He makes a very tentative (couldn't swear to it) identification of two of the evidence hulls based on he thought he had marked two out of the four, and he saw two marks which he did not recognize as his but thought where else could they be. He was led by Mr. Ball into that tentative identification even though he is saying he cannot see marks he knows are his.

But it is identification of the marks which establish chain of custody. If Poe cannot identify any of the marks he sees as *his*, there is no basis for Poe identifying hulls at all. If Poe, pressed to identify his marks, was not identifying marks he made when he identified "those two there", whose marks were those? It appears Poe was

influenced by marks on two evidence hulls which somewhat resembled his own even though they looked sufficiently different he did not think he made them.

The following account of Poe is from Henry Hurt, *Reasonable Doubt: An Investigation into the Assassination of John F. Kennedy*, published in 1985:

“In 1984, Poe explained to the author that he was absolutely certain that he marked the shells. Indeed, he could not be certain of a single other instance during his twenty-eight years of police work when he had failed to properly mark evidence. He indicated that he became aware that he could not find his markings prior to his Warren Commission testimony ‘when the FBI came down and interviewed us ... We were down in the (FBI) office, and I just could not be absolutely positive that my mark was in there.’ While Poe did not specifically say that he was pressured to ‘find’ his marks in the hulls, he volunteered this comment about his experience: **‘I wasn’t going to lie to the man and say I saw my mark when I didn’t.** I still wouldn’t do that.’

“Officer Poe insisted to the author that even though he could not find his identifying marks, he felt certain that the hulls were the ones he had taken into evidence at the scene of the Tippit murder. Poe recalled one explanation that he had not mentioned to the Warren Commission two decades earlier. He stated that the reason he was not able to find his markings might have been that so many other identifying marks had been placed in the cartridge hulls, actually on top of his identifying marks, thus obscuring his markings in the thicket of marks from other officials through whose hand the evidence passed. Stated Poe: ‘When it came to [my] looking at them again, there were so many marks in there that I couldn’t find mine ... In a better light, or [with] a magnifying glass, I might be able to pick it out.’

“Soon after Poe made this statement, the author examined the cartridge hulls at the National Archives with a lighted magnifying glass. Only Officer Poe can state whether his identifying mark is on the hulls, and he has stated that he cannot find it because it appears lost among so many other marks. What is readily apparent to anyone who examines the hulls is that while there are several identification marks scratched in them, in no case is a marking obliterating another marking. Moreover, in each hull at least 50 percent of the surface area around the inside rim has no marking at all, leaving ample space for even additional identifying marks. There is no conceivable reason for any marking to be placed over another marking.

“The markings in the hulls are distinctive and clearly seen—even with the naked eye. It seems impossible that if Poe’s marks were actually *there*, he could not find them. Confronted with this, Officer Poe flatly stated, ‘I [have] talked to you all I’m going to talk to you. You already got your mind made up about what you’re going to say. I know what the truth is.’ He then hung up the telephone, refusing to discuss the matter further.

“Dallas Police Sergeant Gerald Hill, a key figure in the arrest of Oswald, was one of the first policemen to arrive at the scene of the Tippit slaying (. . .) At the scene, Sergeant Hill inspected the cartridge hulls **and ordered Officer Poe to mark them as evidence and turn them over to the crime lab.**

“In 1984 the author interviewed Hill, who rose to the rank of lieutenant before his retirement from the police force (. . .) When asked if he believed the official version on Tippit’s death, he dismissed the question with bombast, stating that the cartridge hulls from the scene, proved to have been fired in Oswald’s pistol, sealed the case.

“The author referred to the grave inconsistencies concerning Poe’s identification of the hulls, suggesting the possibility that they might have been replaced by hulls *not* discovered at the scene and marked by Poe. The implication, of course, is that when the hulls marked by Poe were tested in the lab and were found *not* to have been fired from Oswald’s pistol, they were replaced by hulls that *had* been fired from Oswald’s pistol—*after* it came into the custody of the police. (. . .)

“Hill dismissed the suggestion with the following statement: ‘If they did that [replaced the cartridge hulls], they would also have forged Poe’s marks.’

“It was pointed out to Hill that, as the facts prove, it made no difference that Poe’s marks could not be found. The evidence still became the cornerstone of the case against Oswald in the killing of Tippit. Hill acknowledged that the circumstances concerning the apparent disappearance of Poe’s marks made it *appear* that something like this might have been done. Then, Hill added, ‘**If it were any other police department in the United States, I would say that is possible. But this department is so clean that it scares me.**’” (Hurt, *Reasonable Doubt* [1985], 152-55)

*Sergeant W. E. Barnes*

Mr. BELIN. ...Now you mentioned out there that some cartridge cases were found, is that correct?

Mr. BARNES. That is true.

Mr. BELIN. Sergeant, I will ask you to examine Commission Exhibits Nos. Q-74, Q-75, Q-76, and Q-77, and ask you to state whether or not there appears to be any identification marks on any **of these exhibits** that appear to show that they were examined or identified by you?

Mr. BARNES. I placed "B", the best that I could, inside of the hull of Exhibit 74—I believe it was Q-74 and Q-75, as you have them identified.

*Comment:* The "I believe it was" interrupts and qualifies the uncompleted thought of the preceding phrase in which Q74 and Q75 appear about to have been spoken together. Barnes then continued the sentence, with the clarifying or "weakening" words, "I believe", to include the originally intended naming of the two evidence hulls. That is, Barnes starts out saying declaratively, "I placed 'B' ... inside... Exhibit 74...", and was about to continue, \*"...and Exhibit 75" but interrupted himself mid-sentence to walk back the tone of certainty to a corrected, less certain "I believe it was Q-74" and "I believe it was Q-75", basically the same as saying "I think it was those two (but don't press me too hard because I'm not really sure)".

"I believe it was Q-74 and Q-75" suggests uncertainty. Does he not know for sure? How strong was his belief? Warren Commission counsel Belin does not inquire further but does a common practice of certain Warren Commission counsels in trying to tease useful testimony out of reluctant witnesses: he circles around and returns to it again hoping for a more direct or straightforward answer in a second or third pass. Note below when Belin returns again to the question he asks not *if* Barnes could identify his mark on the exhibits, but rather a leading "*how many*" could he identify.

Mr. BELIN. Now all four of these exhibits appear to be cartridge case hulls, is that correct?

Mr. BARNES. .38 caliber.

Mr. BELIN. .38 caliber pistol?

Mr. BARNES. Yes.

Mr. BELIN. They are kind of silver or chrome or grey in color? You can identify it that way?

Mr. BARNES. Yes.

Mr. BELIN. **How many** of **these hulls**, to the best of your recollection, **did you identify out there?**

Mr. BARNES. I believe that the patrolman [Poe] gave me two, and Captain Doughty received the third.

*Comment:* Belin's question (underlined) is manipulative. Like a salesman's close (*how many would you like to order today ma'am?*), Belin's question bypasses the issue of identification by asking "*how many*" of the evidence hulls "did you identify out there?"

Belin's wording is slightly amiss; the wording should be: "how many of *these evidence hulls* did you *mark for* identification out *there then?*"

"[T]hese hulls" of Belin's question are the evidence hulls (Q74, Q75, Q76, and Q77). Barnes' answer (an historical narrative statement) does not answer Belin's question—does not clearly say any of the crime scene hulls to which he refers are identified as current evidence hulls, though that is what Belin wants Barnes to say (more clearly).

(Barnes seems to have misunderstood Belin's question—Belin was asking how many of *the evidence hulls* did Barnes himself mark for identification *at the crime scene.*)

Belin is trying to get testimony on the record from Barnes identifying current evidence hulls as ones found at the crime scene. Belin presses:

Mr. BELIN. **The two that the patrolman [Poe] gave you** were the ones **that you put this identification mark on the inside of?**

Mr. BARNES. **Yes.**

Mr. BELIN. What instrument did you use to place this mark?

Mr. BARNES. I used a diamond point pen.

Mr. BELIN. **You put it on Q-74 and Q-75?**

Mr. BARNES. **It looks like there are others that put their markings in there too.**

*Comment:* Does not answer the question. The question calls for a yes or no answer.

Why is Barnes referring to markings of others, why volunteer that at all, when that was not the question and is of no relevance to the question?

It is a non sequitur, *unless*—unless there *is* a relevance in that Barnes' answer is a circumlocution for uncertainty in his ability to distinguish *his* marks from those of the "*others*". It may be like the modifier "I believe", a hint of equivocation or weaker confidence in the identification he is expressing.

The "too" in Barnes' answer might be parsed as implying an unspoken affirmative answer to Belin's question but it is not straightforward and Belin does not seek to have it clarified or remove ambiguity but turns to a different topic.

In a rather stunning postscript to this, the FBI and the Warren Commission subsequently decided that Barnes never made any mark on Q75 despite Barnes' testimony under oath to the Warren Commission that he had.

The reason the FBI and Warren Commission decided that is because, according to a thirdhand report two months later, Barnes later said that.

Barnes' Warren Commission testimony took place April 7, 1964 in which he testified he marked Q75 at the crime scene, thereby authenticating evidence hull Q75 as genuinely from the crime scene.

But on June 15, 1964, an unsigned letter from the Dallas FBI office reported to the Warren Commission that Barnes, when later asked, had given different identifications of the two evidence hulls he said he had marked at the crime scene, now no longer including Q75.

"On June 15, 1964, the same cartridge cases, designated as Exhibits C47-C50 [= Q74-77], were shown by Special Agent Bardwell D. Odum to Pete Barnes, an officer of the Dallas Police Department assigned to the Crime Laboratory, and he identified his marking on two of these cases, which also bear the markings '**Q74**' and '**Q77**'. He advised these are the **same two cartridge cases which he received from Office J. M. Poe** of the Dallas Police Department at Dallas, Texas, on November 22, 1963." (CE2011)

That is, according to this later FBI report, Barnes' sworn testimony to the Warren Commission that a mark on Q75 was made by him was not true.

In fairness to Barnes it should be noted there is no record that Barnes confirmed—or was aware of—the report that he had repudiated his identification of Q75 of his Warren Commission testimony.

However the FBI reported that Barnes had done so and the Warren Commission accepted that report.

After receiving that report, the Warren Commission did not recall Barnes to testify again, as the Commission did with other witnesses when clarification of some point was needed.

In light of the seriousness of an allegation that a police officer was repudiating a sworn authentication of physical evidence, why was Barnes not recalled, sworn in again, and asked to confirm or deny that report and explain?

Since that was not done, and since it is not clear the thirdhand report of Barnes is *not* true (because the Warren Commission did not investigate the allegation), the CE2011 report of a repudiation of one of Barnes' sworn evidence hull identifications removes confidence in the security of Barnes' identification of the other, Q74, as well.

In agreement with the conclusion just stated (that no confidence can be attached to Barnes' identifications reported in CE2011), Dallas Police Detective James Leavelle, in charge of the Tippit investigation, in a 1996 interview with Myers suggested Barnes may not have marked either of the hulls that CE2011 says Barnes says he did. Leavelle claimed to Myers that marking physical evidence at crime scenes was not done by Dallas police officers in 1963 (“that is something we didn't do back then”, Myers, *With Malice*, 326-27). “Leavelle suggested that Barnes may not have marked the shells” (*With Malice*, 773).

*What was going on with this?*

Barnes' testimony becomes comprehensible if Barnes marked two hulls at the crime scene, the two hulls handed to him by Poe just after Poe marked them, and then, just like Poe, Barnes later—at the time of his Warren Commission testimony—saw marks on the evidence hulls which he was not sure were his. Then, out of that uncertainty he guessed, reasoning certain marks must be his because he could not find ones he knew were his.

The reactions of Poe and Barnes are not in good agreement with what would be expected if the marks supposed to be theirs on the evidence hulls were genuinely theirs.

Note finally that the two evidence hulls Poe “*wanted to say*” (but said he could not swear to it) that he had marked (Q75, Q77); the two which Barnes under oath testified he “*believed*” he had marked (Q74, Q75); and the final unverified thirdhand report by the FBI of different identifications of Barnes (Q74, Q77)—all these sets of two differ from one another, even though **Poe and Barnes handled the same two hulls at the crime scene** that day.

These contradictory identifications and the language in which these contradictory identifications were made remove them as a basis for knowledge that any evidence hulls have been authenticated.

### *Captain G. M. Doughty*

He received and marked the third of the four hulls found at the Tippit crime scene.

Somewhat surprisingly, this senior officer in the Dallas Police Department, in charge of the Crime Laboratory, was never called to testify before the Warren Commission.

There exists no known sworn testimony, signed statement, or verified direct statement from Doughty with respect to identification of Doughty’s mark on an evidence shell.

There is an unsigned thirdhand report, unverified by Doughty, that Doughty made such an identification; see below on CE2011.

### *Detective C. N. Dhority*

He marked the fourth of the four hulls found at the Tippit crime scene prior to turning that hull over to the crime lab.

Mr. BALL. Now, what did you do with the empty hull that was given to you, that Virginia gave you?

Mr. DHORITY. I gave it to Lieutenant Day in the crime lab.

Mr. BALL. Do you know whether or not Virginia or Jeanette Davis found an empty shell—did she tell you she found an empty shell—Jeanette Davis?

Mr. DHORITY. I don't recall—it seems like she told me she had found one earlier and gave it to the police out there, as well as I remember.

Mr. BALL. Gave it to the police that day?

Mr. DHORITY. Yes; I believe so.

*Comment:* That is all the questions asked by Mr. Ball about the hull that Dhority marked, and Mr. Ball then turned to other matters.

Dhority was not asked about his marking of that hull. He was not asked whether he was able to identify one of the evidence hulls as the one he marked, and then asked to do so.

Why was Dhority not asked to identify his mark on one of the evidence hulls in his sworn testimony?

***Detective C. W. Brown***

Mr. BELIN. All right, **is there anything else** you had to do with the murder of Officer Tippit's investigation or the investigation of the assassination that you haven't related to us thus far today?

Mr. BROWN. **Yes.** In regard to the Officer Tippit murder, the same date, November 22, 1963, Lt. T. P. Wells received a telephone call from a Mrs. Barbara Davis of 400 East 10th stating that her sister-in-law of the same address, her name as Mrs. Virginia Davis, had found an additional empty .38 caliber shell cartridge in her front yard. Lieutenant Wells ordered my partner, G. N. Dhority, and I, to go to the Davis residence where Mrs. Barbara Davis handed my partner this spent hull at approximately 7 p.m., that evening. That was brought to the homicide and robbery bureau by myself and Detective Dhority.

Mr. BELIN. Was it brought to that bureau at the time you brought the two women?

Mr. BROWN. At the same time the Davis women were brought to the office for affidavits and identification.

Mr. BELIN. Who did you turn that cartridge shell over to?

Mr. BROWN. That went to the crime lab, Dallas Crime Lab.

Mr. BELIN. Did you, yourself, turn it over?

Mr. BROWN. No; Detective Dhority handled that.

Mr. BELIN. Detective Dhority handled that?

Mr. BROWN. We were keeping this evidence in a chain there. Mrs. Barbara Jeanette Davis handed him the spent cartridge. He gave it to the crime lab himself, **which was initialed by both of us.**

Mr. BELIN. **Anything else, sir?**

Mr. BROWN. None in regard to any evidence or identification of any further witnesses.

Mr. BELIN. Anything else in connection with either the assassination or the Tippit murder?

Mr. BROWN. None that I recall at this time, sir.

*Comment:* That is all of the questions asked of Detective Brown concerning a hull he had marked, which is to say nothing at all. Brown testifies *that* he marked one of the Tippit crime scene hulls. But Brown is not asked in this direct testimony if he can identify the mark he made that day on one of the evidence hulls.

As with the case with Dhority, the lack of Belin asking Brown to identify his mark on one of the evidence hulls is puzzling.

Why the difficulty in getting testimony under oath establishing provenance of the evidence hulls?

There is the appearance that these officers attempted to be truthful, were unwilling or reluctant to say marks were theirs which they doubted were—or in the case of the one who did struggle and risk an identification under oath, Barnes, he qualified it with “I believe”.

These officers may have been pre-interviewed prior to their testimony such that there was some idea how they would answer if asked under oath in open testimony. If their answers were not what were wanted, that might mean they would not be asked such questions in their testimony if it could be avoided.

The simplest explanation for the Warren Commission counsels not obtaining what should have been straightforward identifications of evidence hull markings under oath from a single one of those five officers, is that those officers were intent upon not committing perjury.

**The anonymously-authored report from Dallas FBI to the Warren Commission of July 7, 1964: CE2011**

“On June 12, 1964, four .38 Special cartridge cases, designated as Exhibits C47-50 [Q74-77], were shown to Captain **G.M. Doughty** of the Dallas Police Department by Special Agent Bardwell D. Odum, Federal Bureau of Investigation. Captain Doughty identified his marking on one of these cases which also bears a marking ‘Q76’. Captain Doughty stated this is the same shell which he obtained from Barbara Jeanette Davis at Dallas, Texas, on November 22, 1963. (. . .)

“On June 12, 1964, the same four cartridge cases, designated as Exhibits C47-C50 [Q74-77], were shown by Special Agent Bardwell D. Odum to Detective **C.N. Dhority**, Homicide Division Dallas Police Department. Detective Dhority identified his marking on one of these cartridge cases which also is marked ‘Q75’. He stated this is the same cartridge case which he obtained from Virginia Davis, Dallas, Texas, on November 22, 1963. (. . .)

“On June 12, 1964, four .38 Special cartridge cases, designated as Exhibits C47-C50 [Q74-77], were shown to Dallas Police officer **J.M. Poe** at his home at 1716 Cascade, Mesquite, Texas, by Special Agent Bardwell D. Odum. Officer Poe stated he had received two similar cartridge cases on November 22, 1963, from Domingo Benavides at Dallas, Texas, and had on the same date given them to Pete Barnes, Crime Laboratory, Dallas Police Department. He stated he recalled marking these cases before giving them to Barnes, but he stated after a thorough examination of the four cartridges shown to him on June 12, 1964, he cannot locate his marks: therefore, he cannot positively identify any of these cartridges as being the same ones he received from Benavides.

“On July 6, 1964, Officer J.M. Poe, Dallas Police Department, advised Special Agent Bardwell Odum that he marked the two cartridge cases on November 22, 1963, ‘J.M.P.’

“On June 15, 1964, the same cartridge cases, designated as Exhibits C47-C50 [Q74-77], were shown by Special Agent Bardwell D. Odum to **Pete Barnes**, an officer of the Dallas Police Department assigned to the Crime Laboratory, and **he identified his marking on two of these cases, which also bear the markings ‘Q74’ and ‘Q77’**. He advised these are **the same two cartridge**

**cases which he received from officer J.M. Poe** of the Dallas Police Department at Dallas, Texas, on November 22, 1963.” (CE2011)

*Comment:* CE2011 is a document dated July 7, 1964, issued under the letterhead of FBI, Dallas. It is anonymously authored and unsigned. It was conveyed to the Warren Commission. The document states its purpose was to respond to a request from the President’s Commission to trace various items of physical evidence.

The document’s contents consist of descriptions of what FBI agents such as Bardwell Odum reported learning from interviews of various witnesses.

If any error or misrepresentation were to come to light in CE2011 it is difficult to see that there would be accountability, since information from witnesses is presented in the form of thirdhand hearsay in a report authored anonymously. Strikingly, there are no known supporting FBI interview reports or paper documentation written by the interviewing agents underlying a single one of the several dozen interviews reported thirdhand in CE2011, which appears irregular when compared with customary FBI practice.

The lack of written interview reports by the interviewing agents described in CE2011 came to light by accident in 2002 with respect to a different ballistics issue (unrelated to the Tippit case) involving *an emphatic and robust denial* from retired FBI agent Bardwell Odum to Gary Aguilar and Josiah Thompson, visiting him in his home, that he, Odum, *had had anything to do with some of the interviews attributed to him in CE2011 by the anonymous author of CE2011*. See Aguilar and Thompson on this at [http://whokilledjfk.net/magic\\_bullet.htm](http://whokilledjfk.net/magic_bullet.htm).

To be clear, from all indications all of the interviews of CE2011 occurred in some form (many of the witnesses recalled the interviews in later years).

But if Odum’s denial is accepted, it is not clear that it can ever be known whether the anonymously-authored CE201 has accurately attributed all of the interviews to the agents who conducted them. (Remember, there is no paperwork to check.)

(Or, Odum could have been lying to Aguilar and Thompson [for the record, that is what I suspect—gd]. It would be an easy, unfalsifiable way to avoid talking about CE399 to Aguilar and Thompson if Odum did not wish to do so—just deny that he conducted the interviews. He could cite a lack of “302” reports filed by him on

those interviews as his evidence to Aguilar and Thompson, knowing that there were no “302” reports on any of the interviews in CE2011.)

Again, there are no individual agent written reports for any of these interviews, no record of these interviews other than the reporting of CE2011 itself and that reporting is in none of the interviewing agents’ names (the reporting is in no one’s name).

There is no reported verification from the witnesses interviewed that they were aware of how they were reported in CE2011, or asked to confirm accuracy.

As noted, no responsible party is named as author or signatory to CE2011 to be held accountable if, hypothetically, a question did arise concerning misreporting.

It does not require much imagination to realize that this method of FBI reporting to the Warren Commission could be misused.

Although the interviews occurred, if there were interpretations in the manner of reporting or a strategic addition or omission to what a witness said in a report such as this, it would be virtually undetectable. In the remote chance a discrepancy was discovered and challenged it would be deniable (compare Odum) and difficult to assign accountability (compare Odum).

In other words, the reporting in the form done in CE2011 would make easy a spin or misrepresentation of an interview if a decision ever was made that it was convenient to do so. Even if that did not occur in specific instances of this form of reporting, that *option* was available, in this kind of system, like a back-door security vulnerability in a software program that may rarely or never be used.

**The potential for misuse in the CE2011 system of reporting witness interviews may not simply be hypothetical**

Aguilar and Thompson alleged an instance of alteration of witnesses’ meanings in CE2011 involving a different ballistics matter (not the Tippit case). This involved witness interviews reported by CE2011 to have been carried out by FBI agent Odum concerning CE399, the so-called “magic bullet”, claimed be the same bullet found on a stretcher at Parkland Hospital on Nov 22, 1963.

The anonymous author of CE2011 reported that FBI agent Odum interviewed two Parkland Hospital employees who had seen the stretcher bullet. They were asked if they could identify C399 as that stretcher bullet.

According to Aguilar and Thompson, a declassified FBI internal memo differs in meaning from what the FBI reported to the Warren Commission in CE2011, based on the same interviews.

The argument is that the internal FBI reporting was truthful, whereas the form in which the identical information was presented in CE2011 to the Warren Commission has an element of spin added, when the two reportings are compared. Below I line them up for comparison so readers can judge for themselves.

Darrell C. Tomlinson, maintenance employee, Parkland Hospital, asked if he can identify the evidence bullet, CE399, as the stretcher bullet, in a declassified internal FBI memo, Shanklin of Dallas to Hoover, Washington, D.C., 6/20/64: “*neither Darrell C. Tomlinson nor ... can identify bullet.*” (Full stop, nothing further said.)

Darrel C. Tomlinson, as reported in CE2011, 7/7/64: “was shown Exhibit C1 [CE399], a rifle slug, by Special Agent Bardwell D. Odum ... Tomlinson said *it appears to be the same one* ... but he cannot positively identify the bullet”.

O.P. Wright, Personnel Officer, Parkland Hospital, asked if he can identify the evidence bullet, CE399, as the stretcher bullet, in a declassified internal FBI memo, 6/20/64: “*...nor O.P. Wright ... can identify bullet.*” (Full stop, nothing further said.)

O.P. Wright, as reported in CE2011, 7/7/64: “O.P. Wright ... advised Special Agent Bardwell D. Odum that Exhibit C1 [CE399], a rifle slug, shown to him at the time of the interview, *looks like the slug* found at Parkland Hospital on November 22, 1963 ... [but] advised he could not positively identify C1 as being the same bullet which was found”.

O.P. Wright, November 1966 to Josiah Thompson, quoted in Thompson, *Six Seconds in Dallas* (1967): “That bullet [stretcher bullet] *had a pointed tip* [unlike CE399 which has *a round tip*] ... Yeah, I’ll show you. It was like this one here [*pulls out pointed-tip .30 caliber bullet*]”. Thompson: “I then

showed him photographs of CE's 399 ... *he rejected* ... Half an hour later in the presence of two witnesses, he *once again rejected the picture of 399 as resembling the bullet found on the stretcher*".

Bardwell Odum, to Aguilar and Thompson, 2002: "I didn't show it [CE399] to anybody at Parkland. I didn't have any bullet...I don't think I ever saw it even".

This is how accountability actually worked in a case in which witness interviews reported in CE2011 *were* questioned as to accuracy.

If there was misrepresentation of Tomlinson and Wright in the reporting of CE2011 (Aguilar and Thompson's suggested addition of statements the witnesses may not have said or meant: "appears to be the same" and "looks like" the stretcher bullet), who was responsible? Who interviewed Tomlinson and Wright? CE2011 says Odum did! Odum says it wasn't him! Nobody knows who claimed Odum *was* the interviewer. But it is written in CE2011 that it was Odum! Who wrote that? Can it ever be known if Odum interviewed? The interviews have no other documentation! Who is CE2011?

That instance in CE2011 came about years later by accident. It does not enhance confidence in the security of the thirdhand reporting of the evidence hull identifications in CE2011, all of which were carried out, according to CE2011, by the very same FBI agent, Bardwell Odum, who denied he carried out other interviews CE2011 says he did.

What would be the mechanism for discovery and correction of error or misstatement in a document such as CE2011, if, hypothetically, there was error in the reporting of evidence hull identifications?

How would one ever know?

It would have been so much simpler to have those officers state those identifications in sworn testimony or written affidavit under oath. That did not happen.

Instead, there is the anonymously-authored CE2011 with thirdhand reporting of evidence hull identifications by police officers perfectly capable of firsthand testimony if everything was aboveboard.

As the saying goes, it is not that we don't trust the FBI when reading reports like CE2011, it is that we wish we didn't have to.

**The claim of the head of the Tippit investigation for the Dallas Police that officer Barnes' authentication of evidence hulls is not credible**

In his later years Detective Jim Leavelle, who was in charge of the Tippit investigation for the Dallas Police, claimed Barnes' identifications of his marks on the evidence hulls should not be believed at all. Leavelle in an interview to Joseph McBride in 1992:

**“Joe Poe, with his statements about markin’ them damn shells. And Pete Barnes. They didn’t mark the shells, the hulls.** There wasn’t no need for ’em to. But they got to thinkin’ that when it gets to be a very important situation, they think, ‘God, did I screw up and not do something that I should have done?’ And so then they claim they marked them but couldn’t recognize their mark. Actually, they never marked ’em. There wasn’t no point in it. We don’t mark ’em.’ ... They weren’t marked. It wasn’t necessary.” (Quoted in Joseph McBride, *Into the Nightmare: My Search for the Killers of President John F. Kennedy and Officer J.D. Tippit* [2013], 256-57)

Leavelle claimed to McBride in 1992, and again to Myers in 1996, that the procedure in 1963 was for the officer to put the hull in a cellophane wrapper with initials on it, and the crime lab would mark the hull. Leavelle told Myers, “that is something we didn’t do back then [mark physical evidence at crime scenes]” (*With Malice*, 327).

The problem with that claim of Leavelle is where are those cellophane wrappers with initials, and why didn’t Poe and Barnes or anyone else involved with the Tippit crime scene evidence remember initials on envelopes. This claim of Leavelle with respect to the Tippit crime scene is first known 30 years after the fact and there is no corroboration. Neither Barnes nor Poe remembered what Leavelle claims nor does any other officer at the Tippit crime scene.

Leavelle’s claim thirty years later that *both* officers Poe and Barnes manufactured similar false memories of marking hulls within months of November 1963 is not credible. Officer Gerald Hill would not have testified in early 1964 that he had told Poe to “be sure and mark” the hulls if officers never marked physical evidence at

crime scenes in 1963 as Leavelle bizarrely claimed. Hill testifying to the Warren Commission:

Mr. HILL. ...Poe showed me a Winston cigarette package that contained three [*sic*, two] spent jackets from shells that he said a citizen had pointed out to him where the suspect had reloaded his gun and dropped these in the grass, and that the citizen had picked them up and put them in the Winston package. **I told Poe** to maintain the chain of evidence as small as possible, for him to retain these at that time, **and to be sure and mark them for evidence**, and then turn them over to the crime lab when he got there, or to homicide.

The comments of Leavelle to McBride and Myers in the 1990s appear to be attempts to destroy the credibility of Poe and Barnes because Poe's and Barnes' testimonies raise questions concerning the authenticity of the evidence hulls.

It may be recalled that Leavelle was reported to have told witnesses within hours of the assassination how he wanted to "wrap him [Oswald] up real tight" on Tippit.

Mr. BALL. Tell us what happened.

Mr. CALLAWAY. We first went into the room. There was Jim Leavelle, the detective, Sam Guinyard, and then this bus driver and myself. We waited down there for probably 20 or 30 minutes. And Jim told us, "When I show you these guys, be sure, take your time, **see if you can make a positive identification.**"

Mr. BALL. Had you known him before?

Mr. CALLAWAY. No. And he said, "We want to be sure, **we want to try to wrap him up real tight on killing this officer.** We think he is the same one that shot the President. **But if we can wrap him up tight on killing this officer, we have got him.**" So they brought four men in ...

Leavelle's fundamental problem with Poe and Barnes may be he saw those officers as not helpful in keeping his case "wrapped up tight".

Myers himself also suggested Poe was mistaken in claiming to have marked hulls at the crime scene. Myers:

"Yet, there may be a more fundamental reason why Poe didn't bother to mark the two shells. **A few minutes after** eyewitness Domingo Benavides

handed Poe the shells in an empty cigarette package, crime lab Sergeant ‘Pete’ Barnes arrives at the scene and began collecting evidence. The crime lab’s senior officer, Captain George Doughty was with him. Poe first offered the shells to Detective Leavelle, who instructed him to turn them over to the crime lab. Did Poe forego marking the evidence in light of the crime lab’s presence on the scene?” (*With Malice*, 327)

Although certainty is difficult, a reconstruction that I believe makes the best sense is that Poe would be expected to have marked those hulls, given that: he had sole custody of the hulls for some minutes; because marking them was expected procedure; because if he had done otherwise (a break in expected procedure) he would be expected to have remembered that (but he did not); and because Poe expressed so strongly following his Warren Commission testimony that he had marked the crime scene hulls.

In this interpretation Poe’s uncertainty that he marked the hulls expressed in his Warren Commission testimony (“I believe I put on them, but I couldn’t swear to it”) would be caused specifically and solely by Poe’s inability to find his marks on the evidence hulls, combined with Poe’s belief in the evidence hulls’ authenticity. That, not any other reason or factor, will have caused and account for the self-doubt expressed in his Warren Commission testimony—caused him to wonder if he had marked those hulls, even though he had.

### **A pattern to what is missing**

In Sir Arthur Conan Doyle’s story, “Silver Blaze”, Sherlock Holmes, studying a case, suggested attention be given to “the curious incident of the dog in the night-time”. But, he was told, the dog did nothing in the night-time. “That was the curious incident,” said Sherlock Holmes.

The point is something did not happen which should have happened.

Is it not obvious what was going on? The Warren Commission functioned like a prosecutor making a case in court. They did not suborn perjury but presented the best case based on the evidence they could obtain and present.

The Warren Commission hearings and exhibits have no direct testimony or direct statement from four of the five officers said to have marked hulls found at the Tippit crime scene, identifying their marks on evidence hulls Q74-Q77.

In the fifth case, Barnes, the later CE2011 reported and the Warren Commission accepted a repudiation which may or may not have come from Barnes, of one of Barnes' two evidence hull identifications in his Warren Commission testimony, thus vitiating the credibility of both, not just that one, of Barnes' identifications in his Warren Commission testimony.

With nothing substantial in the form of direct, credible sworn testimony from even one of the five officers establishing provenance and chain of custody of the evidence hulls, CE2011 was a fallback or workaroud, a document without name attached and layers of deniability.

The anonymous author of CE2011 asserts unsworn, unverified, thirdhand hearsay identifications of physical evidence from officers who never stated such directly or under oath.

There is no record the officers reported thirdhand in CE2011 concerning the evidence hulls were informed of or confirmed the accuracy of how they were reported in CE2011.

The Warren Commission never asked those officers for affidavits to confirm that reporting.

There is no record that Warren Commission staff made phone calls to those officers to verify. Big-city newspapers would have done so before running a story.

### **Were the hulls received by the FBI lab in Washington, D.C., substitutions for the crime scene hulls?**

The lack of clear and credible sworn or firsthand testimony from any of the officers involved in the routine marking of their initials on the hulls found at the Tippit crime scene calls for explanation.

The explanation to be excluded, on the basis of evidence or argument if so, is: that there was a substitution of hulls from shell cartridges fired from Oswald's revolver, replacing the hulls found and marked at the Tippit murder crime scene, with replicated markings, prior to conveyance of the substituted hulls to the FBI lab for analysis to find out whether they had been fired from Oswald's revolver, in keeping with what in the United Kingdom is referred to as police "stitching

someone up” with physical evidence, in cases that sometimes need that little extra boost.

As Gary Murr put it long ago in a pioneering study, *The Murder of Dallas Police Officer J. T. Tippit* (1971):

“In examining the relative testimony and Exhibits, I find myself agreeing with Cunningham and Nicol. CE594 [four evidence hulls in the Tippit case] were probably fired from CE143 [Oswald revolver], to the exclusion of all other weapons. **But, the big question is whether or not CE594 [evidence hulls] represents the shells actually recovered from the scene of the Tippit murder.** The people who found them were unable to identify them from CE594. The Dallas police who handled and marked them were unable to find their identifying marks therefore they too were unable to pick them from CE594. They made a good effort, undoubtedly for the Commission's benefit, but guessed wrongly (...) The possibility of a switch in empty shells is the only logical alternative. Give the FBI four empty shells knowingly fired from CE143 [Oswald revolver]. It makes the task of proving that they were fired from CE143 [Oswald revolver] ‘to the exclusion of all other weapons’ light-years easier. Then Oswald could be ‘wrapped up real tight.’ Cunningham’s (or any one else’s) ability to identify CE594 [evidence hulls] as the shells actually recovered from the Tippit murder site was best explained by Counsel Eisenberg to Representative Ford during an exchange in Cunningham’s testimony: Mr. Eisenberg. ‘...for the record only, this witness is unable to testify as to where they (CE594 [evidence hulls]) were picked up’ (3H465).” (<https://drive.google.com/file/d/15957gAzFZ5wYlbefq4F7cm7sm07ACY8N/view>)

On that last sentence—“this witness is unable to testify as to where they [evidence hulls] were picked up”, I imagine that as having been entered “for the record” at expert witness Cortlandt Cunningham’s request!

The statement clarifies that the expert testimony of Cunningham of the FBI lab to the Warren Commission, concerning the exclusive match of the evidence hulls to Oswald’s revolver, applies factually and truthfully solely to what the FBI lab *received*, and Cunningham’s testimony was not to be construed as meaning more or other than that.

## Report of a retired Dallas Police officer alleging that the Dallas Police did substitutions in the Tippit crime scene shell hulls

From Henry Hurt, *Reasonable Doubt*:

“Most Dallas policemen interviewed by the author either do not want to discuss the Tippit case or say that they have no reason to doubt the official version of their comrade’s death. However, **one officer, now retired, asserted flatly** and without prompting that he believed Tippit was killed as a result of a volatile personal situation involving his lover and her estranged husband. He added, ‘It would look like hell for Tippit to have been murdered and have it look like he was screwing around with this woman ... Somebody had to change the tape. **Somebody had to change the cartridge hulls. Somebody had to go to the property room and change those hulls and put some of Oswald’s hulls in there—hulls that fit Oswald’s gun.**’ This retired police officer claims that others on the force share his beliefs about the Tippit murder—and that some of these policemen will be inclined to talk about it once they have retired and their pensions are secure.” (Henry Hurt, *Reasonable Doubt: An Investigation into the Assassination of President John F. Kennedy* [1985], 168, citing “interview with retired Dallas police officer, March 1984”)

*Comment:* the footnote cites the source for the above as “interview with retired Dallas police officer, March 1984”.

On the hunch that the unnamed “retired Dallas police officer” might appear named in Henry Hurt’s book elsewhere, I checked all the footnotes in the book for dates of interviews with Dallas Police officers. I found citations to these interviews and dates in chronological sequence:

- Carl Day, 1983 (no further date), April 1984
- Patrick Dean, 1983 (no further date)
- **J.M. Poe, March 1984**
- **“retired Dallas police officer”, March 1984**
- Gerald Hill, April 1984
- R.C. Nelson, April 1984
- Murray Jackson, April 1984

Based on this match, is it possible that the retired Dallas Police officer who told Hurt that he believed there had been substitutions in the hulls, was J.M. Poe?

No, because it conflicts with Hurt reporting of Poe, “even though he could not find his identifying marks, he felt certain that the hulls were the ones he had taken into evidence at the scene of the Tippit murder” (p. 153). The contradiction is sufficient to exclude Poe as the retired-officer source, even though Hurt spoke to both Poe and the retired-officer source the same month. It therefore may be the anonymous retired officer does not appear by name in Hurt’s book, in which case it could be a hundred or more possibilities, unidentifiable.

Following Hurt’s March 1984 interviews with Poe and the other retired Dallas police officer, Hurt attempted further investigation but reported lack of success in finding persons to interview who had worked in the Dallas Police crime lab, where the Tippit crime scene evidence was physically held and processed before conveyance to the Dallas FBI office. Hurt:

“The two technicians in the Dallas police laboratory who actually worked with the physical evidence could not be interviewed. Both are reported to be dead. Suspicion about the cartridge cases is further whetted by the bizarre absence of any reference to the cases in the lists of evidence compiled by the police on the day of Officer Tippit’s murder [citing 24H253, 260, 332].”  
(Hurt, *Reasonable Doubt*, 155)

(Although this is an aside, I would like to add parenthetically on the story of a possible role in the Tippit killing of the affair: the affair, for which there is no doubt it was true, could have played a role in Tippit’s presence at the Tenth and Patton location where he was ambushed by his killer for reasons other than the affair. A police motive to cover up the affair out of consideration for the widow, the family, would be no less. But the murder itself would not be a case of murder by a jealous husband. The killing of Tippit was certainly related to the JFK assassination, and a number of details suggest Tippit was lured into an ambush by a professional killer; only the specifics are at issue.)

## **Conclusion**

To go back to the beginning, the match of the evidence hulls to Oswald’s revolver has been perceived, more than any other single factor, as a basis for certainty that Oswald was the killer of Officer Tippit on November 22, 1963.

The witnesses at the crime scene who said Oswald was the fleeing killer could be argued to have made mistaken identifications of someone of similar physical description or appearance. Oswald's presence and arrest in the theater after the killer of Tippit was witnessed entering the theater and went into the balcony could be because Oswald was that killer's next target, interrupted by the police arrival and arrest of Oswald saving Oswald from the killer of Tippit intent on killing Oswald next. And so on. It is the match of the revolver to the shell hulls that is considered the most decisive, hands-down evidence that Oswald did it.

But as has been developed in this study, that claim of evidence is *unsubstantiated* in terms of firsthand verification by *any* of the officers capable of giving testimony as to provenance. For reasons discussed, CE2011 is simply not an acceptable substitute.

Therefore, the conclusion is: although the FBI lab and HSCA firearms panel unequivocally matched the evidence hulls to Oswald's revolver, there is no basis for certainty that those evidence hulls were the hulls found at the crime scene.

If Oswald killed Tippit it must be known on other grounds.