

State of Washington VS. Brian Owens

**Thurston County Public Defense
Thurston County, Washington**

Analysis Prepared By

Christopher Holland

Expert Witness Services

(417) 833-7574

Christopher.Holland17@holland-associates-llc.com

www.holland-associates-llc.com



This analysis has been prepared for the Thurston County Public Defense, Thurston County, Washington, in the matter of State of Washington vs. Brian Owens, who has been charged with 2nd Degree Murder in the death Corey Meyer. The purpose of the analysis was to determine what bias, if any, was exhibited by the Thurston County Sheriff's Office in the conduct of the investigation.

A summary of the case is as follows:

At approximately 1719 hours, on September 3, Defendant Brian Owens stopped at the McDonalds Restaurant, 19734 Old Hwy 99 SW, Rochester, Washington, to engage with a pan handler later identified as Mearl Benedict regarding his (Benedict's) pan handling. The engagement turned into an altercation. A second pan handler identified as Corey Meyer (deceased) entered the argument with Benedict withdrawing from the scene. The argument between Defendant Owens and Deceased Meyer became physical and ended with Owens shooting Meyer twice, resulting in his death. Brian Owens asserted that the shooting was in self-defense. His assertion was rejected, and he was arrested for 2nd degree murder.

Detective Alan Clark was the lead investigator in this matter, conducting interviews of key witnesses along with the interview of defendant Brian Owens. An investigator is obligated to avoid personal bias and pursue the truth in all regards, with the same thoroughness and integrity with which he pursues evidence of guilt. Analysis of interviews and reports in this case clearly demonstrate that Detective Alan Clark acted with bias against defendant Owens. This bias is reflected in Detective Clark's interviews and culminates in his report dated September 4, 2019, hereinafter referred to as the Clark report. Detective Clark' bias was reflected in his interviews and his selective use of witness statements to justify the arrest of Owens. His bias is demonstrated in his report of September 4, 2019, wherein he reaches the following conclusions:

1. Owens was not in fear for his life.
2. Owens could have safely departed from the engagement with Meyer.
3. Meyer fell to his knees after being shot once.
4. Owens fired the second shot while Meyer was on his knees.

This analysis is organized as follows:

- I. Analysis of the witness statements and official reports from the scene which should have informed Detective Clark both for his interview with defendant Owens and his (Clark's) subsequent report.
- II. Analysis of the interview of defendant Brian Owens.
- III. Analysis of the report and findings of Detective Clark based upon the results of steps one and two.
- IV. Analysis of the interviews Detective Clark conducted subsequent to September 3, 2019.
- V. Conclusion.

Though all documents in the case were reviewed, not all are referenced herein. Relevant passages, which go to Clark's confirmation bias against Owens, have been extracted from the reports and interviews and are contained herein. Some of the passages are self-explanatory, while others may not appear relevant until put in the context of Clark's report.

I. Analysis of Witness Statements and Official Reports from the Scene.

Crime Scene logs reflect Detective Alan Clark to have arrived at the scene at **1810 hours**, followed by Detective Howard Reynolds at **1814 hours**. Clark's report reflects that upon arrival he contacted Detective Sergeant Simper, who:

"...briefed me on the incident and advised that I would be the lead investigator on this case. Sergeant (Sgt.) Simper informed me that a citizen had got into an argument with a panhandler who was out in front of the McDonalds and the citizen shot and killed him. Sgt. Simper advised that several witnesses remained on scene and needed to be interviewed."

Detective Clark continues to report:

"Sgt. Simper pointed to a victim who was standing nearby who apparently witnessed the entire incident. Detective Reynolds and I contacted this witness who did identify himself to us and provided a recorded statement."

Although the witness is unidentified, this analysis has determined the witness to be Byron Peterson.

In summary, upon arrival, Detective Clark:

- was advised by Sgt. Simper of the basic facts of an argument and a shooting.
- was advised by Sgt. Simper of a witness needing to be interviewed.
- was advised by Sgt. Simper of additional witnesses needing to be interviewed.
- made observations of the crimes scene and then proceeded to interview Byron Peterson.

The Peterson interview started at **1831 hours**. Prior to that time, three other witnesses had been interviewed, the last of those interviews (Charles LaFray) being completed at **1818 hours**. There is no record indicating that Clark, nor Reynolds, were briefed as to those witness statements. The Peterson interview concluded at **1852 hours**. Three minutes later, at **1855 hours**, Owens was placed in a patrol car in handcuffs.

From this sequence of events it may be concluded that Detective Clark made the decision to arrest defendant Brian Owens based upon a short briefing by Sergeant Simper and one interview, that of Byron Peterson. This decision to arrest was made absent whatever information may have been gleaned from the prior completed witness interviews, or the information yet to be developed from other witnesses or the defendant himself.

Byron Peterson was interviewed at the scene by Detectives Alan Clark and Howard Reynolds, 1831 hours -1852 hours.

The beginning of the interview reflects that the detectives have had some discussion with Peterson prior to beginning the recording. Unless otherwise noted, Detective Clark is doing the questioning.

Page 5, Lines 11-20 (The "one on the ground" refers to the deceased Corey Meyer).	
A	He came walking up aggressive.
Q	The one that's on the ground?
A	The one that's on the ground.
Q	All right.
A	Came walking up and --

Q	And you said it was a fast walk earlier.
A	Fast walk.
Q	Okay.
A	Fast walk.

In the above exchange, Detective Clark effectively changed the narrative from describing an attitude (aggressive) to describing a speed of movement (fast walk). As Detective Clark was in a position of authority, Peterson may have felt bound to stay with his original characterization instead of what he had concluded upon further reflection.

Peterson states that the physical confrontation began only after Meyer spat on Owens (Peterson separates them, and then they clash again):

Page 6 Lines 7-8	
	“.... And that’s when the guy on the ground spit in the other guy’s face, and they got in a little tussle.”

Below, note Clark’s bias in presuming Defendant Owens was the aggressor:

Page 6, Lines 18-21	
A	And then, uh, put my hands between them, kind of broke it up. And then, kind of blew by me, behind me, charged each other again.
Q	Who blew by you? The shooter?
A	Both of them.

In the next exchange, Peterson uses the words “pushed” and “collar bone” which are consistent with a defensive action.

Page 7, Lines 31-34	
	“...And then, at that point, after he pushed the homeless guy back from the collarbone, that’s when he took the gun out, and was like, “Fucking leave me alone. Stay back.” And then – and then, he fired once...”

Clark later interjects the words “grab” and “throat” into Peterson’s statement:

Page 8, Lines 16-23	
A	They were already throwing blows, but he was coming at him, and then the shooter pushed him back by the collar bone area.
Q	Said he grabbed him by the throat – or the collar bone? Where about did he grab him?
A	About like right here.
Q	So, right around the throat?
A	So, throat/collarbone.
Q	-- throat/collar bone area?
A	Yeah.

In describing the spacing of the shots Peterson stated:

Page 8, Lines 32-35	
Q	The shooter shoots him once?
A	Then about one second later, pop.

Q	Pops him again?
A	Maybe one or two seconds. I -I-was like, I 'm a witness.

In the next exchange, Detective Clark asks Peterson to intuit what Owens was thinking:

Page 10, Lines 1-4	
Q	You witnessed this incident, along with, I think, some other people. You're an adult. Do you believe, based on what you saw, that – was he – was the shooter fearing for his life at that point?
A	I want to say, to be a good citizen, probably not.

At first consideration this appears a legitimate question, as a jury would ultimately be asked to consider such a thing after considering all the evidence. However in this instance, Clark does not examine any facts with Peterson, such as the relative ages of Owen and Meyer, their respective physical conditions, the fact that Meyer introduced himself into Owens argument with Benedict, or that Peterson may be viewing the situation from the perspective of a younger, large person who may not have personally feel threatened by Meyer. To the question, Peterson responded, "...to be a good citizen, probably not." His response implies he has a civic duty to say so, as opposed to expressing his opinion, which might be different from his "good citizen" response. Had Peterson been asked if he believed Owens had committed 2nd degree murder, how would he have responded as a "good citizen?" Detective Clark not clarifying that response suggests that Detective Clark had already received the response he wanted, which supported his bias against Owens.

The below response figures prominently in Clark's report.

Page 10 Lines 14-19 (Detective Reynolds asking the question)	
Q	So, real quick, Byron, um, Detective Reynolds here. So, um, as you were
A	talking just a few minutes ago about, you know, there was like a second, maybe two
Q	seconds, between the shots. So, at that point the shooter fires the first shot, what did the
Q	homeless guy, who is on the ground – what did – what were his actions after getting
A	shot the first time?
A	Uh, I want to say maybe he was going to his knees and grabbing his abdomen

Peterson's statements regarding the spacing of the shots is critical, as Clark will-in his report-use it to show malice in that Owens fired a second shot when it was not necessary. Note Detective Reynolds' telling Peterson, "...**real quick, Byron...**" Detective Reynolds is conducting an interview involving a violent death. All aspects of Peterson's interview should be conducted with deliberation. In light of Owens being placed in a patrol car three minutes after the conclusion of this interview, this exchange clearly reflects that Detectives Reynolds and Clark have learned all they needed to know, that they were anxious to get on with the arrest of Owens. They expected other witness information to confirm what they had already determined or had decided that any other information would be irrelevant.

Page 10, Lines 33-34	
	"... the second shot was not like fuck, should I shoot again; it was just a fucking pop pop."

Note the inconsistency in Peterson’s description of the shots. He prior described there being a second or two between shots, then describes it as “pop pop, which does not reflect space between the shots. Deputy Hoover was the first law enforcement member to arrive at the scene and spoke with Byron Peterson prior to Detectives Clark and Reynolds interviewing Peterson. According to Deputy Hoover’s report:

“Byron said that when the first shot went off Meyer appeared to be turning and the two shots were in quick succession, or a double tap.”

A double tap is the firing of two shots in quick succession with little or no space between the shots and is not to be confused with shots fired “a second, maybe two apart”. Clark never questions Peterson regarding this variance in his statement. This differentiation is critical to Clark’s assessment that Owens be charged with 2nd degree murder, as examined in Clark’s report. As noted, three other witnesses had been interviewed prior to Clark and Reynolds interviewing Peterson at 1831 hours, each of whom provides varying degrees of information that differs from Peterson’s.

Destiny Zaidy, an employee of McDonald’s, was interviewed at **1756 hours** by Deputy Sanders. His interview report reflects:

Page 1, Lines 10-12	
	And when I looked out the window I seen two guys fist-fighting, and then I heard two pops, gunshots, and I—my head was out the window and I seen it, and the guy fell to the ground...

McDonalds employee **Jeffrey Coleman** was interviewed at **1804 hours** by Deputy Sanders:

Page 2, Lines 20-21	
	Um, so I ran and grabbed my phone, and by the time I grabbed my phone I had heard two shots fired (Coleman does not comment regarding Meyer falling to the ground).

Charles LaFray was interviewed at **1818 hours** by Deputy Gibbons. LaFray was parked in his car approximately 100 feet distance and observed the encounter through his vehicle’s rear view mirror.

Page 1, Lines 16-18	
	They went down on the ground and wrestled. And the shooter stood up, and I saw him shoot the victim twice.

Each of the above witnesses describes hearing two shots with no mention of spacing in between. Two of the witnesses (Zaidy and Coleman) looked out and saw the victim Meyer on the ground, while LaFray states that he saw the witness fall, with no mention of Meyer falling to his knees. In his report, Clark will completely disregard the information from these witnesses.

Six additional witnesses were interviewed at the scene.

The report of Detective F. Frawley reflects that he interviewed **Rhonda Smith** at **1833 hours**:

Smith's observation of Meyer falling to the ground is contrary to Peterson's.

Page 2 Line 18-22	
	" But I need to interject, when I was at the light waiting for it to turn green, immediately after I heard the two shots, I turned around and that's when I seen the deceased falling...I -- I -- I seen him falling on the ground."

Smith also stated:

Page 2, Lines 2-4	
	"...the younger gentleman, deceased now, dropped his stuff on the ground..."

"Meyer dropped his stuff on the ground..." shows preparation on his part for a physical altercation with Owens. Owens will raise this point in his interview, but Clark will ignore it when assessing events in his report.

At **1854 hours**, Detective Frawley interviewed **Victoria Angeles-Quevedo** and **Jesus Nolasco-Gaspar**, who were together at the Arco Gas Station. They both witnessed the shooting but provided no testimony regarding the spacing of shots or the manner in which Meyer fell to the ground.

Nolasco-Gaspar does state that he heard Owens say to Meyer:

Page 2, Line 3	
	"...I will fuck you up..."

This phrase by Nolasco-Gaspar is important as Detective Clark will misrepresent it in his report as a statement of intent by Owens.

At **1858 hours**, Detective Oplinger interviewed **Mearl Benedict**, who was the first pan handler engaged by Owens:

Page 2, Lines 13-26	
A	"...I looked out the window and I see this guy fall down, boom, boom..."
Q	"...did you hear shots?"
A	"I heard shots".
Q	And how many?
A	Uh, I think it was two.
Q	Two?
A	M—
Q	Okay.
A	Maybe one, maybe—
Q	And y-
A	-two. I'm not sure.
Q	And you s---you saw him fall to the ground?
A	Oh I seen him fall to the ground, yeah.

Note: Benedict does not state any spacing between the shots, nor does he refer to Meyer falling to his knees.

At 1911 hours, Detective Howard Reynolds interviewed **Bryan Ploettner**, who makes no distinction in the spacing of the shots:

A	I was in the army for 12 years.
Q	REYNOLDS: Okay, so you've heard your fair share of shooting.
A	Yeah.
Q	REYNOLDS: So -- so, you believe it was in rapid succession?
A	It was.
Q	REYNOLDS: It wasn't -you didn't hear like a break in time?
A	No, it was pop pop.

Cricket Nichols was interviewed by Detective George Oplinger at **2016 hours**, after the defendant, Owens, had been removed from the scene and detectives had begun Owens interview. Nichols is employed at the Union 76 Store and first became aware of the altercation when she looked out a window and saw two men wrestling on the ground. She ran outside and then:

Page 1, Lines 6-10	
	"... I heard the guy with the gun, um, tell, I guess, the victim that, um, to back off or something, 'cause he had a gun and he would pop him. Um, the gentleman got up off of the ground and, like, kind of charged at him again, and the guy shot him."

Nichols' says, "charged him again", clearly indicating that the deceased had charged Owens previously. Detective Oplinger fails to question Nichols in that regard. Oplinger later offers the following characterization of the event for Nichols to agree with:

Page 2, Lines 24-27	
Q	And the guy that ultimately got shot got into a -- kind of came to Mearl's rescue --
A	Yes.
Q	-- maybe at some point?
A	Yes.

Nichols had already stated she was not aware of the event until the two men were, "...like wrestling around". She did not witness the initiation of the encounter and so had no knowledge upon which to claim that Meyer was "rescuing" Benedict (the first pan handler Owens encountered). Nichols goes on to state that as soon as the shots were fired she ran over to the two men, at which time she heard Owens say:

Page 2, Line 31	
	"That he was just protecting himself... I'm sorry".

The above represents a spontaneous utterance by Owens, which Detective Clark will reject in favor of Peterson's subjective observation of what he (Peterson) thought about Owens possibly being in fear.

In summary, nine witnesses providing relevant information were interviewed at the scene. The information obtained regarding the major points in Clark's report, is as follows:

- a. Only one witness-Peterson-stated there was a time lapse between shots, and Meyer falling to his knees before falling to the ground.
- b. Five witnesses stated that they heard two shots and made no reference to any time lapse between the shots. One of these witnesses (Byron Ploettner) was a 12 year veteran of the U. S. Army.
- c. Four witnesses (Smith, LaFray, Nichols and Benedict) stated that they saw the victim, Corey Meyer, fall to the ground and made no reference to Meyer first falling to his knees.
- d. None of the witnesses were questioned about or provided any characterization of “distance and time” regarding the altercation with Meyer and Owens.
- e. None of the witnesses were asked if Owens could have safely withdrawn from the altercation.

Of the nine witnesses, Cricket Nichols is the only one whose interview was concluded after Detectives Clark and Reynolds had departed the scene to interview Owens, and her interview was concluded at 2016 hours.

Crime scene logs reflect Detectives Clark and Reynolds departed (to interview Owens) at 2002 hrs. Had they waited an additional fourteen minutes, they could have been informed as to all of the information available from the witnesses. This further reflects that Clark had decided the outcome and other witness testimony would not alter the decision to arrest Owens.

II. Interview of Brian Owens

The report of Deputy Sanders reflects that at 2001 hours he transported Brian Owens to the Rochester Fire Dept at 18720 Sargent Road SW, to be interviewed by Detectives Alan Clark and Howard Reynolds. The interview unfolds in two parts, the first being Owens providing his account of the shooting and the second being the detectives efforts to have Owens make statements against self-interest. By nature of the fact that Owens was under arrest, it would be expected for the detectives to show bias in the interview. However, points were raised, which become critical to Clark’s report of September 4, 2019.

This exchange concerns Meyer’s backpack:

Page 12 Lines 23-29	
Q	Did he have – I noticed there was a backpack and stuff laying on the ground. Did he
A	have that on while he was – when you guys were --
A	He --
Q	-- talking and -- and --
A	He brought it over and set it down --
Q	Okay.
A	-- before he confronted me.

Rhonda Smith commented to Detective Frawley regarding Meyer setting down his backpack, which would be interpreted as a prelude to a physical engagement, but Clark attaches no apparent significance to it. Clark had asked witness Peterson to intuit whether or not Owens was in fear for his life. A much more practical question would have been to ask Owens why he (Owens) thought Meyer had set his back pack on the ground, but Clark does not ask.

The next exchange is the only reference made by anyone as to distance between Meyer and Owens when Meyer was shot. This becomes critical in Clark's report.

Page 13, Lines 12-18	
Q	About where was he at from you when he started to lunge at you? Do you remember?
Q	About how far away?
A	Probably not much further than me and you.
Q	So, about --
A	Yeah, I mean --
Q	-- three to four feet, somewhere?
A	Yeah, I wouldn't say any more than that.

In the next exchange, Owens is clear that there is no space between the shots fired.

Page 14	
Q	So, when you shot him the first time, how much time would you say between the second
Q	shot? Do you remember?
A	Fractions of a second. I mean, it was just -- like -- like a reflex. I mean, it was like --
Q	Okay, so do you believe it was -- it was a quick, like -- almost like a double tap?
A	Oh, yeah, it was like -- Okay.
A	-- bang, bang, bang, you know -- it wasn't --
Q	Okay.
A	Bang, bang, you know?

As noted, five other witnesses heard the shots and none of them stated any spacing between them. One of those witnesses, 12 year U. S. Army veteran Bryan Ploettner, was interviewed by Detective Howard Reynolds just an hour prior to the Owens interview. In his report, Clark will override the testimony of Owens and five other witnesses in favor of Peterson's, which supports Clark's conclusion of 2nd degree murder.

The below statement will be examined in the context of Detective Clark's report below.

Page 20, Line 31	
	"...and I'm like dude, back the fuck off..."

III. The Report of Detective Alan Clark

Detective Clark prepared a report dated 09/04/2019 wherein he summarized aspects of his investigation and concluded with what was in effect a statement of probable cause for the arrest. Detective Clark refers to "witnesses", but identifies none of them by name, which inhibits attribution of the testimony upon which Clark relies. However, some of them are identifiable by content as noted below.

Clark's report is not a careful weighing and measuring of evidence. Ten witnesses were interviewed and offered varying accounts of the shooting, but Clark constructs his report largely around the testimony of only Byron Peterson and ignores other testimony contrary to his narrative for 2nd degree murder.

As he recounts witness testimony in his narrative, Detective Clark refers to the deceased as “Mr. Meyer” and refers to defendant Brian Owens as shooter. “Mr. Meyer” conveys respect, while using “shooter” in lieu of Owens’ name conveys disrespect toward Owens and further reflects Clark’s bias. Both individuals should be referred to by name, or as “defendant and deceased”.

Clark repeats the Peterson assessment of Owens not being in fear for his life, then Clark later states: **“Another witness heard the shooter tell Mr. Meyer, 'I' m going to fuck you up" just before the shooting”**.

The referenced witness is Jesus Nolasco-Gaspar. There are several issues with this passage:

- i. The comment **“just before the shooting”** is not provided by the witness but is instead Clark’s opinion. It creates an impression of Owens telling Meyer what he (Owens) intends to do (**“I' m going to fuck you up**) and then doing it. It adds to Clark’s narrative that Owens was not in fear of his of his life, and that Owens shooting of Meyer was malicious.
- ii. Clark is ignoring the statement of Peterson, upon whom he otherwise so heavily relies. Peterson heard , **“Fucking leave me alone. Stay back,”** which is clearly intended as a warning and not a threat.
- iii. Crickett Nichols statement in this regard is similar to Peterson’s, that is, a warning: **“I heard the guy with the gun, um, tell, I guess, the victim that, um, to back off or something, ‘cause he had a gun and he would pop him...”**
- iv. In Owens own interview, he states:
“...and I’m like dude, back the fuck off...”
- v. In summary, Owens and two witnesses offer accounts different from Nolasco-Gaspar, yet Clark uses Nolasco-Gaspar’s statement as it fits his narrative

On Page 6 of his report, Clark states: **“Talking with Mr. Owens it was obvious that he had his own issues and concerns with the homeless people in the Ground Mound area and has been taking it upon himself to try and address the issue.”**

In order of appearance, Clark has posited that Owen was not in fear of his life, that he intended to “fuck up” Meyer and then shot him, and that Owens has **“issues and concerns”** with homeless people. As Clark has concluded Owens committed 2nd degree murder, he is implying that shooting Meyer is how Owens has “taken it upon himself to try and address the issue.”

Clark concludes his report with a summary of probable cause for the arrest.

“Mr. Owens decided to put himself in a confrontation with a panhandler (Mearl Benedict) at that Ground Mound McDonalds while armed. The confrontation quickly turned as Mr. Meyer confronted Mr. Owens because of his initial confrontation with the Mr. Benedict. This confrontation quickly turned physical and ultimately into Mr. Meyer being fatally shot twice by Mr. Owens. At no time did Mr. Meyer have a weapon and during the incident the witness who is of large stature was standing nearby during the incident and had even intervened at one point by pulling Mr. Meyer off of Mr. Owens which appeared to have created distance and time. It appears according to witnesses that Mr. Owens could have stopped and potentially walked away from the situation at some point however he did not. The witness also stated that Mr. Owens fired the first shot after pushing unarmed Corey Meyer backward causing Mr. Meyer to fall to his knees at which time Mr. Owen fired another shot.”

Examining key passages in the summary paragraph:

- a. **“The confrontation quickly turned as Mr. Meyer confronted Mr. Owens because of his initial confrontation with the Mr. Benedict.”**

Clark makes great effort to minimize the aggression displayed by Meyer. Recall that Clark had changed Peterson’s use of “aggressive” approach to “fast walk”, and injected “grab” and throat” in place of “Push” and “collar bone”. Clark disregards Peterson’s statement that the physical aspect of the confrontation began after Meyer spit on Owens.

Both Owens and Rhonda Smith had described Meyer as laying down his backpack when he approached which strongly suggests he was preparing for a physical confrontation from the beginning. Clark avoids this.

Clark also ignores the statement of Crickett Nichols who stated that Meyer **“...charged at him again and he shot him.”** Nichols statement is in accord with Owens claim that he was in fact being charged by Meyer when he shot him.

- b. **“At no time did Mr. Meyer have a weapon...”**

This is Clark’s insertion of a biased opinion as to what should negate a claim of self-defense.

- c. **“...pulling Mr. Meyer off Mr. Owens, which appeared to have created distance and time. It appears according to witnesses that Mr. Owens could have stopped and potentially walked away from the situation at some point, however he did not.**

This statement is totally without foundation. No witness testimony involving time and distance was provided until post arrest, and Clark’s report was prepared prior to those interviews. Defendant Owens is the only one who offers an estimate of distance, that being three or four feet. Furthermore, Clark does not impart as to what is enough “distance and time” to depart from a confrontation, only that it existed in his opinion. Further Clark does not explain what knowledge or experience he has upon which to judge sufficient “distance and time” to depart a confrontation.

- d. **“The witness also stated that Mr. Owens fired the first shot after pushing unarmed Corey Meyer backward causing Mr. Meyer to fall to his knees at which time Mr. Owen fired another shot.”**

Here again, Clark is selectively ignoring the testimony of other witnesses. Cricket Nichols testified that Meyer was charging Owens when Owens shot him. Four witnesses (Smith, Lafray Nichols and Benedict) stated that they saw the victim, Corey Meyer, fall to the ground and make no reference to Meyer first falling to his knees.

Five witnesses stated that they heard two shots and made no reference to any time lapse between the shots, which would be necessary if Meyer were to have fallen to his knees before the second shot. One of these witnesses (Bryan Ploettner) is a 12 year veteran of the U. S. Army and clearly stated that the shots were fired “pop pop” with no break in time.

Deputy Hoover was the first to arrive at the scene and conducted the first interview with Byron Peterson. His report reflects that Peterson told him the following:

“Byron said that when the first shot went off Meyer appeared to be turning and the two shots were in quick succession, or a double tap.”

IV. Post Arrest Interviews

On 09/05/2019, Detective Alan Clark conducted a follow up interview with **Byron Peterson**. Peterson's testimony changes in a crucial aspect. In his first interview, Peterson described Owens as shoving Meyer away and then shooting him. Clark presents that testimony as part of his probable cause in charging Owens with 2nd degree murder. In the second interview, Peterson changes that to state that Meyer was going toward Owens when Owens shot him.

Page 8-9, Line 36-5	
A	And, uh, he was -- the shooter was like fucking pretty much telling him to leave me alone at that point, sort of. He was just kind of had his hands up too. And he was still coming, and that's when the shooter pulled out his gun and shot.
Q	But he already had it out though, right?
A	Yep. He had already -- pulled it out of the holster, I'm sorry

Peterson's new testimony corroborated the original testimony of Crickett Nichols, who originally provided that (Meyer) "**kind of charged at him again, and the guy shot him.**" Clark does not pursue a line of questioning regarding Meyer's movement, which would support Owens claim of self-defense.

In his interview, Owens states that Peterson said the following:

Page 23, Lines 16-17	
	"The -- the Miles guy, and he was like dude -- he said you didn't have any choice. He came right at you. He was -- he was lunging for you."

Clark did not ask Peterson if he had made any statements of support to Owens.

Clark did not ask Peterson if he saw Meyer lay down his backpack, and if so, how did he (Peterson) interpret that act.

On 09/09/2019, **Kristin Goodson**, sister of the deceased Corey Meyer, was interviewed by Detective Clark by telephone from her home in Danbury, Texas.

Page 4, Lines 14-22	
Q	Okay. Have you ever seen him or been around him when he's under the influence of any illegal drugs?
A	Yes, I have.
Q	Does his behavior change when that happens?
A	No, he's a happy person, even when intoxicated or high.
Q	Okay. All right. Um, okay.
A	It takes a lot to upset him. You have to -- you have to pick on somebody or -- or, be ugly to somebody when he doesn't think it's worth it, and then when you -- when he's set off, he's set off.

Clark does not ask Goodson what “set off” means, but the implication is that he becomes aggressive, if not combative. This would go directly to what unfolded in this matter; Owens confronts Benedict, Meyer perceives that Benedict is being picked on, and is “set off”. Clark does not pursue that line of questioning.

McDonalds’ employee, **Destiny Zaidy**, was again interviewed by Detective Clark on **09/10/2019** at **0918 hours**. Zaidy made the following statement regarding Meyer’s behavior on the day of the shooting:

Page 3 Line 11-21	
A	I mean he was really wiggly, but I also think he was, like, on drugs.
Q	Ok.
A	Because he – when he came in, that morning, he was talking to himself.
Q	He was talking to himself.
A	Yeah.
Q	Ok. Alright, and nobody else was – he wasn’t dining with anybody, but himself?
A	Yeah.
Q	Ok. Alright. Did you hear what he was saying?
A	No.
Q	Ok.
A	He was, like, the mumbling...

Page 10 Line 22-26	
Q	Ok, and he was acting strange. He was talking to himself.
A	Well, yeah, because I asked – I didn’t know that he was, like, anything, until I seen all his bags, and I, like, asked him if he was ready to order, and he was just, like, bouncy and, like, just talking to himself, mumbling, like, you couldn’t hear what he was saying. It was just under his breath.

Cricket Nichols was re interviewed by Detectives Clark and Oplinger at **1304 hours**, **09/10/2019**, by telephone.

Note that this was a death investigation and that Nichols was an eyewitness to the actual shooting, yet the interview was conducted via telephone. A local telephone call may be appropriate to clarify a given point but is inappropriate when conducting an entire interview of a crucial witness in a death investigation. A telephone call on this instance suggests that it was an expedited method of getting the interview completed. Also note that this interview was a week after the shooting, which further minimizes the importance Detective Clark attached to it.

In her first interview, Nichols indicated that Meyer had charged at Owens twice. **“Um, the gentleman got up off the ground and, like, kind of charged at him again, and the guy shot him.”** In her second interview, Nichols changes this observation:

Pages 5-6 Lines 37-2	
A	And he –and it –it, kind of, looked like, the victim took a step toward him –
Q	Uh-huh.
A	– um, and the gun – that’s when the gun came out and the two shots were fired.

Clark makes no note of this change in characterization from “charged” to step toward”, nor does he ask about the first “charge” which was not explored in detail in the first interview.

The next exchange again represents Clark looking for confirmation of what he had previously concluded:

Page 11 Lines 7-11	
Q	At any point, during that altercation, up right until the shooting, did you – did it appear,
Q	based on you being an adult, and, uh, viewing this situation, did it appear that the shooter
Q	was in fear of his life, at any point, during that situation, um, up right before the shooting,
Q	um, at that point.
A	No.

In the below exchange, Clark is again asking a witness to intuit as to Owens’ awareness:

Pages 11-12, Lines 32-8	
Q	Ok. So, would the shoot – the – the witness that was standing there, this whole time, he’s
A	Yeah.
Q	a fairly big guy, um –
A	Yeah, he was
Q	the shooter was – It was known that this witness was standing there, this whole time.
Q	Do you think it was known to the shooter? That he knew this guy was standing there?
A	Yeah, he knew. He knew that the guy was still standing there.
Q	Ok.
A	I don’t think they knew each other, though.
Q	Right, but, at one point, he did intervene, and broke them up, so, he would have known that he was there to –to help or assist.
A	Yes.

To put the next exchange in context, recall Owens stated in his interview that he believed Meyer had been drinking. Destiny Zaidy had stated that Meyer had been acting “wiggy” and talking to himself earlier on the day of the shooting. In the below exchange, Detective Clark learns Meyer was in Nichols’ store just twenty minutes prior to the shooting.

Page 14 29-32	
Q	Ok. Alright, and you never saw where that second – or the victim, panhandler, came from. Is that right?
A	I did not see where he originated from. He had just been inside the store, probably, twenty (20) minutes before the shooting.

Clark had asked Nichols to intuit concerning Owens’ awareness of Peterson, but he did not ask her a simpler question of whether Meyer’s behavior a mere twenty minutes prior to the shooting reflected whether he may have been drinking or on drugs.

Note that in the next exchange, Clark does not ask if there was more than one opportunity for Meyer to have walked away, only Owens. Clark is placing all the responsibility for this outcome on Owens.

Page 16-17, Lines 35-4	
Q	Ok. Was there a – was there a chance, right there, that – that you felt that maybe one or
Q	both of the parties had an opportunity to walk away?
A	Yes.
Q	Was there more than just that opportunity for –let’s say the shooter, to have walked away?
A	When I was actually concentrating on paying attention to what was going on, that’s
	[inaudible 0:31:11.7\] you know. There was plenty of time for either one of them to walk

Mearl Benedict-the original pan handler confronted by Owens, was interviewed again, by Clark on 09/19/2019. In the following exchange, Detective Clark provides Benedict with information originally provided by Nichols, which is highly improper.

Page 5, Lines 13-20	
Q	Um, it’s my understanding according to Nichols that she observed this guy, the shooter, actually put hands on you physically at some point.
A	Yeah, he went like that.
Q	OK. So, she actually said that she saw the shooter actually grab a hold of your shirt.
A	Yeah, right, like that.

V. Conclusion

Analysis of the available documents in this matter reflect that Detective Alan Clark, the lead investigator, acted consistently with bias against defendant Brian Owens. That bias was reflected both in questions asked and not asked, and actions taken and not taken.

1. Upon arrival at the scene, Detective Clark was briefed by Detective Sergeant Simper. Absent any other witness information, Detectives Clark and Reynolds interviewed Byron Peterson. Clark made comments during the interview reflecting bias against Owens. Absent any information other than the Peterson statement, Owens was arrested three minutes after the conclusion of the Peterson interview.
2. Prior to the Peterson interview, three other witnesses had been interviewed by other personnel and provided information to authorities. Records do not reflect that either Detective Clark or Reynolds availed themselves of this information prior to the Peterson interview, further reflecting bias. Detective Sergeant Simper briefed Clark, Peterson confirmed what Clark had assessed, and Owens was arrested.
3. Detective Clark prepared a report dated 09/04/2019 in which he detailed probable cause to arrest Owens for 2nd degree murder. None of the nine other witnesses interviewed supported Peterson’s crucial claims upon which Clark heavily relies: that two shots fired by Owens were spaced out, or that Meyer fell to his knees before falling to the ground. Where Peterson’s statement was contrary to Clark’s theory, Clark disregarded Peterson’s information and selectively used a statement from another witness to support his biased position.
4. Detective Clark’ report contained opinions and conclusions which had no foundation in any witness statement.
5. Detective Clark repeatedly failed to ask to follow up questions which could have developed information counter to his biased narrative against Owens.