

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

BUNCOMBE COUNTY

FILE NOS. 00 CRS 65086

00 CRS 65088

STATE OF NORTH CAROLINA,

Plaintiff,

vs.

KENNETH MANZI KAGONYERA;

ROBERT WILCOXSON, III,

Defendants.

HEARING OF THE

NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

(DAY ONE)

At Raleigh, North Carolina

April 28, 2011

10:09 a.m.

Reported by: Ira Anderson

ORIGINAL



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1 JUDGE SUMNER: welcome, commission members,
2 to the North Carolina Innocence Inquiry
3 Commission hearing this morning. And before we
4 get started what I want to do is, for the
5 record, just have each commissioner and
6 alternate commissioners that are present state
7 their name for the record. I'm going to start
8 to my right with Mr. Smith.

9 MR. SMITH: I'm Wade Smith, I live in
10 Raleigh.

11 MS. CHILTON: Mel Chilton, I live in
12 Clayton.

13 MS. JOHNSON: Susan Johnson, Currituck.

14 MR. JENKINS: Heath Jenkins, Gaston County,
15 and Stanley.

16 MS. ASHENDORF: Linda Ashendorf, Charlotte.

17 MS. SURGEON: Diane Surgeon, Lumberton.

18 MS. GREENLEE: Jackie Greenlee, Archdale.

19 MR. BECTON: Good morning. Charles Becton,
20 Durham.

21 MR. VICKORY: Branson Vickory, Wayne
22 County.

23 JUDGE SUMNER: And I am Quentin Sumner, I
24 am the chairman of this commission. And before

1 we get started I want to recognize our newest
2 alternate member to this commission, Ms. T.
3 Diane Surgeon.

4 MS. SURGEON: Thank you.

5 JUDGE SUMNER: welcome aboard. And I will
6 recognize also Ms. Linda Ashendorf, an alternate
7 member. We're very happy to have you folks with
8 us this morning.

9 we'll be hearing the cases of State vs.
10 Kenneth Kagonyera and Robert Wilcoxson, file
11 numbers 00-CRS-65086, and 00-CRS-65088
12 respectively. They were both convicted of
13 second degree murder in Buncombe County.

14 This hearing has been opened to the public
15 pursuant to North Carolina General Statute 15A-
16 1468, subsection (a).

17 Let me just remind, for the record, for the
18 commissioners, that during this hearing I would
19 ask that you, in order to assist our court
20 reporter, to keep your voices up at all times.
21 She would greatly appreciate that fact. I want
22 to also make a formal inquiry at this time that
23 -- note for the record, first of all, that there
24 are eight voting members of the commission

1 present as required by statute. Further, I'd
2 like to make a formal inquiry of each
3 commissioner, if there's any one of you who
4 might need to recuse yourself pursuant to
5 Rule 6(B), subsection (1) of our Rules and
6 Procedures. Is there any such recusal at this
7 time?

8 (No audible response.)

9 JUDGE SUMNER: None being noted, it's
10 deemed that each commissioner has no conflict at
11 this time and will be able to participate at
12 this point.

13 I'd also like to inquire, make inquiry of
14 each commissioner whether or not any of you have
15 had any independent or conducted any independent
16 investigation of this matter, which would be
17 prohibited by our Rule 6(B), subsection (3).

18 (No audible response.)

19 JUDGE SUMNER: None noted, all
20 commissioners are deemed at this point to be
21 unbiased and independent commissioners at this
22 point.

23 I note again for the record all of our
24 alternate commissioners are free to participate,

1 to be at this hearing. However, you may not be
2 involved in the discussion or vote on the final
3 matter at the resolution or, excuse me, at the
4 conclusion of our hearing, but you are welcome
5 to remain and serve.

6 At this time I want to recognize and turn
7 over our hearing to Ms. Kendra Montgomery-Blinn,
8 who is the executive director of our commission,
9 Ms. Montgomery-Blinn.

10 MS. MONTGOMERY-BLINN: Thank you, Your
11 Honor. Good morning, commissioners, and thank
12 you for being here. I'd like to just say a
13 couple things for the record as well before we
14 begin the hearing. I'd like to note that all
15 the parties and agencies that we needed to work
16 with were cooperative, and we appreciated their
17 cooperation during our investigation. This
18 includes the District Attorney's office, the
19 Sheriff's Department, defense attorneys, State
20 Bureau of Investigation, and the Asheville
21 Police Department.

22 I'd like to say a special thank you to
23 Sheriff Van Duncan of the Buncombe County
24 Sheriff's Department. He was extremely helpful

1 in our investigation, and he gave us complete
2 access to his department, his staff, and his
3 records.

4 North Carolina General Statutes 15A-1468(d)
5 says, evidence of criminal acts, professional
6 misconduct, or other wrongdoing disclosed
7 through formal inquiry of the Commission or
8 Commission proceeding shall be referred to the
9 appropriate authority.

10 At the close of this hearing I will be
11 asking the commission to consider whether any
12 referrals need to be made in this case.

13 You are going to hear some accusations made
14 by individuals during our investigation about
15 the district attorney. The elected district
16 attorney, Ron Moore, handled this case for the
17 state and is still serving as the elected
18 district attorney and he represented the state
19 during our investigation. Because of this, we
20 did not attempt to depose Mr. Moore or interview
21 him in relation to these allegations. We did
22 not want to make him a witness in this matter
23 and require that he be automatically recused
24 should the case be referred to three-judge

1 panel.

2 I just ask you, as to hear this case, to
3 please keep in mind that the district attorney
4 has not had an opportunity to respond to these
5 allegations, and we only investigated them so
6 far as they related directly to the innocence
7 claim.

8 You will also hear accusations and claims
9 of wrongdoing against other agencies and
10 individuals. We were able to interview more of
11 these agencies and individuals and give them an
12 opportunity to respond, but again, we only
13 investigated them so much as they related
14 directly to our innocence investigation.

15 This case was investigated under a
16 National Institute of Justice federal grant.
17 Eligible expenses were paid for by the grant
18 rather than state funds.

19 Also, North Carolina General Statute 15A-
20 1466 requires the Commission to give priority to
21 cases in which the convicted person is
22 incarcerated solely for the crime for which he
23 or she is claiming factual innocence. Kenneth
24 Kagonyera pled guilty to this crime, and his

1 plea was consolidated with other unrelated
2 charges for one sentence. Robert Wilcoxson pled
3 only to this crime and is not serving for any
4 other offenses. This case has never been
5 prioritized in this office until the DNA results
6 were returned in November of 2010, and then we
7 began moving this case towards hearing.

8 I'd just like to remind you as we begin the
9 hearing what your standard of review is. This
10 comes directly from our statute 15A-1468, sub (c).
11 In cases where the person entered and was
12 convicted on a plea of guilty, if all eight
13 voting members of the Commission conclude there
14 is sufficient evidence of factual innocence to
15 merit judicial review, then the case shall be
16 referred. So I'll just ask you to keep your
17 standard of review in mind, and I'll show this
18 slide again when we're ready for deliberation.

19 All right, you all received the brief ahead
20 of time. I know it was rather lengthy. The
21 brief was meant to cover all that was known
22 about this case before our investigation. I've
23 got a couple of corrections to the brief, and
24 then we'll see if there are any questions.

1 The first one, if you'll turn in your
2 briefs to page 6. And if anybody doesn't have a
3 copy of the brief, please raise your hand.
4 We've got some extras. All right, on page 6 the
5 pending release dates for the claimants needs to
6 be added there. For Mr. Kagonyera, his release
7 date, according to the Department of
8 Corrections, is November 21, 2012, and for
9 Mr. Wilcoxson, his release date, according to
10 the Department of Corrections, is December 4,
11 2014.

12 And when you're ready, if you will turn to
13 page 13. Page 13 is the time line, and there's
14 just one thing that's out of order. We're going
15 to hand out a new page 13 for you, but I'll tell
16 you, in case you've got notes on your page 13
17 and don't want to replace it. I think a new one
18 is going around now already, is that right?
19 Have you sent it around? Okay. You can just
20 replace your page 13 if you would like to, but
21 what it is is the date from Kagonyera's
22 application to the Commission was the correct
23 date, it was just out of order chronologically.
24 And also, we needed to add, I did not put in

1 there the CODIS hit on the bandana to
2 Bradford Summey. That wasn't added to your time
3 line. So that's March 28, 2007. It's in the
4 new one that's going around, but March 28, 2007,
5 was the date that there was a CODIS hit on that
6 bandana that matched Bradford Summey.

7 And then the next thing just to note in
8 your brief, you don't even need to turn to it if
9 you don't want to, there's a blank page on page
10 89. That's an accident. You're not missing any
11 information, it's just an extra blank page.

12 All right, and one more thing to add to
13 your brief, you can just sit and relax, you
14 don't need to turn to a page. This just didn't
15 make it into the brief. But in the brief I
16 discussed and described Mr. Kagonyera's Motion
17 for Appropriate Relief. Robert Wilcoxson also
18 filed a Pro Se Motion for Appropriate Relief
19 right after he was sentenced on October 23,
20 2002. That's not included in your brief. You
21 can make a note of it if you like or just
22 listen. We're going to send it around. We're
23 sending a handout of the Motion for Appropriate
24 Relief around. I think you've already got it.

1 The quick summary is he was claiming ineffective
2 assistance of counsel, that his guilty plea was
3 unlawfully induced, and that his confession was
4 coerced or illegally induced. His motion was
5 denied on November 21, 2002. So that's just a
6 supplement for you to have for your brief.

7 MS. ASHENDORF: What date was it filed?

8 MS. MONTGOMERY-BLINN: October 23, 2002.

9 All right, are there any questions about
10 the brief or the materials that were contained
11 in the brief?

12 (No audible response.)

13 MS. MONTGOMERY-BLINN: We're not going to
14 go through and re-summarize the brief. We will
15 obviously be hitting on some of the material in
16 there and how it affects and relates to the new
17 evidence, but this hearing will only be covering
18 the new evidence. Any questions?

19 (No audible response.)

20 MS. MONTGOMERY-BLINN: And if you come up
21 with questions as we go, of course, please just
22 interrupt me and ask me or the witnesses.

23 Okay, the commission investigation, this
24 was a lengthy and extensive investigation on

1 behalf of the commission. We did a number of
2 different things. The commission staff
3 conducted file reviews of the district
4 attorney's file, the Sheriff's file, the State
5 Bureau of Investigation file, the defense
6 attorneys' files, the Clerk's Office, and
7 Prisoner Legal Services files.

8 We interviewed the defense attorneys of the
9 claimants and the and codefendants who were
10 willing to allow us to interview their defense
11 attorneys. We conducted DNA testing or we
12 caused to have DNA testing conducted at multiple
13 agencies. There was other forensic analysis
14 done in this case that you'll be hearing about.
15 We conducted multiple witness interviews as well
16 as some depositions, and we'll be playing
17 portions of the depositions today and
18 summarizing the witness interviews for you
19 today. We conducted multiple law enforcement
20 interviews as well as some depositions.

21 Areas of interest were mapped. We'll be
22 handing out those maps today and showing them to
23 you. And we consulted with numerous experts,
24 and you've already had one of those expert's

1 opinions or report sent to you, and we've got
2 another one that we'll be doing today. Any
3 questions at this point?

4 (No audible response.)

5 MS. MONTGOMERY-BLINN: All right, we're
6 going to move right into the evidence then.
7 We're going to talk about the eyewitness and
8 victim interviews that we conducted in this
9 case. We were able to locate the people that
10 were in the home during the invasion. That was
11 Shawn Bowman, who was the victim's son; Wanda
12 Holloway, who was Shawn Bowman's girlfriend; and
13 Tony Gibson, who was a family friend and I
14 believe a cousin of Shawn Bowman.

15 We did ask Mr. Bowman to be here today,
16 Shawn Bowman, and asked him if he could come
17 today. He did speak to us, but he has not been
18 able to come today. We subpoenaed him to
19 testify, but he's not picked up his subpoena or
20 returned our calls from the last couple of
21 weeks, and his family has been unable to contact
22 him on our behalf.

23 So what we're going to do is we're going to
24 have Mr. Lau, our staff attorney who was

1 assigned as lead on this case, testify. And
2 I'll just remind you that Mr. Bowman is the son
3 of the victim. He was present during the murder
4 and he fled the scene before the deputies
5 arrived. He was located and interviewed more
6 than a month after the homicide. He was located
7 and interviewed on October 23, 2000. The
8 interviews that were conducted by the sheriff's
9 department are on pages 59 through 62 of your
10 brief, if you would like to look at them, and we
11 also have a handout that's going to go around.
12 With all the witnesses we try to give you their
13 criminal information, their criminal records.
14 So that's going to come around while we're
15 talking.

16 All right, I call Mr. Lau to testify.

17
18 THEREUPON,

19 Jamie Lau,

20 Having first been duly

21 Sworn, was examined and

22 Testified as follows:

23 EXAMINATION BY MS. MONTGOMERY-BLINN:

24 Q. What is your name?

- 1 A. Jamie Lau.
- 2 Q. Where are you employed, Mr. Lau?
- 3 A. With the North Carolina Innocence Commission.
- 4 Q. And what was your -- were you assigned as lead
- 5 investigator/staff attorney on the Kagonyera and
- 6 Wilcoxson case?
- 7 A. Yes, I was the lead investigator on this case.
- 8 Q. As part of your investigation did you have cause
- 9 to speak to Shawn Bowman?
- 10 A. I did speak with Mr. Bowman.
- 11 Q. Can you tell us about how you located
- 12 Mr. Bowman?
- 13 A. I sent some letters to the house, which is the
- 14 house on Church Road in Fairview, the same house
- 15 where this homicide occurred. In response to
- 16 one of those letters, his mother, Alma Bowman,
- 17 contacted me along with his sister, Evita
- 18 Bowman. During that phone call they gave me
- 19 contact information for Mr. Bowman. I was able
- 20 to call him on the phone and speak with him at
- 21 that time.
- 22 Q. What date was it that you spoke to Mr. Bowman on
- 23 the phone?
- 24 A. January 12, 2011 was the first day that I spoke

1 with Shawn Bowman.

2 Q. And can you tell us about that conversation?

3 A. To begin the conversation I explained to him who
4 the commission was, a bit about what the
5 commission does, and then I asked him if he'd
6 mind telling us, telling me what he remembered
7 from that night. He told me that they were
8 watching a football game. It was himself, Tony
9 Gibson, Wanda Holloway, and his father were at
10 the home. He said that Wanda had brought the
11 dogs outside. One of the dogs was barking, and
12 when the dog came back into the house he asked
13 Wanda what's wrong with that dog, or something
14 to that extent. I'm not 100 percent sure at
15 this point, but he said that somebody said that,
16 did the dog see a bear? That was one thing that
17 he remembered saying.

18 The door was left open when the dogs came
19 in, the front door to the house, so only the
20 screen or the storm door was closed.
21 Individuals ran in. He stated to me that him
22 and Kenny were tussling, meaning Mr. Kagonyera.
23 That Detroit, Mr. Wilcoxson, shot through the
24 bedroom door, that his daddy was shot, and then

1 the individuals took off running.

2 Q. How many people did he say he saw?

3 A. He said they -- four came in. And he was quite
4 sure that he saw four, one in the kitchen, one
5 at the door, one in the doorway, and one was
6 telling Mr. Gibson to get down on the floor.
7 Then he said that, you know, in the heat of the
8 moment he couldn't count. So I asked him how
9 many he personally saw, and he said three or
10 four.

11 Q. Did you ask him about how sure he was of the
12 identification of these individuals?

13 A. Yeah. Well, he had told me that he and Kenny
14 were tussling and that Detroit, Robert
15 Wilcoxson, had shot through the door. So I did
16 ask him if he was sure that it was these
17 individuals. He told me he was. He knew these
18 individuals from the street, and it was the same
19 vehicle. And I asked him what he meant by same
20 vehicle, and he said it was the same vehicle as
21 on the video. They had a video from a
22 convenience store, and it was the same vehicle.
23 So I asked him if he ever had seen the
24 surveillance video from that convenience store

1 that night, and he told me he had not. So it
2 was unclear how he knew it was the same vehicle
3 that was on that security video.

4 Q. Okay. And were you able to clarify when he's
5 talking about recognizing them and naming them,
6 if that was from that night or from later
7 information that he gathered?

8 A. I attempted to clarify that with him, and he
9 told me that they showed him a lineup, and he
10 picked them out immediately, and at that point
11 in time he didn't even know that they had
12 arrested these subjects. So I asked him, you
13 know, because he knew these individuals from the
14 streets, as he had said earlier with regard to
15 knowing the vehicle and having seen these
16 individuals previously. So I asked him if he
17 recognized them that evening and then was able
18 to make that lineup identification as a result
19 of that or if it was the word on the street, if
20 he learned later that these were the individuals
21 before he did that lineup. And I think his
22 words are probably best here with regard to
23 that, and I'll just begin reading from a
24 transcript of our conversation at page 12.

1 Q. Please do.

2 A. I said, "I'm just trying to figure out, Shawn,
3 and I don't know if you maybe not necessarily
4 have the answer to this, I just want to know
5 when did you become convinced that these were
6 the individuals who did it, before the police
7 talked to you? When did you know that these
8 were the individuals that did it? When, was it
9 that night, almost immediately? Did you say
10 that was Kenny, Robert, and Man, or was it when
11 you heard the word on the street? When did you
12 become certain that these were the guys who did
13 it?

14 Shawn Bowman, when, when I knew, I mean,
15 certain knew?

16 Yeah, when were you convinced these were
17 the guys who did it?

18 After I just -- you know, like, after
19 everything that came up, the car, that's the
20 same car I see -- I knew who drive the car. I
21 had already done seen these guys a couple of
22 days ago, you know. One of the guys that they
23 was hanging out with, he kept trying to call me
24 that day, and I kept saying, why is this guy

1 calling me? Like, what's going on? You know.
2 And I'm like, what the world, you know. And
3 then a couple of minutes, I guess I'd say about
4 an hour later, here they go trying to rob in my
5 house, you know. And then I never seen the
6 tape, and I don't know who else, who all they
7 showed the tape to or the video of them getting
8 out of the car at the gas station, pumping the
9 gas. I'm not -- but they do got one."

10 I attempted, I continued to attempt to
11 figure out whether or not he recognized them
12 that night, and finally I say to Shawn, "I don't
13 want to put words in your mouth, but from what
14 I'm hearing you say, the night when they burst
15 into your home you didn't specifically recognize
16 them right away, but after all this was going
17 down and you thought about it, you saw the car
18 and all that stuff, you knew it was these guys,
19 is that right?

20 Exactly.

21 Okay."

22 Shawn Bowman then says, "when shit was going
23 down you ain't trying to say, oh, let me -- you
24 know I'm trying to get at whatever I can

1 remember in there, but when you've got guns
2 pointing in your face and you're trying to
3 tussle and, you know, I ain't just like -- and
4 you know, ain't no fucking robbers going, going
5 to just come in with they face like that."

6 Q. Okay, so that was just a little bit confusing.
7 Just to clarify, you understand that Mr. Bowman
8 -- what is your understanding of Mr. Bowman's
9 recognition of these people?

10 A. That that individual night he didn't identify
11 these individuals specifically. However, after
12 he heard the word on the street, learned about
13 the security video and the car that was alleged
14 to have been in that security video, which he
15 hadn't seen, he made the connection that it was
16 this group of individuals.

17 Q. All right. Did you ask him -- we've divided up
18 the people in this case to group A and group B.
19 Group B is the individuals that were charged,
20 investigated, and convicted, and group A is
21 another group.

22 MS. MONTGOMERY-BLINN: And
23 commissioners, this is in the first page of
24 your brief is a cheat sheet with that.

1 Q. Did you ask Mr. Bowman if he knew any of the
2 people from group A, the other group, the not
3 charged group?

4 A. I did.

5 Q. And what did he say?

6 A. He said that he knew Lacy Pickens from group A.

7 Q. Okay.

8 A. And just for the commissioners, group A is
9 Lacy Pickens, Brad Summey, and Robert
10 Rutherford.

11 Q. Thank you. All right, were you able to speak to
12 Mr. Bowman again?

13 A. I did. I spoke with Mr. Bowman a second time.
14 He was with his mother and some other members of
15 the family on March 11, 2011.

16 Q. And were any other members of the commission
17 staff present with you?

18 A. Ms. Smith, Lindsay Guice Smith was present.

19 Q. Okay. And what did Mr. Bowman tell you that
20 night?

21 A. That afternoon he restated what had happened the
22 night of the murder. We had asked him about his
23 meeting with the Buncombe County Sheriff's
24 office. Specifically at that point in time we

1 had spoken with the lead detective or one of the
2 co-lead detectives on this case from the
3 Buncombe County Sheriff's Office who had told us
4 that Shawn Bowman was sure of his identification
5 of Kagonyera and kept referring him to Goofy
6 through the course of that meeting with the co-
7 lead detective.

8 I asked Mr. Bowman if he remembered that
9 conversation and identifying Kagonyera and
10 referring to him continually as Goofy. He
11 backtracked on the ID, he didn't specifically
12 remember ID-ing them. And he said Goofy was not
13 a word that would have been in my vocabulary,
14 and he wouldn't have referred to Mr. Kagonyera
15 repeatedly as Goofy through the course of that
16 interview.

17 Q. You said he had never seen the surveillance
18 video. Were you able to show it to him at this
19 time?

20 A. At that point in time we had taken into custody
21 the surveillance video. There will be more
22 testimony with regard to that video later in the
23 hearing, but we did show him the vehicle
24 pictured in that security video.

1 Q. And what did he say about that?

2 A. He said that it did not look like

3 Mr. Kagonyera's car, it was not a Box Chevy.

4 Q. And was he able to identify any individuals off
5 the surveillance video?

6 A. He was unable to identify any individuals off
7 that surveillance video.

8 MS. MONTGOMERY-BLINN: And

9 commissioners, we will be going through the
10 surveillance video at length.

11 Q. Okay, what else did Mr. Bowman tell you?

12 A. We asked him specifically about an individual
13 named Tyrell Dickey. Tyrell Dickey was one of
14 the informants who gave a statement saying that
15 Mr. Kagonyera had admitted to him his
16 involvement in this crime. That statement is
17 actually in the brief. We asked him if he knew
18 Tyrell Dickey because we had spoken with Tyrell
19 Dickey actually earlier that same day, and
20 Tyrell Dickey said he was friends with Shawn
21 Bowman, and he indicated that he did not know
22 Tyrell Dickey.

23 Q. Mr. Bowman said he did not know Tyrell Dickey?

24 A. Mr. Bowman said he did not know Tyrell Dickey.

1 MS. MONTGOMERY-BLINN: And we'll be
2 going through the Tyrell Dickey statement
3 more throughout the hearing, commissioners.

4 Q. Is there anything else in your investigation or
5 from, actually from 2000 from the sheriff's
6 department investigation that you came across
7 that substantiates Shawn Bowman's current
8 statements that he did not know who the people
9 were during the time of the crime?

10 A. Yes. One of the things and one of the reasons I
11 was interested in how Mr. Bowman came to
12 identify these individuals when he was first
13 interviewed by the police, law enforcement, a
14 month after his dad's homicide was a statement
15 by Johnny Lackey that was made to the Buncombe
16 County Sheriff's Office. Johnny Lackey met with
17 the sheriff's office following the homicide and
18 said that Shawn had called him and said somebody
19 had killed his daddy and that Shawn was hoping
20 it wasn't Gerald and them.

21 Q. And was that statement from Mr. Lackey given
22 before Shawn Bowman was located by the sheriff's
23 department?

24 A. That statement was given before Shawn Bowman was

1 located by the sheriff's department. So that
2 statement indicated to me that Mr. Bowman had
3 not made the identification on the night of the
4 homicide because after the homicide he had told
5 Mr. Lackey that someone killed his daddy and he
6 was hoping it wasn't Gerald and them.

7 Q. All right. And you talked to Mr. Bowman about
8 testifying here before the commission today?

9 A. I did speak with Mr. Bowman about testifying
10 today. I hoped he would be able to testify.
11 When I spoke with him about testifying, he told
12 me that he had a lot going in his life -- on in
13 his life right now and that he couldn't
14 guarantee that he could be here. He asked me to
15 send a subpoena and that he would let me know
16 prior to today whether or not he'd be able to
17 testify. I sent him that subpoena. He never
18 picked it up. A notice was left at his home and
19 he never picked it up, and I've been unable to
20 contact him and speak with him since that time.

21 MS. MONTGOMERY-BLINN: Commissioners,
22 do you have any questions for Mr. Lau in
23 regards to his interviews of Mr. Bowman?

24 MR. JENKINS: I do have one question of

1 verification. You said that Bowman did not
2 or did know Lacy Pickens?

3 A. Yes.

4 MR. JENKINS: But did not know
5 Bradford Summey or did not know Robert
6 Rutherford?

7 A. That's correct.

8 MR. JENKINS: Okay, thank you.

9 A. And I think it should also be noted that
10 Mr. Bowman, when I asked him about Mr. Pickens
11 and he said he knew Mr. Pickens, he immediately
12 said to me that he didn't believe that he would
13 be involved.

14 MR. JENKINS: Thank you.

15 MS. MONTGOMERY-BLINN: Other
16 questions, commissioners?

17 MR. BECTON: I understood you to say
18 that he did not use the term Goofy, would
19 not have referred to Kenny as Goofy. Tell
20 me again what you said about whether he was
21 certain or uncertain when you interviewed
22 him on 3/11.

23 A. I'm sorry. Can you -- certain or uncertain of
24 what?

1 MR. BECTON: Of who came into his
2 house that night.

3 A. He was, I would say uncertain. He had
4 backtracked and said that he had not necessarily
5 gave the statement to the police officers
6 identifying those individuals. And he said one
7 of the reasons he knew he didn't tell them that
8 specifically was Kagonyera because he would
9 never use Goofy. And that was just one of the
10 reasons he was giving as why the statement may
11 say that he said Kagonyera, but he doesn't
12 believe he did because he wouldn't use that
13 term.

14 I should note, however, and this was in
15 your brief, I believe, that there is a
16 handwritten statement from Mr. Bowman from
17 October 23rd or October 24th, I believe, where
18 he handwrites that he got a look at these
19 individuals, and it was Kenneth Kagonyera, Larry
20 Williams, Man, and Robert Wilcoxson.

21 MR. JENKINS: He didn't refer to him
22 as Goofy in that statement, did he?

23 A. He did not refer to him as Goofy in that
24 statement, no.

1 MR. JENKINS: Okay; all right.

2 MS. ASHENDORF: Can I ask a question?

3 JUDGE SUMNER: Yes, ma'am.

4 MS. ASHENDORF: There are so many
5 names and nicknames, but who is Gerald, if
6 he's afraid it was Gerald?

7 A. We don't know who Gerald is that he was afraid
8 of.

9 MS. ASHENDORF: Okay. I thought I
10 missed that.

11 A. There's a couple, there's a couple other names
12 that pop up, and we didn't ask him specifically
13 who Gerald was. That was just citing that
14 Johnny Lackey statement, so --

15 Q. Gerald is not from group A or group B, right?

16 A. Correct.

17 JUDGE SUMNER: Did he go into any
18 detail with you during the initial
19 conversation about how these people were
20 dressed at that time?

21 A. He couldn't specifically remember how they were
22 dressed at that time, to the best of my
23 recollection. And I had asked him about that,
24 and he basically said he couldn't say what they

1 were wearing, it all happened so fast. And I'm
2 just trying to find in my notes to be exact
3 about that. (Mr. Lau reviews document.)

4 This was not in response to my direct
5 question, but this is what he said about what
6 they were wearing. "I mean, like I sit here and
7 say, oh, he had this color on, this one had this
8 color on, this one had this on. No, I can't do
9 that. I'm not even going to sit here and -- no,
10 you can't do -- I mean, no. I'd be telling a
11 lie if I could sit here and say that. But I can
12 just sit here and tell you that I do know
13 whatever it take, if it -- I mean, the truth
14 going to have to come out."

15 So he didn't tell me what they were
16 wearing. He said he could not do that.

17 JUDGE SUMNER: Mr. Smith?

18 MR. SMITH: I take it then that he at
19 some time said it was Kagonyera?

20 A. Yes, he did. He had said --

21 MR. SMITH: And at some times he has
22 said he doesn't know?

23 A. He has now said to us that -- my interpretation
24 of all this is that he's not certain about his

1 identification of Mr. Kagonyera.

2 MR. SMITH: He has never said he's
3 sure it wasn't Kagonyera?

4 A. He has never said he is sure it was not
5 Kagonyera, correct.

6 MR. SMITH: But he has said he was
7 sure it was at one time, that is, in the
8 written note?

9 A. At one time he did say it was Kagonyera,
10 Robert Wilcoxson, Little Larry, and Man. And
11 Little Larry is Larry Williams, and Man is
12 Robert or Aaron Brewton.

13 MR. SMITH: So his retreat from the
14 written statement that it was
15 Kagonyera is not all the way to the
16 point where he's saying it wasn't?

17 A. Yes, that's correct.

18 MR. SMITH: It's retreating from it
19 was to I don't know?

20 A. Yes.

21 MR. SMITH: Okay.

22 Q. And is it, just to clarify, not even so much
23 that as much as a retreat from it was Kagonyera
24 to I'm not sure when I decided it was Kagonyera?

1 A. Yeah. I mean, he's now -- I would characterize
2 it, and I want to be careful here, these aren't
3 necessarily his words, these are mine. I would
4 characterize it that now he is unsure whether or
5 not it was Kagonyera, and that based on what
6 I've read to you today, I would characterize
7 that at some point after the night of the
8 homicide he learned information about these
9 individuals and decided that they were the
10 individuals that came into the home that night,
11 and that's when he made those statements to the
12 police and said it was these individuals.

13 MS. JOHNSON: Did I understand you to
14 say that you showed him the video from the
15 gas station?

16 A. I did.

17 MS. JOHNSON: When he made the
18 statement that it didn't look like Kenny's
19 car because it was a Box Chevy, was he also
20 able to see the people that were pumping
21 the gas or that went into the station? Did
22 me make any identification of them?

23 A. He did see those individuals, you will see that
24 video later, and he was unable to make any

1 identifications based on that video.

2 MR. VICKORY: So did you say he saw
3 the video or he saw the photographs from
4 the video?

5 A. He saw the portion of the video.

6 MR. VICKORY: Okay, so we haven't see
7 the actual --

8 A. We played the portion of the video for him. We
9 thought that maybe body language and movements
10 and stuff of that nature could help with an
11 identification, but he was unable to make any
12 identification from that video.

13 MR. VICKORY: What type of
14 conversation did you have with him
15 initially? I know you introduced yourself
16 as being from the Innocence Commission.

17 A. Uh-huh (yes).

18 MR. VICKORY: Did you tell him
19 anything about new information that we had
20 discovered or you had discovered or --

21 A. No, I didn't. My initial question to him was,
22 could you describe to me what you remember that
23 night? We went from there.

24 MR. VICKORY: But before that, like

1 when you're talking about why I'm here out
2 of the blue years later --

3 A. No, I didn't give him any information about new
4 evidence. I mean, I can read to you, if you
5 like, exactly what I said, but no.

6 MR. VICKORY: I was just wondering,
7 you know, why he -- I would be shocked if
8 somebody came up to me and started asking
9 me something from ten years ago. I was
10 just wondering what he -- did he ask you
11 any questions about that history or
12 anything to that effect?

13 Q. You identified yourself as from the Innocence --

14 A. I identified myself as from the Commission. I
15 explained a bit about what we do. I told him
16 that we had received claims from these
17 individuals that they were not involved with
18 regard to the murder of his father. I said that
19 we were investigating that claim. I didn't tell
20 him about anything that we had, but I will say
21 this is my exact words, "we're investigating
22 their claim, and I can tell you I wouldn't be
23 contacting you if this investigation had turned
24 up some -- hadn't turned up some potential

1 information that may show that they weren't the
2 individuals involved."

3 He said, Uh-huh (yes).

4 "Because of that, we're trying to speak with
5 everybody who was in the house that night,
6 including you, Wanda, and James Gibson. And I
7 was hoping, just -- and I was just hoping you
8 could tell me what you remember, and then I have
9 a few questions for you."

10 MR. VICKORY: Did you discuss with him
11 any of the concerns you might have about
12 him being fed any information during the
13 investigation by law enforcement or
14 otherwise?

15 A. I'm just reviewing my notes, if you don't mind.

16 MR. VICKORY: Sure.

17 A. (Mr. Lau reviews document.)

18 MS. MONTGOMERY-BLINN: Commissioners,
19 we do have a transcript of this interview.
20 It's kind of lengthy, but if you would
21 like, during a break we could copy it. We
22 have transcripts of most of the interviews.
23 Our intent is to summarize them for time
24 purposes, but if there's any that you would

1 like a transcript of, we would be happy to
2 make copies.

3 Q. Mr. Lau, are you looking at both the phone call
4 and the in-person interview?

5 A. I'm looking at the transcript of the phone call.
6 Is that the one -- that's our initial
7 conversation.

8 Before I asked -- before he told me what he
9 could remember from that night, here is the
10 information I think you're wondering about, what
11 I told him to get him to begin talking to me.
12 And here's what I said. It begins with, and
13 we're investigating the claim, the portion I
14 read to you, "and I can tell you I wouldn't be
15 contacting you if this investigation hadn't
16 turned up some potential information that may
17 show that they weren't the individuals involved.

18 Uh-huh (yes).

19 Because of that, we're trying to speak with
20 everybody who was in the house that night,
21 including you, Wanda, and James Gibson. And I
22 was just hoping you could tell me what you
23 remember, and then I had a few questions for
24 you. And then maybe you could help shed light

1 on what happened that night for me. And the way
2 we work is we don't represent any of the
3 individuals that are incarcerated. We're not
4 their attorneys, we're not their advocates.
5 We're a neutral agency that tries to find out
6 what really happened. Well, and we have reason
7 to sort of question the version that we've been
8 told and that was told by the district attorney.
9 So could you just -- would you mind talking to
10 me about that.

11 Yeah. What you want to know? What are you
12 trying to find out?

13 Well, could you just basically first begin
14 by telling me what you remember?"

15 So that's the setup before he begins
16 talking to me.

17 MR. VICKORY: My question now is
18 stepping on to something else. Did you
19 talk to him specifically about information
20 he might have been fed, not by you, but by
21 law enforcement early in the investigation?

22 A. I didn't specifically ask him if he was fed
23 information by law enforcement at the time he
24 gave his statement, to the best of my

1 recollection.

2 MR. VICKORY: It was your impression
3 that any information that was fed, and
4 that's probably not the right phrase, but
5 that he acquired was through word on the
6 street, and was that kind of where he was
7 picking it up from and why he thought these
8 people had been involved?

9 A. Well, he specifically mentioned that they had
10 these individuals, this car, Kenneth Kagonyera's
11 car on a security video. That was information
12 that I didn't provide to him. That was
13 information that he told me, that they had this
14 car on the video, and that was one of the
15 reasons he cited for why he believed that
16 Kenneth Kagonyera and this group was the group
17 of individuals who committed this crime.

18 MR. VICKORY: But he never indicated
19 to you why he thought that car --

20 A. Was on that security video?

21 MR. VICKORY: -- was on the video?

22 A. He never indicated to me whether or not -- to
23 the best of my recollection, and I can flip
24 through this and get to that segment, but to the

1 best of my recollection he never indicated to me
2 that he was told by law enforcement that a Box
3 Chevy was shown on that video.

4 MR. VICKORY: Thank you.

5 A. Sure.

6 JUDGE SUMNER: You were with him how
7 long on that occasion?

8 A. On this phone call, I believe it was about ten
9 minutes. That's a guess. I can look at the
10 call and give you the exact.

11 Q. And then the second in-person interview, how
12 long did that last?

13 A. The second in-person interview was probably
14 about 15 minutes. And the reason for that
15 interview was primarily to show him the video.
16 We had to meet in person to show him the video
17 and to ask him whether or not that was the car,
18 Kenneth Kagonyera's car that he had been
19 referring to earlier.

20 Q. And then you've attempted to contact him other
21 times, but have not been successful?

22 A. The only other time I've spoken with him was
23 when I've spoken with him asking him to testify
24 here today, that was the other conversation. We

1 didn't speak about this actual incident and what
2 he remembers from this actual incident, we spoke
3 about him coming here to testify.

4 JUDGE SUMNER: Chief?

5 MR. JENKINS: Do we know if Mr. Bowman
6 has had any contact, correspondence, or
7 through his family with anybody in group B
8 since they were incarcerated on these
9 charges? That may or may not have come up
10 in your investigation. I don't know that
11 that would -- I was just going to ask that
12 question.

13 A. I can tell you Mr. Isbell has told us that he
14 has spoken with Mr. Bowman. I'm trying to rack
15 my brain. I believe Aaron Brewton, who is also
16 a member of group B, had said that he had spoken
17 with Shawn or members of Shawn's family. I
18 can't remember if it was Shawn or just members
19 of Shawn's family. So yes, he's had some,
20 according to those individuals. Teddy Isbell,
21 and I believe Aaron Brewton said that he had
22 some contact with Shawn's family, if not Shawn
23 himself. There was some communication between
24 group B and Mr. Bowman.

1 MR. JENKINS: So I guess it would be
2 safe to say that it's possible that there
3 has been some information relayed back and
4 forth from the Defendants to the Shawn
5 Bowman family at some point during the past
6 several years?

7 A. I believe it's safe to say that, based on what
8 Mr. Isbell told me about speaking with
9 Mr. Bowman himself, and I believe it was Aaron
10 Brewton saying that he has had communication
11 with the Bowman family, I think that's accurate.

12 MR. JENKINS: Thank you, sir.

13 A. Sure.

14 JUDGE SUMNER: Any other questions?

15 MS. JOHNSON: I think I have one. Did
16 Shawn Bowman attend the trial of any of
17 these individuals?

18 A. No. Shawn Bowman, the reason the police had not
19 picked him up for a month -- and these were plea
20 cases so he wasn't present for any of their
21 pleas -- Shawn Bowman was wanted on outstanding
22 warrants at the time this homicide occurred.
23 When the sheriff's office first arrived, and
24 this is in your brief, when the sheriff's office

1 first arrived at the home, only Ms. Holloway was
2 present, and the sheriff's department did not
3 know that Shawn Bowman had been at that home
4 that evening, and they were unable to speak with
5 him until just over a month after the homicide
6 occurred.

7 At that point in time they got the
8 statement. They spoke with him, they conducted
9 the interviews. He ended up being incarcerated
10 for those outstanding warrants and he was not in
11 Buncombe County when these individuals -- he
12 relayed to us that the next thing he heard is he
13 received a letter in jail with the sentences of
14 these individuals.

15 MS. MONTGOMERY-BLINN: Any additional
16 questions?

17 (No audible response.)

18 MS. MONTGOMERY-BLINN: I ask that
19 Mr. Lau come down temporarily.

20 JUDGE SUMNER: Thank you.

21 (THEREUPON, MR. LAU STEPS DOWN FROM
22 THE WITNESS STAND.)

23 * * * * *

24 MS. MONTGOMERY-BLINN: The next person that

1 was the in the house that we were able to
2 interview was Ms. Wanda Holloway. I believe
3 Ms. Holloway is here today, but she's indicated
4 she does not wish to testify. She's here as a
5 support person for the victim's family member
6 who is here. Ms. Holloway was the girlfriend of
7 Shawn Bowman, and she identified herself as the
8 daughter-in-law of Walter Bowman, the deceased
9 victim.

10 She was present at the home when the
11 ambulance and deputies arrived. She and
12 Mr. Bowman, the deceased victim, were the only
13 people that were present at the home at that
14 time. She was interviewed the night of the
15 murder, and this is in your brief, this is just
16 a quick refresher. She said that three men
17 invaded the home. She said that three men
18 invaded the home with hats and scarves on the
19 bottom of their faces and that she did not
20 recognize them. She did not disclose that
21 Shawn Bowman and Tony Gibson had also been
22 present during the murder. She was interviewed
23 the day after the murder and continued to state
24 that she and Walter Bowman were the only ones

1 home and had not seen Shawn Bowman in a year and
2 a half.

3 Ten days after the murder on September 28th
4 she was interviewed again by law enforcement and
5 disclosed that Tony Gibson and Shawn Bowman had
6 been present. And I understand that Ms.
7 Holloway would like to testify, is that right?

8 MS. HOLLOWAY: (Nods head
9 affirmatively.)

10 MS. MONTGOMERY-BLINN: Okay, so I will call
11 Ms. Holloway.

12
13 THEREUPON,
14 Wanda Holloway,
15 Having first been duly
16 Sworn, was examined and
17 Testified as follows:

18 EXAMINATION BY MS. MONTGOMERY-BLINN:

19 Q. Can you please state your name?

20 A. Wanda Holloway.

21 Q. And how do you know the Bowman family?

22 A. I was dating Shawn Bowman at the time.

23 Q. Can you speak just a little bit louder?

24 A. I was dating Shawn Bowman at the time.

1 Q. And you're still a member or a family friend
2 with the family?

3 A. Yeah.

4 Q. And you're here today to support Ms. Bowman, is
5 that right?

6 A. That's correct.

7 Q. Thank you for being here today.

8 A. You're welcome.

9 Q. And thank you for agreeing to testify.

10 Can you tell us what you remember about the
11 night that Mr. Bowman was murdered?

12 A. We was watching a game on TV. We had two dogs
13 on the inside of the house, and one dog I had to
14 take out on a chain because he would run away.
15 And I took him back in the house, and I let the
16 other dog back out, which was dirty. And he
17 kept going, like, towards the bushes barking and
18 running back up on the porch. And I was just
19 standing there. So I opened the door, and I
20 said, Shawn, what's wrong with this damn dog --
21 excuse me -- this doggone dog. And he said, you
22 know he crazy. So I just didn't pay it no
23 attention. So when he finished using the
24 bathroom I took him back in the house. And I

1 left the front door open, but I left the -- you
2 know, the door was open, but the screen was
3 shut.

4 So I took the dogs back in the back room
5 and shut the door, and before I took the dogs
6 outside, Walter Bowman was in the other room
7 asleep. So I pulled the door up so the dogs
8 wouldn't wake him up. When I put the dogs back
9 up I didn't open his door back up.

10 So we was just sitting there, and I was
11 closer to the kitchen, and Tony Gibson was
12 closer to the door. And when they ran -- well,
13 oh, they -- the door just opened, and they just
14 ran in like, get down, get down, get down. So I
15 ran in the kitchen and ran up under the table.
16 And they was like, Oh, hell, where you going?

17 Came and pulled me from up under the table
18 by my hair. And Shawn Bowman came in the
19 kitchen where we was at. And the man kept
20 telling him to get down, but he wouldn't get
21 down. So they was just standing there like, get
22 down. He's like, I'm not getting down. What do
23 you want?

24 You know, and by that time I heard a

1 gunshot, and they ran out. So I heard -- I know
2 Daddy opened the door, which I called Walter
3 Bowman Daddy. He opened the door, and I heard
4 the door slam. So he must apparently seen the
5 guys with the guns and whatnot and just shut the
6 door. And I figure the guy that was standing at
7 the door was nervous not knowing what was behind
8 the door and what he was doing, so he shot
9 through the door, and Daddy was still standing
10 behind the door.

11 So after they ran out Shawn and them got up
12 and ran out. I called 911. I called
13 Alma Bowman and them. By the time Alma and them
14 got there, the ambulance had got there and was
15 gone with Walter. Then by the time he got to
16 the hospital, I believe we got a call saying
17 that he died on the way to the hospital, if I'm
18 not mistaken.

19 Q. Ms. Holloway, when this happened it was you,
20 Shawn Bowman, Tony Gibson, and Walter Bowman?

21 A. Walter Bowman. And if I'm not mistaken, I think
22 the cousin, Tony Hayes, was there, but I'm not
23 for sure, but I believe Tony Hayes was there
24 also.

1 Q. Maybe Tony Hayes?

2 A. Yeah.

3 Q. Okay.

4 A. If I'm not mistaken.

5 Q. And they were the only people in the house until
6 the --

7 A. Until the ambulance. Yeah, until the people
8 came in, and then everybody left out. Then it
9 was just me and Walter left there.

10 Q. Do you remember how many people came into your
11 home or the home?

12 A. I remember seeing three once I came from up
13 under the table, and I don't think that was
14 counting the one that was at the door.

15 Q. Did you see the one at the door or just --

16 A. No, I didn't. The gunshot, that's what let me
17 know there was another one. But it was one in
18 the kitchen by me, it looked like one was in the
19 middle of the floor where Tony Gibson was, and
20 one was standing by the door.

21 Q. So at least three, maybe four?

22 A. Yeah.

23 Q. And you don't know if there were more or more
24 outside?

- 1 A. No, I don't.
- 2 Q. Did you recognize any of those men?
- 3 A. No, I didn't.
- 4 Q. Did you ever at any point see pictures and
- 5 recognize them?
- 6 A. I didn't.
- 7 Q. What about their voices, did you recognize any
- 8 of their voices ever?
- 9 A. No, because I only heard one talking, that was
- 10 the one that came in the kitchen and got me, and
- 11 I don't remember the voice.
- 12 Q. And I'm guessing you were pretty nervous when
- 13 this was happening?
- 14 A. Yeah.
- 15 Q. And pretty scared, right?
- 16 A. Uh-huh (yes).
- 17 Q. Okay.
- 18 A. Yeah.
- 19 Q. Now, right after this happened Shawn and Tony
- 20 left?
- 21 A. Yeah, but I -- can I go back for a minute?
- 22 Q. Sure; of course.
- 23 A. Before all that happened, Man, which is Aaron,
- 24 Aaron --

1 Q. Brewton?

2 A. -- Brewton, he kept calling Shawn's phone. I
3 don't know what was going on or whatnot, but he
4 kept calling, and Shawn kept telling him to go
5 to his aunt's house, he would be down there, he
6 was watching the game. His aunt would be my
7 cousin, which is Cynthia Hite. So like thirty
8 minutes later, ten minutes later call come
9 through again. He was like, why does he keep
10 calling me like that? why does he keep calling
11 me like that?

12 So we was just sitting there. Then he
13 called again, and then, you know, just like
14 after that, then somebody came in. You know, I
15 don't know if he was trying to get Shawn to
16 leave the house to where they could come in, or
17 I don't know if he was -- had anything to do
18 with it, but before all of it happened, he kept
19 calling Shawn wanting Shawn to meet him.

20 Q. would you say, were Aaron Brewton and Shawn
21 friends?

22 A. Associates maybe.

23 Q. Associates?

24 A. I wouldn't say friends. I never seen them like

1 hanging or going anywhere together, but he
2 be's (sic), like, around. They might have spoke
3 or whatnot, but not just like to --

4 Q. So for him to call repeatedly, you felt was
5 unusual?

6 A. Yeah.

7 Q. One call, would that have been unusual, or was
8 it that it was repeated calls?

9 A. No. It was repeated calls.

10 Q. Okay. So if he had called one time or he had
11 called --

12 A. Or two maybe, okay, yeah, but like just to keep
13 calling, keep calling, keep calling. He'd keep
14 telling him he'll be there when the game is off.
15 You know what I'm saying? Like, I'm watching
16 the game and I'll be there when the game go off.
17 And the game was still on and he was still
18 calling like --

19 Q. Okay. Do you know what he was asking
20 Shawn Bowman for?

21 A. No, I don't. I could just hear Shawn say, just
22 go to your aunt's house. When the game go off
23 I'll be there.

24 You know, like I don't know what the

1 conversation was about or whatnot, but I know he
2 kept calling and Shawn kept telling him he was
3 watching the game, and just to go to his aunt's
4 house and he would be there.

5 Q. Did you know Aaron Brewton to use drugs?

6 A. I didn't.

7 Q. You don't --

8 A. I don't really know him like that myself.

9 Q. Okay. And I was getting ready to ask you, so
10 after the shooting happened and you're calling
11 911, is that when Shawn and Tony left?

12 A. They was probably leaving in the process of me
13 calling 911.

14 Q. And Daddy, Walter Bowman, he was still alive at
15 that point?

16 A. Yeah. I was holding pressure to his wound,
17 trying to.

18 Q. So you were giving him first aid?

19 A. Trying to, yeah.

20 Q. And are you on the phone with 911 at that time?

21 A. Yeah.

22 Q. And I understand you got blood all over
23 yourself, is that right, his blood?

24 A. Yeah.

- 1 Q. And you're trying to save his life?
- 2 A. Uh-huh (yes).
- 3 Q. And they leave. why?
- 4 A. Yeah, they left.
- 5 Q. why did they leave?
- 6 A. Because Shawn was wanted at the time.
- 7 Q. So he said --
- 8 A. He was like, just go ahead and call 911, you
- 9 know, and he just left.
- 10 Q. Do you need a minute?
- 11 A. Oh, no.
- 12 Q. Okay, I'm sorry. So he said -- he left. He
- 13 told you that was why he was leaving or you
- 14 assumed?
- 15 A. No, I knew why he was leaving. He didn't tell
- 16 me why he was leaving. He was like, let's just
- 17 go. And Tony -- and I believe the other Tony,
- 18 it was two Tonys, Tony Gibson and Tony Hayes. I
- 19 believe all three of them left together. well,
- 20 I know they left together, but I'm saying I
- 21 think Tony Hayes was with us, too, at the house.
- 22 Q. If Tony Hayes was there, he left with them?
- 23 A. He went too, yeah.
- 24 Q. Were you mad at them for leaving?

1 A. No. I was still -- I don't know what I was. I
2 was still -- I don't know. No, I wasn't mad at
3 them leaving. I don't know.

4 Q. Just too much to --

5 A. I was just glad they was still there when they
6 came in. I'm glad I wasn't there by myself
7 because I would have been there by myself if
8 they would have left. So no, I wasn't mad.

9 Q. And you waited with Mr. Bowman until the
10 ambulance arrived?

11 A. Uh-huh (yes).

12 Q. What arrived first, the law enforcement or the
13 ambulance, if you remember?

14 A. I don't really remember.

15 Q. And you understand that Mr. Bowman passed away
16 before he reached the hospital?

17 A. Uh-huh (yes).

18 Q. But he was alive there at the house?

19 A. When he left, yeah.

20 Q. Did he say anything to you?

21 A. He was just saying he was hurt.

22 Q. So he was still speaking at that time?

23 A. Uh-huh (yes).

24 Q. And did he say anything to you about recognizing

1 the individuals?

2 A. Huh-uh (no).

3 Q. Did Shawn Bowman ever talk to you about

4 recognizing the individuals?

5 A. No, he didn't.

6 Q. So you never had a conversation with

7 Shawn Bowman about --

8 A. Yeah, we communicated. I mean, afterwards we

9 talked, but he never said he knew who it was.

10 Q. Did he ever say that was Kenny, that was Man?

11 A. We just talked about Man the way he kept

12 calling, but he never said who he actually

13 thought it was or voices he heard that he

14 noticed or none of that.

15 Q. Did you ever hear him talk about

16 Kenneth Kagonyera and refer to him as Goofy?

17 A. No. I don't even know who he is. Okay, that's

18 the guy that got charged. I don't even know

19 him.

20 Q. You don't know them?

21 A. I know Teddy.

22 Q. Teddy Isbell?

23 A. Yeah, and I seen Teddy when he first got

24 released. I was working at Homewood Suites, and

1 his girlfriend was working there.

2 Q. Teddy Isbell's girlfriend?

3 A. Uh-huh (yes). And he came in the day he got
4 out.

5 Q. Did he talk to you?

6 A. He spoke, I spoke.

7 Q. What did you say?

8 A. He said, hey. I said, hey. That was it.

9 Q. You didn't talk about this?

10 A. Huh-uh (no).

11 Q. Has anybody ever tried to talk to you about this
12 other than the sheriff interviews?

13 A. No.

14 Q. And obviously, you met with Mr. Lau?

15 A. I mean, you know, people talk, not, you know,
16 like what happened, what happened, you know, but
17 nothing to like the extent of who it was or
18 nothing like that.

19 Q. Did anybody talk to you ever about what you
20 should say to the police or to the sheriff?

21 A. No.

22 Q. And has anybody talked to you about it since and
23 said this is what you should say to the
24 Innocence Commission?

1 A. No.

2 Q. Is there anything that you want to tell the
3 commission?

4 A. (Witness shakes head negatively.)

5 Q. Is there anything else about that night that you
6 remember?

7 A. No.

8 Q. Or even after that night, anything about this
9 case that you remember?

10 A. No. That was about it. I just was interviewed,
11 and, you know, went to trial. Nothing that I
12 remember ever really helped. Just --

13 Q. Were you present when the people pled guilty?

14 A. I was.

15 Q. You were there in the courtroom?

16 A. I was, yeah.

17 Q. Were you present when the charges were dismissed
18 against Aaron Brewton, Man?

19 A. I was.

20 Q. How did you feel watching those charges be
21 dismissed against the person that had been
22 calling that night?

23 A. I guess they just didn't have evidence enough to
24 -- I mean, maybe he didn't have nothing to do

1 with it, I don't know. I just felt it was
2 strange.

3 Q. So you just don't know who did it?

4 A. I just don't know.

5 Q. You don't know --

6 A. Even today, I still don't know.

7 Q. Now, do you know a person or did you know a
8 person named Lacy Pickens, J.J. Pickens?

9 A. J.J. Pickens, is he dead?

10 Q. Uh-huh (yes).

11 A. I remember J.J. got killed at Cracker Barrel.
12 Was that the J.J.?

13 Q. It was during an altercation with police.

14 A. I don't know. I remember hearing it, but I
15 don't --

16 Q. But you don't know him?

17 A. I don't know him personally, no.

18 Q. How about Bradford Summey, do you know him?

19 A. I don't think so, and I know a lot of people by
20 face, not names, so I don't know.

21 Q. How about somebody named Robert Rutherford, do
22 you know him?

23 A. Somebody was trying to make me know who he was,
24 and I think I kind of know, but really I --

1 Q. What do you mean by somebody was trying to make
2 you know who he was?

3 A. Well, like Evita was trying to explain to me who
4 he was.

5 Q. Okay.

6 A. You know, like to let me know I do know him,
7 but --

8 Q. Evita Bowman was trying to refresh your --

9 A. Yeah, refresh my memory, but I really, I really
10 don't know.

11 Q. You don't know. Okay, and you said the only one
12 of the people that were charged that you knew
13 was Aaron Brewton?

14 A. Yes.

15 Q. Is it all right if the commissioners ask you
16 questions as well?

17 A. Uh-huh (yes).

18 Q. Thank you.

19 JUDGE SUMNER: Any questions?

20 MR. JENKINS: I have one.

21 JUDGE SUMNER: Yes, sir.

22 MR. JENKINS: Thank you for being here
23 and testifying.

24 A. Oh, you're welcome, sir.

1 MR. JENKINS: I know this is difficult
2 for you. You were dating Mr. Bowman at the
3 time?

4 A. Uh-huh (yes).

5 MR. JENKINS: How long had you been
6 dating him when this incident happened?

7 A. About eight or nine years.

8 MR. JENKINS: So a long time?

9 A. Uh-huh (yes).

10 MR. JENKINS: And you never heard him
11 talk about any of these names that Kendra
12 has asked you about prior to that night?

13 A. (Shakes head negatively.)

14 Q. Or since then?

15 A. Huh-uh (no). No. We just talked about Man,
16 Aaron Brewton, because we didn't know who else
17 was involved. He didn't know. He couldn't
18 identify nobody.

19 MR. JENKINS: Thank you.

20 A. Uh-huh (yes).

21 JUDGE SUMNER: Yes, ma'am.

22 MS. ASHENDORF: Thank you for being
23 here.

24 A. You're welcome.

1 MS. ASHENDORF: One question -- I have
2 a couple of questions.

3 A. Okay.

4 MS. ASHENDORF: One question, how did
5 it happen that Evita was asking you or
6 prompting you to tell you you knew who
7 Robert Rutherfordton -- Rutherford was?

8 A. Because I guess --

9 MS. ASHENDORF: How did his name come
10 up?

11 A. I guess from the interview that they had with
12 Shawn Bowman on another day. I'm not for sure.
13 I'm just going to say I don't know because I
14 don't want to lie.

15 MS. ASHENDORF: Okay.

16 A. I don't know how she know.

17 MS. ASHENDORF: Okay. And Daddy
18 Bowman, Mr. Bowman, really never saw the
19 people who entered because he was behind
20 the door?

21 A. Yeah, but he opened the door and seen like --
22 you know, he heard the commotion. I'm sure
23 that's what woke him up when they came in, get
24 down, get down. It woke him up. So he opened

1 the door to see what was going on. I apparently
2 figured he seen them and shut the door back.

3 MS. ASHENDORF: And where was the
4 shooter? Was the shooter standing --

5 A. He was in --

6 MS. ASHENDORF: -- near the front
7 door, the --

8 A. No. He was at the door. Like the front door is
9 here, and if you go straight like down the
10 little hallway, the bedroom that walter was in
11 was right here.

12 MS. ASHENDORF: And that's where the
13 shooter was?

14 A. That's where the shooter was, at the door where
15 walter was.

16 JUDGE SUMNER: Yes.

17 MR. SMITH: Did Shawn ever tell you
18 who he thought did this?

19 A. No, sir.

20 MR. SMITH: He didn't speculate about
21 or it just say, well, I think it was so and
22 so?

23 A. Well, we assumed Aaron Brewton had something to
24 do with it, but we don't know for sure.

1 MR. SMITH: Because of the calls?

2 A. Yes, but we don't know for sure.

3 MR. BECTON: Did he tell you that he
4 could not identify any of the people who
5 came in?

6 A. Yeah. He didn't know.

7 MR. BECTON: He didn't know?

8 A. He didn't know.

9 MR. BECTON: Did he ask you if you
10 recognized any of the people who came in?

11 A. He didn't.

12 MR. VICKORY: Ms. Hollaway, I'm sorry.
13 Briefly, again, I appreciate you being
14 here.

15 A. Uh-huh (yes).

16 MR. VICKORY: The descriptions of the
17 people that came in that night -- I know it
18 was all happening real fast, and we're
19 trying to break things down into little
20 tiny segments, which is impossible, but
21 they had masks, bandanas on?

22 A. Bandanas.

23 MR. VICKORY: Did you take that to
24 have any gang significance or anything? I

1 know one was a blue one and one was a green
2 one maybe. Did that mean anything to you
3 at the time?

4 A. No.

5 MR. VICKORY: The ages of the people
6 -- I know, I think you identified them as
7 black males?

8 A. Correct.

9 MR. VICKORY: So you could tell that
10 much?

11 A. Yes.

12 MR. VICKORY: From the voices and just
13 their appearance, could you tell
14 approximate age?

15 A. No, I couldn't. Because like I just glanced at
16 them like when they came in the house. Once he
17 pulled me from up under the table I really never
18 looked back up. But from like when they first
19 came in the house I just seen like bandanas and
20 hats when I first started going to the kitchen.

21 MR. VICKORY: When the one that
22 grabbed you up --

23 A. I didn't even look up. He just pulled my hair
24 from up under the table like this, and I really

1 didn't even look back up. I just heard him and
2 Shawn like get down, get down, and Shawn like,
3 let her go. I'm not getting down. And he like,
4 what do you want? And he like, ain't nothing in
5 here.

6 You know, I just heard them words, but I
7 never really looked back up.

8 MR. VICKORY: So Shawn was taking him
9 on, I mean --

10 A. Yeah. He wouldn't lay down. He was just
11 like -- I'm sure they was just right there. He
12 wouldn't get down.

13 MR. VICKORY: Did you think at the
14 time maybe Shawn might know who it was?

15 A. No. I was thinking at the time Shawn was going
16 to get his ass killed.

17 MR. VICKORY: Were you screaming at
18 Shawn?

19 A. No, I wasn't saying nothing.

20 MR. VICKORY: What was it that kept
21 Shawn -- what did Shawn do?

22 A. He didn't do nothing. I guess the guys just
23 really didn't -- I don't know because he was
24 just saying, get down. And he kept saying, I'm

1 not getting down. And like it couldn't -- it
2 wasn't too long before that shot went off. That
3 shot is what stopped everything. All right,
4 once that shot went off everybody just ran out.
5 It wasn't no more nothing, all right.

6 MR. VICKORY: When the man stood you
7 up, I mean, how tall --

8 A. He didn't stand me up. He just -- I was up
9 under the table, and he just came, and he's
10 like, oh, you -- you know, and I just crawled
11 out. I didn't get up. He just -- I didn't get
12 up. So I just stayed down on the floor.

13 MR. VICKORY: Was he still holding
14 your head?

15 A. Yeah, he still had my hair.

16 MR. VICKORY: I'm sure he seemed like
17 a bigger-than-life person with a gun up in
18 your face.

19 A. Yeah. That's why --

20 MR. VICKORY: I'm just trying to see
21 if there's any kind of --

22 A. I understand.

23 MR. VICKORY: -- you couldn't --

24 A. I understand, but I didn't see nothing.

1 MR. VICKORY: You couldn't tell if it
2 was a younger person?

3 A. Huh-uh (no).

4 MR. VICKORY: All right.

5 MS. JOHNSON: Thank you again for
6 being here.

7 A. You're welcome.

8 MS. JOHNSON: When the intruders came
9 in the house, could you tell how many of
10 them had weapons?

11 A. No, because I --

12 MS. JOHNSON: And you said that they
13 were wearing bandanas and hats?

14 A. And they had a hat or something on like the --
15 you know, like the first one that came in, the
16 first one I seen had a bandana and a hat.
17 That's the first one I seen. That's what made
18 me take off because as soon as they came in,
19 they was just like, get down. You know, so I
20 just took off. I didn't know what to do.

21 MS. JOHNSON: Did they leave anything
22 behind at the house when they left, that
23 you can recall?

24 A. Not inside the house, I don't believe, no.

1 MS. JOHNSON: Anything outside the
2 house?

3 A. I think something was left outside, but that was
4 from, like, you know, like evidence, like
5 bandanas and stuff they said they found outside
6 and stuff, but I don't know what was found. I
7 didn't see anything. I didn't pick nothing up
8 and give them to them.

9 MS. JOHNSON: Are you saying that the
10 police collected that evidence that was
11 left outside or it was left there?

12 A. Yeah. I believe in the trial they were saying
13 it was outside. I think they found bandanas or
14 something outside or something, a bandana or a
15 hat or something. I don't know.

16 MS. JOHNSON: At the time that the
17 shot was fired, do you recall them saying
18 anything when they were running out of the
19 house?

20 A. I don't.

21 MS. JOHNSON: That's all my questions.

22 A. I know Tony Gibson, he was just still laying
23 there. I was like, get up, Tony, get up.

24 I thought he had been shot the way he just

1 kept laying there. But then by the time they
2 got ready to go out the door, I had to jump over
3 him to shut the door after they ran out because
4 he was still just laying there.

5 MS. JOHNSON: And he had not been
6 shot?

7 A. And he had not been shot.

8 JUDGE SUMNER: Chief?

9 MR. JENKINS: I think she has --

10 JUDGE SUMNER: I'm sorry, sure.

11 MS. JOHNSON: I did have one more
12 question.

13 A. Go ahead.

14 MS. JOHNSON: You said there were two
15 Tonys?

16 A. Yeah. Tony Hayes would be Shawn Bowman's
17 cousin, and Tony Gibson is the friend of the
18 family.

19 MS. JOHNSON: And you think all three
20 of them left together?

21 A. Yeah. If I'm not mistaken, I believe Tony Hayes
22 was also there that night.

23 MS. JOHNSON: How long was he at the
24 house, the same amount of time as all the

1 rest of you?

2 A. Oh, yeah, we had all got there at the same time.

3 MS. JOHNSON: Okay. So he did leave

4 with the others?

5 A. Yeah. If he was there that night, he did leave
6 with the rest of them.

7 MS. JOHNSON: But you're not positive
8 he was there?

9 A. I'm not. I'm thinking he was, though, that
10 night; I'm thinking he was.

11 MS. JOHNSON: Okay. Thank you.

12 A. You're welcome.

13 MR. JENKINS: You testified that Shawn
14 said there ain't anything in here?

15 A. Yeah, like --

16 MR. JENKINS: Did you hear the --

17 A. They didn't ask for nothing or nothing.

18 MR. JENKINS: Did anybody say anything
19 about what they were looking for?

20 A. No. I guess when you come to rob somebody you
21 coming in for something.

22 MR. JENKINS: Well, did they say
23 anything about money?

24 A. They didn't say nothing. He was like, get down,

1 get down.

2 And he was like, what do you want? Ain't
3 nothing in here.

4 That's all I remember them saying. I mean,
5 it could have been more, but I really remember
6 that.

7 MS. ASHENDORF: Did you ever wonder
8 why Shawn was the one who was standing up
9 to them?

10 A. I just know Shawn. That's him.

11 MS. ASHENDORF: But what reason did
12 they have --

13 A. He came in --

14 MS. ASHENDORF: -- not to shoot him and
15 to shoot Mr. Bowman, who didn't do anything
16 but open the door?

17 A. Because I'm thinking the guy panicked when he
18 ~~shut the door back not knowing what Walter was~~
19 in there doing. So he just shot through the
20 door, and Walter happened to still be standing
21 behind the door. And I think apparently he must
22 have opened the door and seen he shot Walter,
23 and they ran out, because I don't think he would
24 have just ran out, you know. He had to open

1 that door back up and seen he had shot him, and
2 that's why they ran out. And I can't remember
3 if he said I shot, I don't remember none of
4 that. That gunshot just really got me, and them
5 dogs was in there going all crazy on that door.
6 They was just in there like just scratching on
7 the door and stuff. I was scared to open the
8 door when the ambulance people and them left; I
9 was scared to open the door. I thought they was
10 going to jump on me.

11 MS. ASHENDORF: You said the dogs
12 earlier, right before had been barking at
13 the bushes?

14 A. Just the -- not the --

15 MS. ASHENDORF: The one dog?

16 A. The one dog, the one I can let out by hisself.
17 He kept just like going -- and it was pitch
18 dark, and the bushes like sit up. And so like
19 if the neighbors would have came out on the
20 other side, they could have seen like if
21 somebody was standing on the other side of the
22 bushes, but it was just so dark over there. And
23 the dog would just like run halfway to the
24 little bush like by the little porch steps and

1 jump back up on the porch. He just kept like --
2 but I just, I didn't know. I mean, I just
3 didn't know. I guess that was a sign saying
4 somebody was in them bushes, but I just didn't
5 know because he just -- he was a dumb dog. He
6 just did stuff. So I'm just like, I don't know.

7 MS. ASHENDORF: And you didn't see
8 anybody in the bushes?

9 A. No. It was dark, and I didn't -- I looked, but
10 I didn't see anything.

11 MS. ASHENDORF: You're just assuming
12 now that that might have been --

13 A. I'm just -- yeah.

14 MS. ASHENDORF: But you didn't see?

15 A. Yeah. Because as soon as I took the dogs back
16 in and by the time that I shut the door and sit
17 down, they came in. And then later Tony Gibson
18 said he thought -- well, maybe Tony Hayes wasn't
19 there because I remember Tony Gibson saying he
20 thought it was Tony in the door playing. Like
21 it might have just been Tony there playing, had
22 a mask or something on playing with him or
23 something. Yeah. I'm sorry. Tony Hayes wasn't
24 there because I remember Tony Gibson saying that

1 Tony Hayes -- he thought that was Tony Hayes in
2 the door playing.

3 MS. ASHENDORF: At first?

4 A. Before they came in, before they actually opened
5 the door, because Tony Gibson sat there and
6 looked at them in the door, but he thought it
7 was family member playing.

8 MS. ASHENDORF: Just a joke for a
9 second?

10 A. Yeah. Yeah, so he wasn't there.

11 MS. ASHENDORF: So it was just you --

12 A. Me, Tony, and Shawn.

13 MS. ASHENDORF: -- Shawn Bowman, Tony
14 Gibson, and Walter Bowman?

15 A. And Walter.

16 MS. MONTGOMERY-BLINN: Are there any
17 more questions?

18 MR. BECTON: Excuse me, ma'am. Do you
19 know if Tony Gibson or Shawn saw the car
20 that the three or four people got in and
21 drove off in?

22 A. No, because I'm sure by the time they got up and
23 got out the door that car was gone. So I don't
24 know how he would have knew, no, unless people

1 was talking and he just heard.

2 JUDGE SUMNER: Yes, ma'am.

3 MS. ASHENDORF: Were there any drugs
4 in the bedroom?

5 A. In the bedroom? No.

6 MS. ASHENDORF: To your knowledge
7 where Mr. Bowman was?

8 A. No. Bowman was in the living room. All of us
9 was in the living room, and -- you mean
10 Walter Bowman?

11 MS. ASHENDORF: Right.

12 A. No; no.

13 MR. VICKORY: Do you know whether or
14 not Shawn had been robbed before this night
15 of any money?

16 A. Huh-uh (no). We never had nothing like that to
17 happen.

18 MR. VICKORY: He never mentioned to
19 you having lost any sum of money to robbers
20 before?

21 A. Huh-uh (no).

22 JUDGE SUMNER: Any other questions?

23 (No audible response.)

24 JUDGE SUMNER: Ms. Holloway, I want

1 to thank you for agreeing to testify.

2 A. You're welcome.

3 JUDGE SUMNER: And I do have just one
4 very brief question.

5 A. Okay.

6 JUDGE SUMNER: I noticed that you
7 indicated a moment ago that Tony Hayes was
8 not there?

9 A. Correct.

10 JUDGE SUMNER: Upon further
11 reflection, have you decided whether or not
12 there were three or four people that came
13 in that evening?

14 A. I said I seen three. Like, you know, I'm down
15 like this. I see -- I know Tony's here,
16 Gibson's there. He's laying on the floor, I see
17 him. I see feet at the door. I see the guy
18 right here, and I seen one in the living room,
19 and Shawn's right here. And I assume where the
20 shot went off, it had to be another one there.
21 If these three is in here, and a shot went off,
22 there had to be another person in the house.

23 JUDGE SUMNER: So you're comfortable
24 with the fact that it was four individuals?

1 A. Yes.

2 JUDGE SUMNER: Anyone else?

3 (No audible response.)

4 JUDGE SUMNER: Thank you, ma'am.

5 A. Thank you all.

6 Q. Thank you very much.

7 (THEREUPON, MS. HOLLOWAY STEPS DOWN
8 FROM THE WITNESS STAND.)

9 * * * * *

10 MS. MONTGOMERY-BLINN: Well, James Tony
11 Gibson was the other person that was in the
12 house that survived. He was -- I guess we could
13 have asked this -- he was a family friend, I
14 understand, possibly a cousin of Shawn Bowman's.
15 And he was present during the shooting, but he
16 fled with Shawn Bowman. He was interviewed by
17 deputies two days later and originally denied
18 being present during the shooting, but then he
19 came into the sheriff's department or the next
20 day he was interviewed again and admitted this
21 time that he had been present during the
22 shooting and had left with Shawn Bowman.

23 The commission staff was able to locate and
24 interview Mr. Gibson. His original statements

1 to law enforcement are in the brief. The staff
2 calls Jamie Lau.

3 (THEREUPON, JAMIE LAU RETURNS TO THE
4 WITNESS STAND.)

5 EXAMINATION BY MS. MONTGOMERY-BLINN:

6 Q. Mr. Lau, I believe you're still under oath.

7 MS. MONTGOMERY-BLINN: Is that
8 correct, Judge Sumner?

9 JUDGE SUMNER: Yes.

10 MS. MONTGOMERY-BLINN: Thank you.

11 Q. Were you able to interview Tony Gibson?

12 A. I was.

13 Q. And how did you locate him?

14 A. We had did a LEXIS search, and through Facebook
15 we also located him. His wife had a Facebook
16 page. So through communication with his wife's
17 Facebook page as well as seeing that they had
18 moved to Atlanta on Facebook, we were able to
19 identify the address and go visit him.

20 Q. So you went to Atlanta?

21 A. We went to Atlanta.

22 Q. And did you talk with him when you were in
23 Atlanta?

24 A. I did.

1 Q. And was that, what date was that?

2 A. It was on March 2nd.

3 Q. Who all was present during your interview?

4 A. It was myself and Ms. Smith.

5 Q. And can you tell us about that interview?

6 A. When we arrived at the address an individual was
7 in a Ford Aerostar van, I believe it was. We
8 had records indicating that this may be the van
9 registered to Mr. Gibson. I approached the
10 individual in the van and I asked him if he
11 happened to be Mr. Gibson, and he identified
12 himself as Mr. Gibson. At that point in time we
13 began to talk.

14 Again, I explained the commission, why we
15 were there to see him. He had indicated to me
16 that he meant to call, he had meant to call me
17 because his -- I had passed along my number to
18 his wife through her Facebook page, but that he
19 hadn't had the opportunity to yet. And then we
20 began discussing his recollections from the
21 night.

22 Q. And was he willing to talk with you?

23 A. He was willing to talk to us.

24 Q. And what did he tell you?

- 1 A. He told me that he recalled the dogs, and he
2 said that when the dog came in, the dog -- he
3 asked, did the dog see a bear? He said that the
4 individuals came in.
- 5 Q. Was that, did he ask that because the dog had
6 been barking?
- 7 A. Because the dog was acting in a -- yeah.
- 8 Q. Okay, go ahead.
- 9 A. He said that the individuals came in, pointed
10 the gun in his face and told him to get down.
11 And he said that he thought it was a joke and
12 was like, stop playing or whatever.
- 13 Q. He said that?
- 14 A. He said that, yes. I asked him how many people
15 did he remember seeing coming through the door.
16 He said one pointed the gun in his face, he seen
17 another one coming through in the house, and I
18 know at least one other was behind him; at least
19 three people.
- 20 Q. Was he able to give you any descriptions of the
21 people?
- 22 A. He didn't give -- to my recollection, he could
23 not recall them well enough to give a
24 description to us.

1 Q. Now, originally the deputies showed him the
2 bandanas and gloves that they found, and he
3 identified them. Did you ask him about that?

4 A. I did. I asked him whether or not he recalled
5 being shown the bandanas and gloves. I also
6 showed him the report, the prosecution report
7 that's in the brief that indicates that he was
8 shown the bandanas and gloves and identified as
9 similar in kind to the bandanas the perpetrators
10 were wearing. He reviewed that report. He did
11 not specifically remember being shown those
12 items, but said it probably happened.

13 Q. In the same vein, did he remember giving a
14 description of the intruders?

15 A. He remembered giving a description.

16 Q. But he could not remember them from his memory
17 now?

18 A. He couldn't remember from his memory now,
19 correct.

20 Q. Were you able to show him any portions, or even
21 if you didn't have the equipment, at least some
22 still photos from that gas station video that
23 we've discussed?

24 A. I did. I showed him a still photo. He said he

1 could not make any I.D.'s off of that still
2 photo. He said that it could be the robbers
3 because you always have to ask what's going on
4 when you see black people in Fairview.

5 Q. Those are his words, right?

6 A. Those were his words, yes; those were his exact
7 words. But he could not identify anybody.

8 Q. And just to clarify, that video is quite grainy,
9 is that correct?

10 A. Yes.

11 MS. MONTGOMERY-BLINN: Commissioners,
12 do you have any questions for Mr. Lau about
13 this interview?

14 (No audible response.)

15 MS. MONTGOMERY-BLINN: None?

16 MR. VICKORY: Do you remember speaking
17 with him about the reference that he
18 recalled one of the robbers making a
19 comment, where's the bitch, or something
20 like that, to which Ms. Holloway said, I'm
21 right here? I don't know if you went over
22 that with him or not, but --

23 A. I don't recall specifically asking him about
24 that statement. You know, I asked him, again,

1 generally if he could tell me what he remembered
2 from that night. (Mr. Lau reviews document.)
3 And I'm flipping through my notes to see if he
4 addressed that specifically, and he doesn't.
5 Here in my notes of our conversation I don't see
6 him specifically addressing one of the robbers
7 stating, where's the bitch?

8 MR. VICKORY: Did he give any
9 indication to you that he perceived the
10 robbers seemed to know who might be in the
11 -- not necessarily the identities, but that
12 they might know the sexes of the various
13 people that were present?

14 A. He never said anything to that effect.

15 MR. VICKORY: As far as he was
16 concerned, it could have been a completely
17 out of the blue, random robbery, or it
18 could have been a specific knowledge of --

19 A. We didn't talk about that. I couldn't say what
20 he believes. We didn't discuss that.

21 JUDGE SUMNER: Did he make any
22 references to Brewton calling Shawn Bowman
23 repeatedly during the day?

24 A. (Mr. Lau reviews document.) No, not to my

1 recollection.

2 JUDGE SUMNER: Any other questions?

3 (No audible response.)

4 MS. MONTGOMERY-BLINN: I'd ask Mr. Lau
5 to step down.

6 JUDGE SUMNER: Thank you.

7 (THEREUPON, MR. LAU STEPS DOWN FROM
8 THE WITNESS STAND.)

9 * * * * *

10 MS. MONTGOMERY-BLINN: Commissioners, I'm
11 sorry. I forgot to show you this slide.

12 (THEREUPON, A SLIDE IS SHOWN.)

13 MS. MONTGOMERY-BLINN: Commissioners, we're
14 next to hear from a witness, Mr. Devereux. You
15 know him as an alternate commission member, but
16 he also represented Mr. Kagonyera. I'm not
17 completely certain that he's here, and would
18 this be a good time to take a very short recess?

19 JUDGE SUMNER: This would be an excellent
20 time.

21 MS. MONTGOMERY-BLINN: Five minutes, Your
22 Honor?

23 JUDGE SUMNER: Let's go seven, how about
24 that?

1 MS. MONTGOMERY-BLINN: Seven minutes, thank
2 you.

3 (THEREUPON, A SHORT RECESS WAS TAKEN.)

4 JUDGE SUMNER: Thank you folks, and I
5 appreciate your not abusing my seven-minute time
6 limit. Thank you.

7 MS. MONTGOMERY-BLINN: All right. The
8 commission calls Sean Devereux.

9 JUDGE SUMNER: Mr. Devereux, you may be
10 seated.

11
12 THEREUPON,
13 Sean Devereux,
14 Having first been duly
15 Sworn, was examined and
16 Testified as follows:

17 EXAMINATION BY MS. MONTGOMERY-BLINN:

18 Q. What is your name?

19 A. Sean Devereux.

20 Q. Mr. Devereux, how are you employed or in what
21 manner are you employed?

22 A. I'm an attorney in Asheville.

23 Q. And what kind of law do you practice?

24 A. I'm board certified as a specialist in criminal

1 defense.

2 Q. How many years experience have you had as a
3 criminal defense attorney?

4 A. I've been practicing criminal defense law for
5 approximately 25 years.

6 Q. And what kinds of criminal cases do you do?

7 A. Just across the spectrum. I've appeared in
8 capital murder cases and petty offenses on the
9 Parkway, and we do a fair amount of white collar
10 representation now.

11 Q. In 2000, were you also doing capital murder
12 cases at that time?

13 A. I was.

14 Q. And just to clarify, Mr. Devereux, you are also
15 a member of the North Carolina Innocence Inquiry
16 Commission, is that correct?

17 A. That is correct.

18 Q. And you've served on this commission in past
19 hearings, is that correct?

20 A. I have. When Mr. Smith is unavailable they call
21 on me.

22 Q. Thank you, Mr. Devereux. Now, in 2000, did you
23 represent Kenneth Kagonyera?

24 A. I did.

1 Q. And you are aware that Mr. Kagonyera has waived
2 his attorney-client privilege and given you
3 permission to speak freely about his case?

4 A. I am aware of that, yes.

5 Q. And how did you get Mr. Kagonyera's case?

6 A. I had -- it's a long story. I'd represented a
7 man named Freddy Wadsworth. I'd actually
8 represented Freddy Wadsworth's father.
9 Freddy Wadsworth is Tisha Lee's father and
10 Anita Findlay's father. And Mr. -- if I recall
11 correctly, Mr. Wadsworth brought Mr. Kagonyera,
12 who was the father of his grandchild, he was
13 dating his daughter, Tisha Lee, brought
14 Mr. Kagonyera to see me, I think, in April of
15 2000 on, of course, unrelated matters.

16 Q. So you were retained on unrelated matters?

17 A. That's correct.

18 Q. And then were you court appointed on the murder
19 case that came up?

20 A. I was; I was.

21 Q. And who was your -- well, did you have co-
22 counsel on the murder case?

23 A. I did.

24 Q. And who was that?

1 A. It was Al Messer.

2 Q. And were there two attorneys appointed because
3 it was potentially a capital case?

4 A. That's correct.

5 Q. I'd like to talk a little bit about your
6 representation of Mr. Kagonyera, if that's all
7 right. Did Mr. Kagonyera ever confess to you?

8 A. Mr. Kagonyera -- the short answer is, yes. The
9 longer answer is that he initially denied any
10 involvement and persisted in that denial for
11 some time. Ultimately he told us and others, or
12 gave versions that were, that involved him,
13 inculpatory versions.

14 Q. And was that close to the time that he pled or
15 was that early on in the case?

16 A. I went back and constructed a time line. Is it
17 okay if I consult that?

18 Q. Yes.

19 A. My recollection is that he first acknowledged
20 some involvement to us. Then there was a
21 meeting with -- in the office of the district
22 attorney with the district attorney, myself,
23 Mr. Messer, Mr. Kagonyera, and at least one
24 investigator, which would have been, I want to

1 say November.

2 Q. November of what year?

3 A. Let me go back and make sure I've got this
4 right. It was a meeting with the district
5 attorney on November 29, 2001, and it was prior
6 to that. And I can't tell you how much prior to
7 that that he told us that he was involved.
8 Actually, I can. I can narrow it a little bit.
9 My notes reflect that I had a meeting in the
10 jail on October 24, 2001 with Damian Mills, who
11 was -- Damian Mills was Kenneth Kagonyera's
12 cousin or step-cousin, as he referred to him.
13 And our reason for meeting with Mr. Mills was
14 that Mr. Kagonyera had told us that Mr. Mills
15 would corroborate his account that he was not
16 there. And so at that point he must still have
17 been telling us that he wasn't involved. That
18 was the purpose of that meeting.

19 Q. So that's over a year after the murder?

20 A. That's correct.

21 Q. So sometime over a year after the murder is when
22 Mr. Kagonyera first started to incriminate
23 himself to you?

24 A. That's correct.

1 Q. Do you remember anything else about what
2 Mr. Kagonyera told you?

3 A. At what point?

4 Q. Throughout your -- well, let me ask some other
5 questions, and then we'll go back to that more
6 general --

7 A. Sure.

8 Q. All right. Can you tell us about your case
9 strategy? When you received this case, did you
10 have a strategy that you started to put
11 together?

12 A. Mr. Messer and I met with Mr. Kagonyera, and
13 I've shown you folks the notes of those early
14 meetings. In the first meetings he denied any
15 involvement whatsoever. We started getting the
16 discovery in, and there were statements from co-
17 defendants, as well as others, that appeared to
18 involve him. And he gradually from September
19 probably would not have -- the case remained in
20 District Court for a while. So it may have been
21 the first of the year before he started seeing
22 discovery, but we would -- and I can't recall.
23 It's not generally my practice to simply copy
24 discovery and leave it in the jail. I think

1 that's a bad idea. But he --

2 Q. why is that a bad idea?

3 A. It would get -- you know, you leave your cell to
4 go somewhere, and your cell mate reads it
5 becomes a witness or it gets distributed
6 throughout jail, and there's -- stories take on
7 a life of their own, especially when they're in
8 writing. Plus you know, somebody will say that
9 a witness said such and such when it's not
10 really the case, and that will set up all sorts
11 of cross currents of animosity in cases
12 unnecessarily. So it's just a bad idea.

13 Typically what we'll do is either go over
14 it ourselves and go through the discovery with a
15 -- especially in a case as serious as this, or
16 send a legal assistant that can just sit there
17 and retrieve the discovery materials when the
18 client is through looking at them, through
19 reading them. But you know, we did that.

20 And I had a growing concern. There were,
21 if you recall, ultimately, if I'm not mistaken,
22 five people pled guilty. One person was
23 charged, Mr. Brewton, and the charges against
24 him were ultimately dismissed. I'd been

1 involved in cases like this before where there
2 were multiple defendants. Generally speaking
3 they were robberies or a drug case of some sort,
4 felony murder. The issue is always who's the
5 most culpable, the person that actually fired
6 the weapon or committed the homicide. Everybody
7 else, other defendants are given an opportunity
8 to be a witness rather than a defendant, and
9 there's always a race to be that person, to be
10 the witness. So pretty early on I think there
11 was -- as we began to see evidence appear to
12 mount against Mr. Kagonyera, I think that was,
13 you know, that was what was going in my mind.
14 I'm still answering your question about the
15 approach we took.

16 we also heard at some point, I think
17 Mr. Williams, Larry Williams, Little Larry
18 Williams, in one of his early interviews gave
19 the opinion -- I don't think he claimed to have
20 seen it, but he was of the opinion that or
21 expressed the opinion that Mr. Kagonyera had
22 actually been the shooter. So that increased
23 the concern on our part.

24 Q. Did your client, did you ask your client or have

1 him submit to a polygraph examination?

2 A. We did. And I'm a little unclear on when that
3 -- I felt badly about being murky about this
4 until I talked to some of the lawyers that
5 represented other defendants. I understand that
6 very few of them still had their files. So my
7 bad memory may be the best memory that you have,
8 unfortunately. But we did. I used, back then
9 there was a gentleman named Steve Davenport.
10 Steve Davenport had been with the SBI for many,
11 24 years, I think, as an agent, and then as a
12 polygraph examiner, and ultimately was the
13 instructor for the polygraph. All of the SBI
14 polygraphers were trained for many years by
15 Mr. Davenport. When he retired he went into
16 private practice, I think, down near Wake County
17 actually, and we would frequently use Steve to
18 administer a polygraph.

19 Q. And why did you like to administer or why did
20 you think it was useful to do a polygraph?

21 A. Well, a couple reasons. One -- and I've learned
22 more about polygraphs since 2000. I learned a
23 lot from Steve, and then these days we use a guy
24 name Terrence T.V. O'Malley. He not only

1 administers polygraphs for us, but kind of
2 taught me some about a polygraph. And my
3 understanding of a polygraph is that it is -- if
4 you -- at least certainly law enforcement
5 administered polygraphs. If you show no
6 deception on the polygraph, there's a very
7 strong likelihood that you're not deceiving
8 anyone. On the other hand, if deception shows,
9 that means that you're holding something back,
10 you're concerned, and that concern is being
11 expressed physiologically. You're worried about
12 something, but it may not necessarily translate
13 into a lie in response to -- in other words, if
14 you ask Mr. Kagonyera, were you present at the
15 Bowman home on September 18th, and he shows no
16 deception, then you can be pretty darn sure he
17 wasn't there. If there's a deception or it's
18 inconclusive, in my experience with the
19 polygraph, it doesn't necessarily mean he was
20 there, it just means that there's something he's
21 concerned about, something he perhaps hasn't
22 told you.

23 So and I'm using that as an example, but
24 what it adds up to in my experience is I have

1 clients take a polygraph so that I can go to the
2 district attorney, who I think understands
3 polygraphs similarly, and if I have one from
4 somebody reputable like Steve Davenport and my
5 client has passed it, then you're in pretty good
6 shape. I mean, at that point law enforcement,
7 at least in our area, accepted what
8 Mr. Davenport had to say.

9 The danger, there are several dangers of
10 the polygraph. One is, you know, I don't think
11 they're right. Even having said everything I've
12 said, I still think there are lots of mistakes.
13 Polygraphs are not infallibly by any means, and
14 lawyers can get too dependent on a polygraph.
15 You can have a client fail a polygraph and tell
16 yourself, well, that's, you know, that solves
17 the mystery, and now I know what really
18 happened, my client is lying, and act
19 accordingly. I think that's -- I've had enough
20 experience in cases where the client failed the
21 polygraph, and then there was evidence later
22 that they shouldn't have flunked the polygraph.
23 So you know, I don't put a whole lot of weight
24 on them. I use them so that I can show a

1 certificate to the district attorney. So that
2 was what we were looking for in this case.

3 Q. And do you remember what happened with
4 Mr. Kagonyera's polygraph?

5 A. Right. He did not do well on the polygraph.
6 And if I recall, the question had to do with --
7 I don't think he was asked about whether he
8 fired a weapon or not. I think the question --
9 and I hate to say this because I don't remember
10 it that well, but I think it had to do with his
11 presence at the Bowman residence that night.

12 Q. And deception was indicated?

13 A. It was, yeah.

14 Q. And there's no report of his polygraph that
15 you're aware of, is that correct?

16 A. I'm not even sure that -- sometimes
17 Mr. Davenport would begin a polygraph, and if
18 it, you know, he had concerns about, he would
19 tell us, and we would not complete the
20 polygraph. I mean, sometimes clients -- it can
21 be a real barrier between you and your client as
22 well because you're seen as the guy that brought
23 the polygraph examiner in. So if it looks like
24 it's not going to end up being a useful tool one

1 way or the other, then forgetting the whole
2 exercise may be -- and I think that's what we
3 did. But he wasn't -- at the time that we
4 stopped the polygraph, deception had been
5 indicated.

6 Q. And the only document that you have to refresh
7 your recollection is your handwritten notes, is
8 that right?

9 A. I have handwritten notes, and I think in our
10 billing I think we, IDS reimbursed us or we paid
11 out of the -- the firm paid for it.

12 Q. The time sheet?

13 A. Yeah, there's some record that we actually paid
14 for a polygraph or an attempted polygraph.

15 Q. Now, you mentioned that you had your client meet
16 with you and Mr. Mills and his attorney, is that
17 correct, with Damian Mills?

18 A. That's right.

19 Q. Can you tell us about that?

20 A. Now, I don't think that -- there were meetings
21 with several codefendants. I don't think Mr. --
22 my notes reflect that Kenneth, Mr. Kagonyera,
23 was present for that meeting, which appears to
24 have taken place on October 24, 2001.

1 Q. And you said you were -- why did you arrange
2 that meeting, if you recall?

3 A. We were -- I say we. Mr. Messer and I were
4 telling Mr. Kagonyera, you know, look, your
5 codefendants at that point -- I mean, not -- the
6 sequence, as I recall it, was that Teddy Isbell
7 gave some statements that implicated
8 Mr. Kagonyera right around the 25th of
9 September. The next day Mr. Williams gave
10 statements that implicated Kenneth, and
11 ultimately Mr. Mills did. Mr. Wilcoxson I don't
12 think ever did. Kenneth was the holdout at that
13 point, he and Mr. Wilcoxson were. So he was
14 close to Damian. Damian was his cousin or
15 related in some way, and so we said to him,
16 well, look, Damian's saying -- this is what
17 Damian's saying, and it does implicate you. He
18 said, I don't care what's written down there.
19 Damian won't tell you that. So that's why we
20 got Damian -- got them together in a room. I'm
21 surprised we were able to do it actually, but we
22 did.

23 Q. Do you remember what happened at that meeting?

24 A. Yeah. I took notes of what Damian said, and

1 Damian basically repeated what he had told law
2 enforcement, which was inculpatory. It
3 implicated Mr. Kagonyera.

4 Q. And you don't remember what your client said or
5 did at that meeting?

6 A. He was upset about it. I remember that but, you
7 know --

8 Q. Did Mr. Mills indicate whether or not he would
9 testify against your client?

10 A. You know, I don't know that -- that was a fairly
11 -- we weren't really cross-examining Mr. Mills
12 at that point, but I mean, we were just letting
13 the two of them talk as much as anything else.
14 I certainly had that -- that was what my
15 impressions were.

16 Q. Did you know that Mr. Kagonyera's aunt met with
17 the district attorney?

18 A. No. I didn't remember that until either your or
19 Mr. Lau told me about it. But I do remember now
20 that his aunt lived in D.C., lived somewhere out
21 of town, and I remember hearing about that.

22 Q. Do you know why that meeting took place?

23 A. I don't. I mean, I -- my impression was it was
24 an effort to persuade him that her nephew wasn't

1 involved, I would assume, but you know, I didn't
2 know about that. I've never seen any, I don't
3 think I've ever seen any notes of that meeting.
4 It's certainly an unusual occurrence.

5 Q. And you were not present for that meeting?

6 A. No, I absolutely wasn't. I don't think I ever
7 met the aunt.

8 Q. You didn't know ahead of time that that was
9 going to happen?

10 A. Oh, no. I would have -- I think I -- what I
11 would have done is, had I known that the aunt
12 intended to do that, I certainly would have
13 spoken with the aunt myself and found out what
14 she was going to say or was going to ask. I
15 wouldn't have sent her in there under the --
16 certainly not.

17 Q. And you mentioned a man named Freddy Wadsworth
18 who was the father of Mr. Kagonyera's
19 girlfriend?

20 A. That's right.

21 Q. Did you know that he met with the district
22 attorney about the case?

23 A. As I mentioned, I've known Freddy Wadsworth for
24 years. I knew his dad. And as part of the

1 background of all this I think it's important to
2 know that at that point for maybe ten or twelve
3 years I had represented lots of the folks in the
4 community that were charged with drug offenses,
5 one of whom was a guy named Andrew Fletcher, who
6 was the first continuing criminal enterprise
7 case that was ever prosecuted, that I recall, in
8 Federal Court in Buncombe County. It was a big
9 deal at the time. Andrew Fletcher was a part
10 owner of a place called the New Southern Depot,
11 along with his mother Clara Mills. Clara Mills
12 is Damian Mills' grandmother. Freddy Wadsworth
13 was a silent or not so silent partner in that
14 enterprise. The federal government forfeited
15 that as part of the continuing criminal
16 enterprise case, they forfeited that property.

17 One of the codefendants in that case was
18 Tommy Littlejohn. Tommy Littlejohn is Aaron
19 Brewton's father. Of course, Freddy Wadsworth
20 is the father of Tisha Lee, Kenneth Kagonyera's
21 girlfriend, and Anita Findlay was -- she's
22 involved it, and we may get into that, but she
23 was involved as well. Further, one of the folks
24 that was involved in that -- New Southern Depot

1 was a nightclub that the government contended
2 was purchased with drug proceeds and used to
3 launder money and so forth. Matthew
4 Bacoate, Sr., who was a local businessman and
5 political figure, was also involved in that
6 business or at least was a frequenter. We
7 called him as a witness in the federal drug
8 trial.

9 I think Kenneth was brought to me possibly
10 because of all that background. I mean, I had
11 -- you know, I know all of those folks. There
12 were lots of people that were part of what the
13 government considered the Booney-Fletcher
14 organization that were later prosecuted in state
15 court. So this was all terrain that I knew
16 pretty well and that I had covered with the
17 district attorney, Mr. Moore, Ron Moore. You
18 know, these cases involving these folks and
19 those particular dealings had, you know, been
20 the subject of litigation before. So I knew
21 Freddy Wadsworth pretty well.

22 Q. Okay. And did he, did Mr. Wadsworth meet with
23 the district attorney about Mr. Kagonyera?

24 A. That was the long way around to answer your

1 question, I'm sorry.

2 He did, and I think what concerns me now --
3 at the time I assumed that Freddy Wadsworth had
4 Kenneth Kagonyera's best interest in mind. I'm
5 not sure that that's the case. I mean, I've
6 seen, gone back and looked at discovery that I
7 don't recall. I'm sure it was there, but -- I
8 think Mr. Wadsworth met with law enforcement
9 early on and told them about that Kenneth
10 Kagonyera and others had been at Anita Findlay's
11 house the night before the Bowman homicide, and
12 they were talking about robbing Shawn Bowman.
13 So I didn't, I wasn't aware that -- Freddy
14 Wadsworth would play both ends against the
15 middle, that's for sure. And so it doesn't
16 surprise me, it wouldn't surprise me if he had a
17 dozen meetings with the district attorney.

18 I was there at one point one day when
19 Mr. Kagonyera was brought over to the district
20 attorney's office to meet with Mr. Moore, a
21 meeting that I don't think took place actually.
22 He was there, but I don't think that it actually
23 happened. But I remember Mr. Wadsworth being
24 there and somebody suggested that if

1 Mr. Wadsworth talk to the district attorney, we
2 weren't getting anywhere. And I started to go
3 into the room with Mr. Wadsworth, and he said,
4 no, no, I'll do this myself.

5 And he goes in and meets with the district
6 attorney. You know, I don't -- it obviously had
7 to do with all of this, but I don't know what
8 took place. So it was a little unusual.

9 Q. So you said you were going to try to get the
10 meeting because you weren't getting anywhere.
11 What do you mean by you weren't getting
12 anywhere?

13 A. Well, we were going to have to either persuade
14 Mr. Moore that, short of a trial, that, you
15 know, Kenneth was telling the truth and that he
16 wasn't involved or we were going to have to
17 persuade Kenneth that he needed to make some
18 accommodation, you know, acknowledge whatever
19 role he had in this and make some sort of deal
20 with the district attorney.

21 One thing I should say, I mean, again, I
22 don't want to ramble on here, but you asked me
23 initially our approach to the case, and I think
24 it's important because this underlay everything.

1 In 2000, as I mentioned, I had done probably a
2 half dozen capital cases at that point. In the
3 summer, in July of 2000 Steve Lindsay and I, who
4 was representing a codefendant in this case --
5 Steve Lindsay ended up representing Mr. Isbell.
6 Steve Lindsay and I had tried a capital murder
7 case in Waynesville. It went about five weeks.
8 I got an apartment in Waynesville. I also had
9 been retained in another capital case involving
10 a guy in Henderson County who had -- what was
11 alleged to have shot a woman and then burned her
12 body. That case was going on at the same time.
13 During that time period the capital defense
14 attorneys throughout the state had gotten
15 organized in the sense that the capital -- the
16 Death Penalty Resource Center had been set up.
17 This was before, I think, there was a capital
18 defender, but capital commentary and Mary Ann
19 Tally were putting on Capital College, and so
20 there was an effort to standardize practice to
21 raise the standards of criminal defense, of
22 capital defense, and we met frequently, at least
23 once a year, for Capital College. In fact,
24 right around the time that I got involved in

1 Kenneth's case I was -- I taught at Capital
2 College.

3 All of this is to say that -- and many of
4 us were doing post-conviction cases for old
5 capital cases that had been handled five or six
6 years before that, before there was that level
7 of organization. A recurrent problem was
8 excellent North Carolina attorneys who were not
9 used to doing capital cases who would do a
10 wonderful job at the first phase of the capital
11 case only to have their client convicted. And
12 then faced with the problem of mitigation, a
13 second phase, which sometimes takes longer than
14 the first phase, and they would be stuck with a
15 jury that didn't believe what their client had
16 -- that didn't believe them. They were left
17 with absolutely no credibility for the effort to
18 save their client's life. So there's a tension
19 in capital cases between the guilt/innocence
20 phase and the punishment that exists nowhere
21 else.

22 Out of that came, and it's still being
23 debated today, but there is -- some people see
24 it as wrong-headed, but there was an effort when

1 a case was a real capital case, the sense was if
2 you can get a second degree plea or even a first
3 degree plea with no capital punishment out of
4 it, do it no matter what. I mean, there was a
5 real strong emphasis on doing that.

6 At the same time, in cases involving
7 multiple defendants and an underlying felony you
8 had all kinds of problems because it's very,
9 very easy to convict someone of felony murder in
10 the State of North Carolina. So we would have a
11 kid who drove his friends to a convenience store
12 robbery, somebody got killed, and this would be
13 a young man who was an Eagle Scout or, you know,
14 never been in any kind of trouble before, and
15 explain to him and his parents why pleading
16 guilty to first degree murder to avoid the death
17 penalty was a good idea is a tough sell. But
18 that sense that you needed to get a plea in a
19 case that was realistically capital -- now, in
20 this case, the Walter Bowman homicide, whoever
21 did it, involved a home invasion and the death
22 of somebody who was apparently not involved, not
23 at all involved, I mean, almost totally
24 innocent. It also took place -- it was a drug

1 deal, had drug overtones in a rural white
2 section of Buncombe County. I think that's why
3 Sheriff Medford, who didn't usually get involved
4 in these things, I think that's why
5 Sheriff Medford was involved in it.

6 So the sense that our guys were way off
7 their turf out in Fairview in a situation that
8 ended up in somebody, an innocent man getting
9 killed in his own home, while there were other
10 aspects of it that may appear not capital, I
11 mean, the death of Mr. Bowman seems inadvertent
12 if I'm not -- if I can use that word. Nobody
13 went out there to kill Walter Bowman. But the
14 case seemed to us in the beginning to have a
15 potential, Kenneth Kagonyera certainly had a
16 potential to get, to receive the death penalty.

17 He also, if he was the shooter, you know,
18 that was going to be very difficult. The
19 potential for him to be convicted of first
20 degree murder and receive a life sentence seemed
21 very great. We didn't think that, unless he was
22 the shooter, that he really was realistically
23 facing the death penalty, but it's always -- I
24 mean, there are lots of people on death row

1 whose lawyers concluded that it wasn't really a
2 death case. So I was very much afraid of both
3 of those possibilities.

4 Finally, and then I'll shut up. Finally
5 was the fact that he was charged with, before
6 the Bowman homicide, assault with a deadly
7 weapon with intent to kill, inflicting serious
8 bodily injury, a felony drug case, felony B&E,
9 and something else, dog fighting, but it seems
10 to me there may have been another felony. The
11 assault, that was what I was retained to
12 represent him on. The felony assault case was a
13 self-defense case. We didn't really explore the
14 merits of it to a great extent because this came
15 along, but there were a couple problems with
16 that. One is apart from the homicide, he could
17 have received sentences as long as the one that
18 he ultimately got, and secondly, there was
19 always the possibility that the State could try
20 him on any one of the previous felonies and have
21 that evidence as 404(B) or character evidence at
22 the time that he went to trial on the homicide.
23 So those things were going on in my mind anyway
24 from the time he was arrested.

1 Q. So you're thinking it's in his best interest to
2 try to take a plea deal, especially a second
3 degree murder plea?

4 A. I think that I was blinded to -- I think I
5 locked in on something that prevented me from
6 absorbing everything about this case that I
7 probably should have absorbed. I mean, I think
8 early on I decided that, as a practical matter,
9 you know, this case ought to plead out.

10 Q. The best thing for your client would be to seek
11 the best plea deal?

12 A. I think that, you know. I think that's -- and
13 I've really, you know, gone over this since the
14 case, since January I've thought about it a lot.
15 I think that's, you know, really what was going
16 on at least in my mind. Mr. Messer had come out
17 of the district attorney's office a year-and-a-
18 half before. He had never tried a murder case,
19 that I know of, and he was young, so I was
20 pretty much making the decisions. And I think
21 that's what was going on, you know, going in my
22 mind.

23 Q. And were you trying to get your client to
24 understand this?

1 A. You know, I was. Capital defense, one of the
2 things that makes certainly any client -- you
3 need -- a defense attorney needs to have a good
4 relationship with any client. Capital cases
5 take that up a notch. Number one, your clients
6 are almost always in custody, and so they're
7 frustrated by being confined, you're frustrated
8 by having to go through the rigamarole of
9 getting to the jail and scheduling and they
10 can't come to see you. And but at the same
11 time, it's so important that you have a real
12 relationship with a client in a capital case
13 because you are probably going to have to
14 approach that client with what oftentimes seems
15 to people to be an irrational choice at the end
16 or it's certainly a very, very difficult choice,
17 and you're going to have to approach his family
18 about that. So if you haven't put in the time
19 sitting there in the jail and listening to
20 everything that that client wants to tell you
21 and answering every question that that client
22 wants answered, you're not going to be able to
23 have the conversation at the end that you need
24 to have about taking a plea, or certainly you're

1 not prepared to go to trial. I mean, the client
2 may not take a plea. And in the Lippard case we
3 waited for a plea that never came and ended up
4 spending the summer trying the case. But I had
5 spent a huge amount of time with that client and
6 was able to put him on the stand as a
7 consequence.

8 I think, and I hope this doesn't sound like
9 an excuse, but I think in the fall and spring of
10 2000, 2001, I think was tired. I think I was
11 worn out. I mean, I had been through -- I was
12 doing -- been through one capital case, was
13 doing another one, and I think I decided early
14 on that this is a no-brainer, he needs to take
15 this deal, and probably did not -- not probably,
16 certainly did not spend the time either
17 listening to what Mr. Kagonyera had to say or
18 talking to him about why he needed to do what I
19 thought he needed to do and then hearing why
20 that was a bad idea from his perspective.

21 Q. But there's no doubt that if he committed this
22 murder and the other crimes, wrapping it all up
23 into one sentence for second degree murder is a
24 good plea deal?

1 A. If he was in the Bowman house on the night of
2 September the 18th, this was a -- I'm a great
3 lawyer, but --

4 Q. So you were advising him to take what you
5 believed to be --

6 A. Right.

7 Q. -- a good plea deal?

8 A. That's right.

9 Q. And he was not --

10 A. I'm not being a martyr here, but going back and
11 looking at this has really -- it's been
12 fascinating to see it in retrospect. That's
13 right.

14 Q. Okay. And Mr. Kagonyera was not interested in
15 that is what you're saying, at least early on?

16 A. Oh, in the beginning, no. He was -- it was a
17 curve sort of. He was certainly not interested
18 in the beginning, and what you're going to hear
19 in the beginning is talk about bond and
20 explaining why, regardless of the circumstances,
21 you're unlikely to get bond on a first degree
22 murder charge. You know, you're going through
23 all that, and a certain amount of -- nothing
24 gets your client's trust like getting them out

1 on bond, and that wasn't going to happen here.

2 He was very insistent that he hadn't done
3 it. I think up through -- I think that -- my
4 recollection, again, this is, what, almost
5 eleven years ago, but ten years ago anyway when
6 we talked to him about it, but I think the
7 Damian Mills meeting was a turning point. I
8 think he, you know, either -- my perception at
9 the time was he accepted that what everybody was
10 saying was that he had been involved, he had
11 been there. It may have been that he just gave
12 up. But from that -- for a brief period of time
13 from October the 24th through the meeting with
14 Mr. Moore and then the guilty plea on
15 December 13, 2001, I thought he, you know, was
16 acknowledging what had really happened, and it
17 was over, and he had accepted it. And we
18 knew -- and I was sure he was going to get a
19 good deal, again, under the assumption that he
20 had at least been there that night.

21 After that, not long after that he changed.
22 I started hearing from him that he felt that the
23 plea -- he wanted to withdraw the plea, thought
24 it was a bad idea. In fact, in February we met

1 with Aaron Brewton. Aaron Brewton was the one
2 of the six guys -- everybody said everything
3 about Aaron Brewton that they said about Kenneth
4 Kagonyera. Aaron Brewton from the beginning
5 said, I didn't do it, I wasn't there. He
6 persisted in that. He would not accept the
7 plea. My understanding is he passed the
8 polygraph, but I don't really -- that doesn't
9 mean too much to me. His lawyers tried to get
10 him -- I know because my present partner,
11 Andy Banzhoff, was second chair for Mr. Brewton,
12 and David Belser, with whom I practiced law for
13 many years, was Brewton's lead counsel. They
14 tried to get him to take a plea, he wouldn't do
15 it, and ultimately that case was dismissed.

16 If you believe what Kenneth Kagonyera said
17 to Ron Moore and the police officers, there's
18 absolutely no reason under heaven why Aaron
19 Brewton's case should have been dismissed, but
20 -- and we met with Brewton in February of 2002
21 because Kenneth, at that point Kenneth was
22 saying, I don't care what I pled to, I still
23 tell you I wasn't there.

24 So again, I'm answering your question maybe

1 more than you asked, but he did take the plea,
2 but he never -- he went back to asserting his
3 innocence very strongly as early as February of
4 '02.

5 Q. Let me just go back for one second and just
6 confirm that the aunt that met with the district
7 attorney and Mr. Wadsworth that met with the
8 district attorney, it was your understanding
9 that they were to try to get Mr. Kagonyera to
10 accept the plea offer?

11 A. No, I don't know that.

12 Q. No?

13 A. I don't know. Honestly, I have no idea what
14 Freddy Wadsworth's agenda was.

15 Q. Okay.

16 A. I mean, I assumed in the beginning that, you
17 know, he was assisting his common law son-in-
18 law, or his daughter's boyfriend, but I don't
19 know that for sure. I think the aunt -- my
20 impression with the aunt, I think the aunt -- I
21 recall the aunt, speaking to her on the phone,
22 and I think she was upset with me for suggesting
23 that he ought to take a plea. Now, in cases
24 like this you want to spend time talking to the

1 family. I don't know why she didn't -- you
2 know, I don't think we met with her. I don't
3 think she came to the office. She may have, but
4 I don't remember that. But I think what I would
5 have said to her is, this is what we're up
6 against and you need to be talking to Kenneth
7 about making a deal. So I really don't know
8 what she -- I don't think she went over to the
9 district attorney's office to tell him that she
10 thought her nephew was guilty; I don't believe
11 that.

12 Q. Okay. You've already testified that you tried
13 many other capital cases out of Buncombe County,
14 is that right, or handled those?

15 A. I've tried, yeah.

16 Q. So you're aware of cases that began capital and
17 pled?

18 A. Sure.

19 Q. Was it common, was it a common practice in 2000
20 for everybody in a multiple defendant murder
21 case to get a second degree murder plea?

22 A. I can't recall that ever happening.

23 Q. And what do you mean? What was not common about
24 that?

1 A. I mean, the district attorney would typically
2 build their case by deciding in their mind,
3 based on what the investigation showed, who was
4 the least culpable if they needed a witness.
5 Sometimes they didn't, and they would try
6 everybody. But I can remember at least three
7 cases that we tried, the same basic fact
8 pattern, robbery, multiple defendants, and in
9 those cases one of them they -- the district
10 attorney -- our client was the least culpable, I
11 think, but we had to try it to prove that. In
12 the other case the client was the most culpable,
13 and everybody ganged up on him, and he -- we
14 tried that all the way through. That was the
15 first capital case I tried. We tried that all
16 the way through the verdict at the penalty
17 phase. So you know, people are lining up to
18 come testify against each other, generally
19 speaking, in these kinds of cases.

20 Q. And you also said that your client tried to
21 withdraw his plea immediately after entering it?

22 A. I've gone back and looked at Mr. Messer, who is
23 not -- we're not practicing together. We
24 haven't since -- about that same time he opened

1 his own office. But we've talked about this,
2 and I've also looked at an affidavit that he
3 prepared. His recollection is that he didn't
4 hear about Mr. Kagonyera's dissatisfaction with
5 the plea until they went to sentencing, and at
6 sentencing Mr. Kagonyera attempted to withdraw
7 the plea on his own. I withdrew as there was no
8 longer a need for two counsel after the guilty
9 plea. So somewhere along in there I withdrew
10 as --

11 Q. So you don't have any direct knowledge about
12 Mr. Kagonyera's attempt to withdraw his plea?

13 A. Yes, I do. He got in touch with me. He was
14 writing to me saying, why are you getting out of
15 my case, and I want to withdraw my plea. I
16 mean, he was unhappy.

17 Q. Did he say why he wanted to withdraw his plea?

18 A. Yeah, he didn't do it. I wasn't there. I
19 wasn't -- you know.

20 Q. Because of innocence is why he wanted --

21 A. Yeah, absolutely. Yes, he did. That's right.
22 One other thing, and I know, I mean, a little
23 bit about where all this is headed, but I was
24 surprised to -- or not surprised, but it was

1 interesting to notice last night that as early
2 as April of '01 he was writing me letters
3 saying, where's the DNA? why do you not have
4 those DNA results back? I mean, I got a letter
5 from -- it's dated, I don't know when I received
6 it, but I'm sure I got it pretty close to the
7 date of April 6, 2001.

8 So you know, he never -- sometimes you'll
9 have a client who says they're innocent. They
10 acknowledge that they had done something and
11 peace reigns after that. I mean, they pretty
12 much accept something. But that didn't happen
13 with Ken, with Kenneth.

14 Q. Did you ever talk with Mr. Kagonyera or start to
15 plan out what you would have presented if you
16 had gone to trial?

17 A. We did. I mean, initially when Mr. Wadsworth
18 brought him in we understood that Tisha Lee was
19 going to say, would say that Mr. Kagonyera was
20 with her either in Pisgah View or some -- I
21 can't recall. Kenneth's grandmother lived on
22 White Fawn Drive, that's about a half a mile
23 from my house. I know the grandmother's house
24 well. But if he had been with Tisha, that would

1 certainly --

2 Q. Alibi?

3 A. If he had an alibi, it would have been very
4 important. I know that I received from the
5 interview notes that Ms. Lee was interviewed,
6 and she did not say that, at least not according
7 to the notes. And my -- I don't remember
8 talking to Tisha, but I do remember talking to
9 her father, Freddy Wadsworth and, you know, we
10 had hopes of that in the beginning.

11 And I remember talking to Kenneth about
12 that, but -- and also there was a, there was
13 this whole business about he and several of the
14 people that ended up being defendants in this
15 case had broken into an apartment, Anthony
16 Lewis's apartment in Pisgah View pretty close in
17 time to the Bowman shooting. Accounts vary, but
18 I think from my notes from conversations with
19 him, it may have taken place earlier on the
20 18th, like early morning hours of the 18th.

21 There was a -- Anthony Lewis was upset
22 about his house being broken into, and the word
23 was that he was looking for Kenneth with a gun.
24 Kenneth obtained the gun, himself got a gun from

1 Nita Findlay's, his girlfriend's sister's
2 apartment.

3 Q. Freddy Wadsworth's other daughter?

4 A. Freddy Wadsworth's other daughter, that's right.
5 It was a gun that he got from there, and
6 Teddy Isbell, who was the first cooperating
7 witness, knew about Mr. Kagonyera getting the
8 gun. So what the account was initially is
9 Kenneth must have been the one because he got
10 this gun. Well, when we interviewed Kenneth
11 originally, the time sequence according to what
12 he told us was out of whack and it couldn't have
13 happened that way. So I recall being interested
14 in, you know, let them stake themselves out on
15 Kenneth did it with this gun and then go in
16 there and show them he didn't even have that gun
17 until a week later, whatever it was. Remember,
18 he wasn't picked up right away. So he was --
19 Kenneth was out for a while thereafter. So that
20 was discussed as a potential defense.

21 Q. Okay; all right. So let's talk about when your
22 client did --

23 A. And I think the other thing -- I'm sorry. The
24 reasons for meeting with Damian Mills,

1 Mr. Jack Stewart, who represented Wilcoxson, was
2 very experienced at trying these cases.

3 David Belser, who represented Aaron Brewton, was
4 very experienced. Some of the other guys had
5 lawyers that didn't typically try cases, and so
6 sometimes when you got multiple defendants and
7 the ranks of appointed counsel are kind of thin,
8 you've got guys that you're afraid are going to
9 roll because of the lawyer's concern about going
10 to trial.

11 I think we met with Brewton and Brewton's
12 lawyer, to be perfectly frank, because his
13 lawyer was not considered somebody who would go
14 to trial. And we were trying to -- if
15 Damian Mills was really telling the truth and
16 our guy wasn't really there, then we were going
17 to -- there's a witness for us, and we're going
18 to tell his lawyer, hey, you know, come on,
19 let's try this. So you know, that's -- in
20 talking to Damian, that's why I think we met
21 with Belser and Brewton because, you know, they
22 did -- Belser would have gone to trial, I think.
23 So you know, we were looking, we were hunting.
24 At the time that the State is looking for

1 witnesses to testify that all this had happened
2 the way they thought it did, we were looking for
3 witnesses to say different.

4 Q. Okay. So let's turn to when your client did
5 start to make admissions and when he did
6 ultimately confess that day in the district
7 attorney's office.

8 A. Uh-huh (yes).

9 Q. Why did Mr. Moore, the district attorney, want
10 to meet with him, or did you understand that he
11 did?

12 A. He wanted -- well, I mean, in any set of
13 circumstances like these a district attorney is
14 going to want to interview a potential witness.
15 So if your client's saying this is the way it
16 happened, he's going to want to hear it from
17 your client's mouth. And I think after Damian
18 Mills told -- that didn't pan out, and after the
19 polygraph, Kenneth talked to us about it, said
20 -- I mean, basically, in retrospect I have to
21 wonder if he didn't just, you know, just give --
22 just memorize the discovery. But he, you know,
23 he gave us a version that put him there at the
24 scene, not the shooter.

1 Q. Well, did Mr. Moore --

2 A. So we said, okay, fine. Do you want us to go --
3 and I got a letter from him right around -- I
4 noticed that last night, too. I got a letter
5 from him right around the same time saying I
6 want to talk to -- I have a proffer, I think, or
7 a word to that effect, that I want to make to
8 Mr. Moore. I want to talk to Mr. Moore about
9 what really happened in this case, and there was
10 something else about counterfeiting money in the
11 projects. So he wanted -- he asked us to talk
12 to Mr. Moore.

13 Q. So it was your client that wanted to arrange
14 that meeting?

15 A. Well, we certainly would have encouraged that
16 all along, but yeah, he -- you know, that may
17 have been the trigger.

18 Q. And you said your client, you know he would have
19 had access to his discovery even if it was not
20 with him at all times in the jail? You would
21 have sent somebody over to sit and let him read
22 it?

23 A. Well, I'm sure other lawyers didn't do it the
24 way we did it. There were four people besides

1 him or five people in custody, some of whom had
2 discovery. You've got -- I mean, I've -- as I
3 as looking through this last night, I found a
4 page in the discovery that I got from the State
5 in this case, or maybe got from Mr. Lau, of
6 discovery from another client, another capital
7 murder client, the Hendersonville guy who was in
8 the Buncombe County Jail at the same time.
9 Somebody had a page of that discovery, and there
10 were notes. It looked like inmates' notes on
11 what my client, that client was saying in the
12 jail. So you know, they've got a lot of time on
13 their hands. Folks have a lot of time on their
14 hands in jail, and they learn each other's cases
15 for good reasons and bad reasons. So they could
16 -- it would have been the easiest thing in the
17 world to find out what was being said about it
18 by each other.

19 Q. Okay. And let me just clarify, you don't have a
20 copy of the brief that was provided to the
21 commissioners, right?

22 A. Absolutely --

23 Q. You've never read it?

24 A. No, I have not.

1 Q. You don't know what's in it?

2 A. I do not.

3 Q. And you --

4 A. I asked for it and was told I couldn't see it,
5 so --

6 Q. I apologize.

7 A. Which makes it -- no, I understand that. But
8 no, I haven't seen it.

9 Q. And also just to clarify, you obviously do know
10 some of the evidence we've uncovered because
11 we've asked you about it, but I've never sat
12 down, and Mr. Lau has never sat down and told
13 you our whole investigation?

14 A. Absolutely not.

15 Q. You don't know what I'm presenting today?

16 A. No, I do not.

17 Q. Or tomorrow?

18 A. No, I don't.

19 Q. And hopefully not on Saturday?

20 A. Right.

21 Q. Okay. All right, so let me ask you this:

22 Mr. Kagonyera has stated in a deposition under
23 oath to me that he is innocent and that he made
24 up the confession from the discovery that he had

1 because he felt pressured to take a plea
2 agreement. I know you can't answer whether
3 that's true or not, but is it possible?

4 A. That's certainly possible, and that was the
5 concern. That's always the concern. I mean,
6 I've had clients tell me, okay, whatever, I'll
7 just say whatever. And you say, no, you know,
8 I'm not asking you to do that either. I mean,
9 yes, you're facing the death penalty. Yes,
10 you're facing life in prison. No, I think going
11 to trial is a bad idea, but don't make up
12 anything, I mean, what a horrible position to
13 be in.

14 But I will say that last night I went back
15 through and read witness statements, and I was
16 really struck by Ms. Holloway, Anita,
17 Renita Holloway. There are at least five
18 versions. She's, as I recall, she was there in
19 the home at the time that Walter Bowman was
20 shot. The first four or five accounts she gives
21 -- the one she gives -- and one of them appears
22 to have been the 911 call, so six accounts. If
23 that, if there's any truth to what she said the
24 first five times, then what Kenneth Kagonyera

1 told us and told the district attorney couldn't
2 have happened. So could he have made it up?

3 Yes, he could have.

4 Q. And just to go back -- I'm sorry, I'm going to
5 just jump back one more time to that earlier
6 question about not giving you the brief. We
7 didn't provide you any documents in this case?

8 A. No.

9 Q. Mr. Lau didn't provide you with any documents?

10 A. Absolutely not, no.

11 Q. I think you had mentioned something about
12 discovery and may have been -- we didn't provide
13 you any documentation, is that right?

14 A. No. I have some -- that's right. There are
15 some motions that were filed, which I got from
16 Mr. Kagonyera's file in the clerk's office in
17 Buncombe County. I went over and pulled those.
18 And also I think there's some stuff -- well, I
19 went and got those.

20 Q. Some of our -- some of our, some of the
21 Commission's motions you got from the court
22 file?

23 A. Right.

24 Q. Okay. So the file that you have up there, none

1 of that is from the Commission or the Commission
2 staff?

3 A. No; no.

4 Q. Okay. Do you remember in the discovery that you
5 received from the district attorney very early
6 on in the case that the first Crime Stoppers
7 call that came in, there were a couple Crime
8 stoppers calls, but the first one that came in
9 named J.J. Pickens, Robert Rutherford, and
10 Bradford Summey as the killers?

11 A. Summey, yeah, I do. I didn't remember that when
12 I first met with Mr. Lau and Ms. Smith. I do --
13 I mean, I've seen it since then. It's not
14 uncommon to have lots of people calling the
15 sheriff's office when something like this
16 happens initially, there's always a false lead
17 or two. But I do remember that, that's right.
18 And I -- there were other statements in there of
19 people I didn't have any idea about. There was
20 a Carlos Smith mentioned at one point, I know
21 he's certainly a candidate; Lacy Pickens; and I
22 didn't know Robert Rutherford then. I've since
23 learned about him a little bit, but I certainly
24 knew Lacy Pickens and Brad Summey.

1 Q. You knew who they were or are?

2 A. Oh, yes, I did indeed.

3 Q. Now, do you remember with that Crime Stoppers
4 call a handwritten note on there that said
5 J.J. Pickens was in jail at the time of the
6 murder?

7 A. I remember it from recently, but I don't
8 remember it from 2000.

9 Q. Is that in your discovery --

10 A. Uh-huh (yes).

11 Q. -- that you received back in 2000?

12 A. I think it is, yeah.

13 Q. Now, would it have changed your strategy in
14 handling this case back in 2000 and 2001 if you
15 had realized that J.J. Pickens was only serving
16 weekends and was actually not in custody on the
17 day of the murder?

18 A. It -- I think so, yeah. It would have, yeah.

19 Q. Now, again, back in 2000 and 2001 before your
20 client accepted the plea agreement, did you have
21 any results from DNA testing?

22 A. No.

23 Q. Did you know before your client accepted the
24 plea agreement that on March 7, 2001, your

1 client and all of the other codefendants were
2 excluded from DNA on the bandanas that had been
3 located?

4 A. I absolutely did not know that.

5 Q. And that's March 7, 2001. Is that before your
6 client pled?

7 A. It is.

8 Q. Would you have --

9 A. It's also before the meeting that I recall where
10 he gave a -- it's really before he -- at a time
11 when he was still absolutely -- he hadn't said
12 anything to us to indicate that he was involved
13 at that point. He had asked for the DNA,
14 however.

15 Q. But you didn't have it?

16 A. No.

17 Q. Okay. Would you have considered that evidence
18 to be exculpatory and assumed it would have been
19 turned over to you?

20 A. As I understand it, what was, what that meant in
21 March of 2001 was that several bandanas and
22 gloves had been found near the scene, up the
23 road. The bandanas, in any event, two of them,
24 maybe three had been sent to the SBI lab.

1 Presence of saliva had been detected, and then
2 further the DNA in that saliva or whatever was
3 on the bandana, that all of the codefendants had
4 been excluded as contributing to that DNA. Is
5 that what --

6 Q. That's what you understand now, is that correct?

7 A. That's my question is, is that what -- you're
8 asking me, would that have made a difference.
9 If that's what it means, yeah, it sure would
10 have.

11 Q. And if that's what it means, you did not know
12 that prior to the plea?

13 A. Absolutely not.

14 Q. And would knowing that have changed your
15 strategy in this case?

16 A. I would certainly hope so.

17 Q. And you said that your client did ask you about
18 the DNA results?

19 A. Repeatedly over the years, he did.

20 Q. Not just before he pled, but over the years?

21 A. The note I've -- you know, I noticed this this
22 morning, and I remember various times at which
23 he raised that issue. But there's a letter to
24 me in the file from April 6, 2001, which is a

1 month and a day before you're telling me that
2 result was obtained. He's writing to me saying
3 it's been six months since we gave DNA, I'd like
4 to see the results.

5 Q. Did you pursue those results?

6 A. I did not.

7 Q. Why not?

8 A. At that time it was not all that long after the
9 O.J. Simpson case. We heard a lot about DNA
10 from clients. I mean, clients would ask for DNA
11 in a bad check case. I mean, you just -- they
12 wanted it. I remember talking to Kenneth about
13 it, and there was a -- I don't remember. I
14 remember thinking -- I didn't see how -- what he
15 could be excluded from that would rule him out.
16 I remember having that discussion with him. And
17 I don't recall that it specifically had to do
18 with the bandanas, but I remember thinking, you
19 know, there are lots of contributors here. You
20 could still have been at the scene, you could
21 still have been at the car, and none of your DNA
22 would be anywhere. So why was, why, Kenneth, do
23 you think that's going to make a difference?

24 I really don't recall ever being focused on

1 the bandanas and the possibility that everybody
2 would be ruled out. In that note from Kenneth
3 on April the 6th he says something to the effect
4 that DNA results might show that some of the
5 defendants were involved and some of them
6 weren't, which I thought was an interesting, in
7 retrospect an interesting observation.

8 Q. Mr. Kagonyera said that?

9 A. Uh-huh (yes). And I think that reflects
10 conversations that he and I had had. Now,
11 always in your mind is -- sometimes you would
12 get lab results back, sometimes they wouldn't
13 get anything and you wouldn't hear from them. I
14 think in my mind always was if the district
15 attorney gets anything in this case that's as
16 substantive as that, I will certainly -- it will
17 certainly be turned over to us. So was I
18 actively pursuing it? No. But, you know, did I
19 -- was I expecting to see it? Yes, if there,
20 had there been a result.

21 Q. Did you view the surveillance video from the gas
22 station?

23 A. But let's be clear about this. I should have
24 pushed to see it. I mean, there's no question

1 that we were preoccupied with the statements of
2 the witnesses and meeting with Damian and the
3 talk about that, but, you know, we should have,
4 we should have pushed for it. In my experience,
5 our district attorney had been straightforward
6 about providing -- there were district attorneys
7 in our district that I worried about providing
8 discovery. At that time I didn't worry about
9 Ron Moore's office, but that's not an excuse for
10 not -- for before we pled looking at the file
11 and saying, wait a second, where is this? You
12 know, why don't we have this? So --

13 Q. Did you view the surveillance video from the gas
14 station?

15 A. I have no recollection of looking at the
16 surveillance video.

17 Q. Were you aware that there was surveillance video
18 from the gas station?

19 A. I don't -- I remember seeing there's an
20 inventory sheet or an evidence log that reflects
21 that somebody saw one. One of the officer's,
22 Sprinkle, if I'm not, Detective Sprinkle, if I'm
23 not mistaken, that, you know, that it existed
24 and there was some discussion about it

1 portraying three black males, that's all I
2 remember about it. But I don't -- I don't
3 remember ever looking at it.

4 Q. You never viewed it?

5 A. I don't, I really don't think I did.

6 Q. Why not?

7 A. That's a good question. I don't know; I don't
8 know. I mean, I should have. There again, the
9 guys that -- Jack Stewart, David Belser, and
10 others that were working on the case, even
11 though we had codefendants who at any time might
12 have chosen to testify against each other, we
13 also looked after each other pretty much. And
14 so, for example, there was at one point in the
15 case something came up about the gun, and I know
16 there was a -- one of the -- somebody in the
17 jail was saying that Kenneth had been the
18 shooter. And Mr. Seimens, Jim Siemens was
19 another one of the lawyers, he told Mr. Messer,
20 he gave us a heads-up about, you know, they're
21 saying Kenneth might be the shooter. So it was
22 kind of a network.

23 I don't recall anybody ever talking about
24 the surveillance. That's -- or I think it's

1 really not a surveillance as much as a security
2 -- as I understand it, it's a security video
3 from the convenience store, and I can't -- I
4 remember hearing since then that it was
5 difficult to tell anything about it or that it
6 had been taped over. I mean, there was some
7 problem. I don't remember it, you know, hearing
8 until this year that there was anything about it
9 that would have helped us. To this day I don't
10 know whether there is or not at this point, but
11 that's not to say that I shouldn't have looked
12 at it.

13 Q. After your client pled on March 28th and 29th,
14 2003, another person, not one of the
15 codefendants, not one of the people that was
16 charged, confessed to this crime. Did you know
17 about that?

18 A. Not until January of this year.

19 Q. Not until the commission contacted you?

20 A. That's right.

21 Q. So was that information ever sent to you? I
22 know it was after your client pled, but was it
23 ever sent to you by the district attorney or the
24 sheriff's department post conviction?

1 A. No, certainly wasn't.

2 Q. What would you have done if it had been sent to
3 you or if you had received it?

4 A. My understanding is that Robert Rutherford, who
5 by 2000 -- when was that? When did he make his
6 statement?

7 Q. March 28th and 29th, 2003.

8 A. In February of 2003 my partner was involved in a
9 federal drug case in Asheville. Rutherford was
10 a government witness in that case. We weren't
11 partners at the time, but Andy Banzhoff knew
12 about Rutherford. Right around that I certainly
13 knew -- if I'd seen something saying that
14 Lacy Pickens and Brad Summey were involved, that
15 somebody had said that, I certainly would have
16 followed up on it at that point.

17 Q. Even though your client was -- it was post
18 conviction and you no longer represented him?

19 A. I would have, yeah.

20 Q. Okay. Would you have sent it to your client?

21 A. Oh, yeah.

22 Q. Or your former client?

23 A. Yeah. I would have done that, certainly. I
24 mean, I say that. I mean, I'm the guy that

1 didn't look at the video either, but I would
2 certainly -- I think that would have made such
3 an impression that I would have, yes.

4 Q. Did you know that there was a CODIS hit in 2007
5 from one of those bandanas? A CODIS hit is a
6 DNA hit through the state --

7 A. Right.

8 Q. -- national DNA databank --

9 A. Right.

10 Q. -- that was a hit that matched somebody else
11 that had been named in that confession who was
12 not in the original suspect group, Brad Summey?

13 A. I didn't know that until I was told in January.

14 Q. You didn't know about it back in 2007?

15 A. (Witness shakes head negatively.)

16 Q. Was that ever sent to you by the district
17 attorney or the sheriff's office or SBI, anybody
18 post conviction?

19 A. Absolutely not.

20 Q. What would you have done if it had been, if you
21 had received it or known about it, if anything?

22 A. If -- and at that point I presume that I would
23 have known that Rutherford said that Pickens and
24 Summey were involved in the shooting, and then

1 on top of that you now have a confirmation
2 that's at least a CODIS confirmation that
3 Summey, that there was some of Summey's DNA on
4 the bandanas. Yeah, I would have, I certainly
5 would have done something at that point.

6 Q. Would you have sent it to your client or your
7 former client?

8 A. I would have. I think at that point that -- I
9 mean, then, if not -- if I'd have known post
10 conviction about the DNA being available in
11 March of 2001, I certainly would have let --
12 because I was doing post conviction work during
13 that time, and that would have struck me. You
14 know, the Innocence Commission wasn't around
15 then, but that certainly is grist for an MAR.
16 When you now -- I don't know that a federal
17 inmate saying I was involved in a murder
18 necessarily would have set -- I mean, people say
19 lots of thing when they're in jail for lots of
20 different reasons. But the combination of an
21 exclusionary DNA result that excludes all of the
22 codefendants, then a statement indicating
23 Summey, then a confirmation that Summey's DNA
24 was somehow on the bandana certainly would have,

1 I certainly would have felt obliged to pass that
2 on, at least pass it on to Mr. Kagonyera.

3 Q. Let me ask you, when Mr. Lau first interviewed
4 you in January, did he tell you about this or
5 did you just learn about it through the course
6 of the interview and your looking at the files?

7 A. I don't think he told -- Mr. Lau and Ms. Lindsey
8 told me precious little our first meet, I
9 remember. And I understand why, but I don't
10 think they did tell me then. How did I find
11 out? I can't, you know, I can't imagine finding
12 out anywhere other than from somebody at the
13 commission, but it may not have been in January.
14 It may have been that the -- I think there are
15 recitations about that in the various papers
16 that were filed in Mr. Kagonyera's file in the
17 Clerk's office.

18 Q. The motions that the Commission filed with the
19 clerk's office?

20 A. Uh-huh (yes).

21 Q. Can you tell us a little bit about what Buncombe
22 County was like in 2000: I have a couple
23 questions about that or, you know, anything else
24 you want to expand on. But was it common for

1 the district attorney to be a part of
2 interrogations prior to arrest?

3 A. It tapered off, Mr. Moore's involvement tapered
4 off, but there was a period of time in there,
5 and I would say it was, that he was still doing
6 this in 2000, that Ron Moore was a very hands-on
7 prosecutor. And he used to -- remember, this
8 had -- all these folks -- I say all of them.
9 Let me back up a second. Pickens, Summey, and
10 Shawn Bowman were first string varsity drug
11 dealers in Buncombe County. Those guys were
12 players. The rest, our clients, were second
13 string, JV, want-to-bes.

14 Q. You're talking about, when you say your clients,
15 you're talking about Mr. Kagonyera?

16 A. I'm talking about Kagonyera, Brewton. Isbell
17 was older and had been around some, but he was
18 not a heavy hitter. None of these guys were,
19 none of the people that ended up being
20 convicted. Mr. Moore handled all the drug cases
21 for a long period of time. I notice at the end
22 of this case a guy named Bill Boyum, who had
23 gone to the U.S. Attorney's Office and come
24 back, I think is what happened, returned to

1 Mr. Moore's office as an assistant district
2 attorney. I think he picked up the case at some
3 point. But for years all the drug cases were
4 handled by Mr. Moore, and he spent a lot of time
5 with what was then known as the Metropolitan
6 Enforcement Group. It was a multi-agency drug
7 task force, and he would be out nights riding
8 around with those guys.

9 Q. Mr. Moore?

10 A. Mr. Moore, the district attorney, was with those
11 guys on raids and kicking doors down and, you
12 know, interviewing people at the scene. I mean,
13 I've been called by a client to his house at
14 2 o'clock in the morning to find the district
15 attorney there with the drug agents, that kind
16 of thing. So he did -- I mean, it's -- you
17 know, I don't know many district attorneys that
18 do that, but he did interview people. I mean,
19 he would -- the object a lot of times was if
20 they arrested some -- not even -- they wouldn't
21 arrest somebody. If they had a search warrant,
22 they found evidence, or they stopped somebody
23 along the side of the road, they'd want that
24 person to roll before they were arrested, before

1 there was a lot of publicity, before the word
2 was out. So they would try to do, they being
3 Mr. Moore and the MEG agents, would try to do an
4 interview as soon as possible. So people
5 were -- I can remember a guy getting busted with
6 two kilos that never got charged, never got
7 charged. He gave a statement, set some people
8 up, and went on down the road.

9 Q. And Mr. Moore would then prosecute the cases
10 that he participated in the investigation?

11 A. He would use that person to make cases against
12 other people. I mean, Shawn Bowman was one of
13 those guys. Shawn Bowman, my recollection is
14 Shawn Bowman had been arrested with -- he had
15 been arrested with a significant quantity of
16 cocaine, did a little bit of time in the annex,
17 which is the work-release, and then was back on
18 the street at some point.

19 Q. Was it common for Sheriff Medford to be a part
20 of the interrogations, do you know?

21 A. It was not common for Sheriff Medford. Sheriff
22 Medford had been a detective in the sheriff's
23 office before he went to the police department
24 and before he was elected sheriff. My memory of

1 him is that he was a general crimes
2 investigator, homicide lots of times. You know,
3 there were some cultural aspects of all this.
4 Ron Moore has been very involved in the black
5 community for one reason or another. He's
6 coached Little League, and he was involved in
7 Mr. Bacoate's program. He prided himself on his
8 knowledge not just of the black community, but
9 he knew a lot about the streets.

10 Sheriff Medford, I'd be surprised if
11 Sheriff Medford was ever in the projects, the
12 Buncombe County projects in Asheville. He did
13 not -- it's very unusual to see him involved in
14 the interview of Larry Williams. I don't
15 understand why. I mean, he was the sheriff, and
16 he certainly was -- but that's odd to me that
17 that happened.

18 Q. Did that give you concerns that the sheriff was
19 involved?

20 A. Sheriff Medford is now in federal prison. For
21 many years it was a problem in the office
22 because had a Confederate flag on his desk, I
23 remember that. And so he was not somebody that
24 you would expect to conduct a sensitive

1 interview of a 16-year-old African-American kid.
2 So yeah, I was struck by it. And it appears
3 from the notes that he goes in to a number of
4 people there interviewing Mr. Williams, and then
5 the sheriff goes in by himself and interviews
6 him, and that's when Mr. Williams comes forward
7 and says that he was involved and the others
8 were as well.

9 At the bottom of that interview, I just
10 noticed this this morning, at the bottom of that
11 interview there's a note that he then told
12 Forest Weaver that he'd been frightened and that
13 wasn't true. He immediately recanted. Forest
14 Weaver was an African-American officer, veteran
15 officer, great officer who was frequently
16 brought in because people would talk to Forest.

17 Q. And he's actually from the police department,
18 not the sheriff's department, right?

19 A. That's right; yeah, that's right. So he tells
20 the sheriff that he did it, a 16-year-old kid
21 says, yeah. This is the day after Isbell comes
22 in. And immediately when the sheriff comes out
23 and Forest Weaver goes to talk to him, he tells
24 Forest -- Forest Weaver would have been

1 sympathetic. I mean, he was a police officer,
2 he's a real police officer, he's not coddling
3 anybody, but it's interesting to me that he told
4 Weaver that what I told the sheriff is not, 15
5 minutes ago is not true.

6 Q. Okay. And you just said that Sheriff Medford is
7 now in federal prison. Why is he in federal
8 prison?

9 A. He was prosecuted for his involvement -- there
10 were video poker owners and operators that were
11 paying the sheriff's department to be permitted
12 to run video poker machines in Buncombe County,
13 and that and money laundering. He's serving 15
14 years, I think, in federal prison.

15 Q. So he's no longer the sheriff, I suppose
16 that's --

17 A. He's not.

18 Q. All right. Now, are you familiar with a program
19 -- and I'm almost done, Mr. Devereux. I thank
20 you for your patience. Are you familiar with a
21 program called Life on Life's Terms? I believe
22 it's now called New Life Options.

23 A. I am.

24 Q. And who runs that program?

1 A. A gentleman named Matthew Bacoate. I think it's
2 Matthew Bacoate, III, if I'm not mistaken.

3 Q. And what do you understand that program to be?

4 A. It's a program for dealing with people that
5 suffer with various substance abuse addictions.
6 They have AA meetings, NA meetings, various
7 sorts of counseling. It's religious based to
8 some extent, as I understand it. I don't know
9 that Mr. Bacoate has any special professional
10 training. As I mentioned, his father was at the
11 margins of the drug community some years ago.
12 And my impression is, and I think this is right,
13 is that Mr. Bacoate had some trouble with the
14 law a while back himself. I want to say it was
15 drug-related, I'm not positive of that.

16 In any event he runs the program, runs
17 these meetings. But one component of what was
18 then, it was Life on Life's Terms in 2000, one
19 component of that is this kind of a diversion
20 program, an effort to come up with an
21 alternative -- some sentencing in criminal cases
22 an alternative to prison time. That's how it's
23 advertised.

24 Q. Okay. So it works with the court system in that

1 respect?

2 A. what happens is, if you -- defense attorneys,
3 the way we utilize the program, is if you had a
4 client who was facing a mandatory active
5 sentence, for example, a mandatory minimum in a
6 traffic -- certain cases carry mandatory minimum
7 sentences. So if you have over 28 grams of
8 cocaine, you get a certain amount of prison
9 time, certain number of kilos of marijuana. The
10 court can't do anything about it. If you're
11 convicted of that offense, you almost have to
12 receive that sort of sentence. Also, many times
13 you will have offenders who qualify as an
14 habitual offender, which also has implications
15 at sentencing.

16 The practice for quite some time, and
17 certainly was the practice in 2000, was to get
18 your client into Mr. Bacoate's program and you
19 would get a recommendation, not necessarily -- I
20 don't know that I ever used him directly with a
21 court. He had a great deal of influence with
22 Mr. Moore. He could talk Mr. Moore into
23 reducing a -- to get, for you to get a non-
24 trafficking offense. So somebody that would be

1 looking at 25 to 35 months in prison, for
2 example, would now be eligible for probation and
3 usually would get probation. The same way with
4 someone who had qualified as an habitual
5 offender. It was within the district attorney's
6 discretion to not charge that person as a
7 habitual offender, and without the habitual
8 implications at sentencing, the defendant would
9 frequently get probation. So Mr. Bacoate had
10 access to the district attorney and considerable
11 influence with the district attorney.

12 Q. So the clients would -- please explain or
13 correct me if I'm wrong, the clients would
14 complete the program prior to pleading or being
15 convicted or being sentenced?

16 A. Well, all different variations. I mean, it was
17 very unstructured.

18 Q. Okay.

19 A. You would send your client to Life on Life's
20 Terms, they would pay a certain amount of money
21 to participate in the program. There was
22 apartments, sort of an old apartment building
23 that was part of the program, and so some folks
24 stayed there. It was an inpatient program.

1 There were no medical facility or no, as I say,
2 no trained addiction specialists or anything,
3 but other people would sign up for the program
4 and go to an unspecified number of AA meetings
5 or NA meetings, at the end of which time
6 sometimes Mr. Bacoate would give you a
7 certificate, give them a certificate that said
8 they had completed the program, other times he
9 would go upstairs and talk to Mr. Moore and your
10 client would get probation.

11 Q. So there wasn't a set checklist of what to do
12 with it, it varied case by case?

13 A. Right.

14 Q. And how about you mentioned the fees, was there
15 a set fee schedule or, that you know of?

16 A. No, there was not.

17 Q. You said you did use this program with some of
18 your clients, is that right?

19 A. I did.

20 Q. What was your client feedback about the program?

21 A. I mean, I've had clients go to Mr. Bacoate's
22 program for ten years so there have been lots of
23 different, I've had lots of different feedback.

24 Q. Was it positive?

1 A. It was positive in the sense that you almost
2 always got good results if you had somebody in
3 the program.

4 Q. By good results, do you mean free of addiction
5 and drug dependency?

6 A. No, good results in -- I mean, sometimes that,
7 too. I mean, I think there was some of that
8 level of legitimacy to it. At least, I mean, AA
9 and NA, you know, those are good programs
10 regardless, and I think it did help people in
11 that regard. But more often the lawyers were
12 just looking for results in court.

13 Q. For their plea agreement or --

14 A. Uh-huh (yes).

15 Q. Did any of your clients ever indicate that they
16 had problems or concerns about the program? And
17 if you can't discuss that, I understand.

18 A. I've had clients that did feel as if they were
19 being taken advantage of in various ways. At
20 some point I and several other lawyers were
21 concerned about it to the degree that we -- and
22 there was a lot of talk about Life on Life's
23 Terms and its successor program, which is New
24 Life Options. At some point I made a referral

1 of several of my clients to the U.S. Attorney's
2 Office and to the Buncombe County Sheriff's
3 Department.

4 Q. Okay.

5 A. And I know from, that judge -- I mean, I don't
6 know how much -- I don't want to compromise
7 anybody's investigation, but I think I can say
8 without doing that and with complete certainty
9 that the program was and remains under
10 investigation at this point.

11 Q. By federal agents?

12 A. Uh-huh (yes), at least by them.

13 Q. Do you know anything about Teddy Isbell's
14 relationship, Teddy Isbell one of the
15 codefendants in the case --

16 A. Right.

17 Q. -- his relationship with Matt Bacoate, the
18 person that ran the program?

19 A. I've known Mr. Isbell for a long time.
20 Mr. Isbell was, in September of 2000 was a
21 participant. Mr. Isbell had an addiction
22 problem and was enrolled at Life on Life's Terms
23 and lived at, it's now 60 Flint Street, at one
24 point it was on Hillside, and I can't recall. I

1 didn't pay too much attention at the time. But
2 he was in the program and, ultimately, if he
3 wasn't working for Mr. Bacoate in some capacity
4 then, he did ultimately. He's still at -- he
5 did some time in prison as a consequence of his
6 involvement in all of this, but to this day he
7 lives at 60 Flint Street. I'm not really --
8 which is the address of Life on Life's Terms.
9 I'm not quite sure what his relationship with
10 Mr. -- he's still -- I know they -- Mr. Isbell
11 came to see me yesterday. He certainly talks to
12 Mr. Bacoate still.

13 Q. Do you know if he ever acted as an informant?
14 You may not know.

15 A. For Mr. Bacoate? Well, part of what was going
16 on at Life on Life's Terms was that -- and this
17 was a source of concern among defense attorneys.
18 Mr. Bacoate would frequently, on his own,
19 arrange meetings between criminal defendants and
20 the district attorney. He would take them up
21 there to talk to Mr. Moore sometimes when they
22 had counsel. He had some relationship with one
23 of the bondsmen, bail bonds ladies in Buncombe
24 County, and he would -- somebody get, you know,

1 a drug dealer would get arrested, Mr. Bacoate
2 would be over there helping get that person out
3 on bond, and soon enough they would be talking
4 to Mr. Moore.

5 We referred to -- I say we, the defense bar
6 referred to Life of Life's Terms as a snitch
7 school, is how we --

8 Q. Snitch school?

9 A. Snitch school, yeah. Mr. Moore used to go to the
10 meetings, the district attorney used to attend
11 meetings at Life on Life's Terms.

12 Q. The district attorney attended meetings at
13 Life --

14 A. He would show up for, like, I don't know whether
15 they were NA meetings or what sort of -- they
16 have regular meetings of the participants, and
17 he would be, he would go to meetings and, you
18 know, talk to the folks there.

19 Q. And now, is that rumor or do you know that?

20 A. No, no, I know that's the case.

21 Q. Now, Mr. Bacoate told the Commission staff
22 attorney while under oath that he got a reward
23 for providing information in this homicide case
24 for bringing Mr. Isbell in. Did you know that?

1 A. I didn't know that.

2 Q. Would that have changed your strategy if you had
3 known that?

4 A. Well, eleven years have passed since Mr. Bowman
5 was killed. I have notes, I went back and
6 looked at my handwritten notes, and I've made
7 notes about Mr. Bacoate's involvement, Life on
8 Life's Terms and so on, but I wasn't really as
9 sensitive to that then as I am now. And looking
10 back, the case began, at least the case that was
11 made against my client appears to have begun
12 with Mr. Bacoate bringing Teddy Isbell, who was
13 a participant in his program and perhaps an
14 employee of his, to Sam Constance, who was a
15 detective in the sheriff's office at that point.
16 Mr. Isbell gives, says, I heard on, if I recall
17 correctly, says, I heard on the street that
18 Mr. Kagonyera and Mr. Wilcoxson were involved in
19 this robbery.

20 Detective Constance says, well, how do you
21 know that?

22 That's just what I hear.

23 Did you have anything to do with it?

24 No, I didn't.

1 At that point -- and I'm not saying this is
2 true, I'm just saying what's in the notes and
3 how it strikes me now. Lieutenant Constance or
4 Detective Constance, as he was then, went and
5 spoke with Mr. Bacoate's girlfriend who had
6 accompanied him to the sheriff's department, if
7 I recall.

8 Q. Do you mean Mr. Isbell's girlfriend?

9 A. I mean, sorry, Mr. Isbell's girlfriend. And she
10 says, no. According to her statement in the
11 file she says, no, Mr. Isbell told me in the
12 presence of his mother that he was actually
13 there when the shooting occurred. Detective
14 Constance contacts Mr. Isbell's mother. She
15 confirms that that's what Mr. Isbell had said.
16 Mr. Isbell is picked up later in the afternoon
17 for further questioning at the Interstate Motel,
18 and he says, I don't want to talk to anybody
19 without Ron Moore. I want the district attorney
20 here and Mr. Bacoate before I'm questioned any
21 further.

22 Again, there's a lot, he says a lot, but he
23 implicates others, he implicates himself, he
24 unimplicates himself, he pled, he withdrew his

1 plea, and he still came -- aside from
2 Aaron Brewton, he came out of this better than
3 anybody in the case. If Mr. Kagonyera was
4 telling the truth and if the district attorney
5 believed Mr. Kagonyera when he told his story to
6 Mr. Moore in his office, then Teddy Isbell was
7 right in the middle of this. And the treatment
8 of Teddy Isbell seems extraordinary under all of
9 those circumstances.

10 Q. Let me ask you, you just said, you characterized
11 the case as beginning with Mr. Bacoate bringing
12 Teddy Isbell into the Sheriff's Department.
13 Would you in the same vein characterize it as
14 ending with Aaron Brewton's charges being
15 dismissed and him being released to Life on
16 Life's Terms; Mr. Bacoate's program?

17 A. I would.

18 Q. All right. I think I am through with my list of
19 questions, but I know the commissioners may have
20 some questions. And I would like to just thank
21 you, Mr. Devereux, for coming down here to
22 testify, for cooperating so much with our
23 investigation, and providing your file and
24 testimony today.

1 JUDGE SUMNER: Any questions?

2 MR. SMITH: I wanted to ask about the
3 Mills meeting, what that meeting must have
4 been like for you. Did that take place at
5 your office?

6 A. Well, it didn't. It took place -- I have notes
7 from that meeting. It took place in the jail.
8 Both Mr. Mills and --

9 MR. SMITH: All right.

10 A. -- Mr. Kagonyera were still in custody at that
11 time.

12 MR. SMITH: And just the three of you
13 were present?

14 A. No. I think that Mr. Messer, the other
15 attorney, was there.

16 MR. SMITH: Yes.

17 A. And Mr. McDowell, who was Mr. Mills' attorney.

18 MR. SMITH: And did Mr. Mills confront
19 Kagonyera pretty starkly, that is, state
20 pretty starkly that he was involved?

21 A. Mr. Mills, if I recall correctly, is younger
22 than Mr. Kagonyera, and I think he had lived
23 with Ms. McLean, the grandmother. They had
24 lived together with -- I think he looked up to

1 Mr. Kagonyera. I don't remember him getting in
2 Mr. Kagonyera's face or anything. I think there
3 was a lot of kind of mumbling and, you know,
4 looking -- not looking each other in the eye
5 sort of talk.

6 what I was primarily interested in was the
7 substance of it. And I don't have a strong
8 recollection of the meeting itself. I did take
9 notes, but --

10 MR. SMITH: But the substance, I
11 assume, was that he -- did he accuse
12 Kagonyera of being involved?

13 A. What I remember is he was talking to us. I do
14 have a recollection of Mr. Kagonyera sitting
15 over to my left and sort of looking off into
16 space, and we're, Mr. Messer and I are talking
17 to Mr. Mills. Now, his attorney was there and,
18 I think, if I'm not mistaken, Mr. Mills
19 negotiated a pretty favorable deal, too. But
20 what he had to say did certainly implicate
21 himself and Mr. Kagonyera. It also tracked the
22 discovery pretty closely.

23 MR. SMITH: And you had indicated it
24 was sort of a turning point for you?

1 A. Well, it wasn't -- it was and it wasn't. I
2 mean, you're thinking all along, I've got a
3 client who's charged with assault with a deadly
4 weapon, intent to kill, inflicting serious
5 injury, and a drug case, and this felony
6 breaking and entering, and there are four or
7 five people that put him at least in the car
8 going out to the Bowman's house.

9 MR. SMITH: Right.

10 A. So let's say we get a not guilty and he walks
11 out of the courtroom, where are we at that
12 point? So I think that -- and this, in
13 retrospect, may have been terribly unfair to
14 Mr. Kagonyera, but I think I was, you know, I
15 wanted him to hear it from Mr. Mills. I'd seen
16 what Mr. Mills had said. Now, had Mr. Mills
17 said, that's right, Kenneth, we -- you know,
18 these guys are twisting my arm and making me say
19 this. that would have made a huge difference to
20 me, but that's not what happened.

21 MR. SMITH: But the effect of what
22 Mr. Mills said was that Mr. Kagonyera was
23 involved in this event. Did Mr. Kagonyera
24 get up and scream and say, oh, no, I

1 wasn't?

2 A. He was very frustrated. You know, he wasn't
3 happy with the meeting. He didn't -- he wasn't
4 violent or he didn't, you know, say anything
5 untoward, but --

6 MR. SMITH: All right.

7 A. And during the same time period, and I'm sure
8 that this will be presented to you at some point
9 during this proceeding, but there is a note that
10 appears to be from one of the defendants to
11 another. I'm not sure, I remembered it, but
12 it's addressed to Engine, E-n-g-I-n-e. And it's
13 a plea from somebody to Engine to tell the truth
14 and straighten this all out. And it refers to
15 -- whoever Engine is, Engine has a cousin, you
16 can tell from the context of the note. I wish I
17 remembered, and I wish I knew who wrote that
18 because I think that would shed some light on
19 the relationship between all of these people and
20 their lawyers during that time period. It's
21 later because at that point whoever Engine is
22 has already entered a plea. But it's one of the
23 codefendants saying you know this is wrong, you
24 know we weren't involved, you shouldn't have

1 entered a plea, and the least you can do is come
2 forward and say that I wasn't involved. It may
3 have been from Brewton to Mr. Kagonyera, but
4 it's a pretty compelling document, and I hope
5 somebody during this proceeding can shed some
6 light on it.

7 MR. SMITH: Thank you; thank you.

8 MR. BECTON: Did you use -- I was
9 writing down pretty intensely at the time
10 you were testifying about the October
11 meeting. And I wrote that your client said
12 that Damian could corroborate him and help
13 prove he was not involved. I have in red
14 ink here, and I don't know if you -- I want
15 to ask you if this is what you said: Mills
16 actually implicated Kenny and Kenny was
17 really upset.

18 A. That's correct.

19 MR. BECTON: Is that what you recall
20 saying?

21 A. What we had -- we're talking to Kenneth and
22 saying, Kenneth, help us out. We need a theory
23 of defense here, need a theory of the case.

24 MR. BECTON: Okay.

1 A. There are people that are saying -- and he knew
2 them as well as we did, but we went down the
3 list of who was saying what about him. And in
4 the course of that I said, Kenneth, your own
5 cousin says you're involved. And he said, I
6 don't believe that. I want to hear that from
7 Damian's own lips. So that's why we arranged
8 the meeting with Damian.

9 JUDGE SUMNER: Yes, ma'am.

10 MS. ASHENDORF: Sean, you said
11 something about Renita Holloway, and can
12 you remember what you said, because I got
13 confused by whatever you said?

14 A. Yeah. What I tried to do -- I'll give you
15 another long-winded answer. I'm sorry, I don't
16 get to be a witness very often. When I knew
17 that, about the DNA coming back in March of '01
18 excluding everybody and then subsequently the
19 story about Pickens and Summey knowing what I
20 know about this whole world rings very true to
21 me, and then the fact that there's some, or very
22 much confirmation that Summey was involved,
23 Summey's DNA is involved. So take that -- what
24 you're looking for is the theory of the case. I

1 mean, it's not enough to go in on one of these
2 and just say, well, I can prove beyond a
3 reasonable doubt. There's got to be some
4 coherent response to what the State has to say,
5 a story, as it were. And I don't mean you
6 construct a fiction, but -- and so that was what
7 I felt like I never had. You know, Tisha Lee
8 will say I was with her. That didn't pan out.
9 Damian will say I was with him. That didn't pan
10 out. So as much as the evidence that we had
11 against us, I mean, you know, had I looked at
12 the security video and we could have determined
13 anything from that, that might have made a
14 difference, you know, maybe. But I think an ex
15 -- DNA that excluded everybody available to us
16 in March of 2001 would have, we'd put on a new
17 lens at that point; you would look at the case
18 in a new way. And I tried to ask myself, how --
19 what that would have meant.

20 The example I gave is Ms. Holloway. So I'm
21 going back through the last week or so thinking,
22 okay, suppose that I know that the DNA, my guys
23 are excluded. I'm going to go back through the
24 file. If it's not our guys, who is it? well,

1 here's Crime Stoppers, Lacy Pickens, and Summey.
2 All of a sudden that's underlined. That means a
3 whole lot more now than it did before. The fact
4 that those guys would have been -- that probably
5 got on everybody's Crime Stoppers reports during
6 that time period for all sorts of things. So it
7 didn't mean -- they were operators. But if it's
8 not our guys, who is it? So we would have
9 looked at that.

10 Now, Ms. Holloway, and maybe I'm reading
11 too much into this, but she gives -- and I
12 understand she testified here. I've never met
13 her, I wouldn't know her if I saw her. But the
14 first four or five statements she gives say I
15 was the only -- are absolutely clear, I'm there
16 by myself with Walter Bowman, and these guys
17 come in. The fifth version all of a sudden
18 becomes there were four or five guys, they had
19 guns, they had bandanas, they had -- it just, it
20 changes completely. And so knowing that three
21 guys -- knowing that the DNA -- there's a good
22 chance that it wasn't our folks, and there are
23 three people that are identified in a Crime
24 stopper let's take a look at them again, you

1 know. That starts to fit. That starts -- it
2 starts making sense.

3 And then I had -- when I was notified -- I
4 mean, my first reaction when I heard from
5 Mr. Lau, he can tell you, is Jamie, you know,
6 there are a lot of cases that you all could be
7 looking at, but this is -- I worked on this
8 case, you know. And it wasn't until I sat down
9 with him and, you know, gradually and looked at
10 the file and went back and put it all together,
11 because I think it was deceptively simple.
12 There was a lot more to it than met the eye.

13 I went back through knowing that what I
14 know now. I mean, I had told Kenneth, Kenneth,
15 all these people say different things about you.
16 I mean, all these people implicate you,
17 Larry Williams, Damian, Teddy Isbell, Bowman.
18 But if you go back and you look at their
19 statements, if they're all -- if Ms. Holloway is
20 telling the truth, Bowman's statement doesn't
21 mean anything because he wasn't there. And his
22 statement, what he says is certainly
23 inconsistent with the three -- with it being
24 Pickens and Summey, and it also is inconsistent

1 with the DNA results.

2 So all of a sudden you've got a theory of
3 the case, and you've also got a shield, and
4 you've got a weapon. And you start picking
5 these people's stories apart, and when they're
6 looked at closely, and I should have been doing
7 this all along, I think, they don't hold up. I
8 mean, what you're looking at in all these cases
9 is the story of the story, how the story
10 evolved. And I didn't do that properly maybe
11 because nothing triggered that, but I think what
12 would have triggered that catalyst to going back
13 and putting it together in that way would have
14 been the DNA. Knowing that, wait a second, this
15 can't be, this cannot have happened the way
16 these people are saying, so why did they say
17 that? And what does that mean about who really
18 did it?

19 And then I think the Pickens -- and I can't
20 stress enough, Pickens was -- you know, if you
21 had asked me out of all the -- if you had listed
22 all the names in this case, a hundred names, and
23 said pick five people who could have shot
24 Walter, Pickens would have been on my list,

1 Holloway would -- I mean, Summey would have been
2 on my list, Rutherford probably now, but -- so I
3 think things would have changed.

4 We were bumping along looking for a theory
5 of the case and not finding it, and then
6 deciding the risk is so -- it's not that I
7 didn't believe Kenneth. I don't think I ever
8 really -- you don't do that. I mean, Mr. Smith
9 can tell you, you really don't ever know, you
10 know. It wasn't that I decided, well, he's
11 lying so he needs to go to prison. It's just
12 that the risk benefit was never our way. I
13 mean, it was always he's looking at probably
14 eight, nine, ten, maybe fifteen years even
15 without this case, so why risk his life?

16 On the other hand, I think the DNA shifts
17 everything. That gives them -- now we're on the
18 offensive a little bit. So that's why it would
19 have made -- and her -- what -- and I may be all
20 wrong about her. I mean, it's not, I'm not
21 working on the case now, and I'm not casting any
22 aspersions on her whatsoever, but I'm just
23 saying that if you take those new facts and go
24 back and look at everything in the file, it's a

1 very different case.

2 MR. SMITH: But his confession in your
3 presence with the district attorney must
4 have given you comfort --

5 A. Oh, sure; yeah.

6 MR. SMITH: -- that it's what you
7 thought?

8 A. That's right. Well, not so much the -- I mean,
9 again, and I'm not here to be a, my own personal
10 psychoanalysis or anything but, you know, I'm
11 not sure I was wanting to go through another
12 five-week death penalty case at this point. And
13 you know, so was I looking for a way out?
14 Maybe, you know.

15 MR. SMITH: It is rare, isn't it, in
16 our work to sit down with our client with a
17 district attorney and have our client say
18 he did it?

19 A. Sure.

20 MR. SMITH: And once that happens, you
21 feel comfort, don't you?

22 A. You do. But that comfort, I will have to say,
23 was -- when I go back and look in the clerk's
24 file, this isn't anything I got from these

1 folks, and I see that in 2006 Mr. Kagonyera,
2 who's off in prison, is halfway through his
3 sentence or something, doesn't have any real
4 reason to still be threatened about this, files
5 a motion to get the DNA results and sends it to
6 the DA and says, I know you've got results that
7 rule me out. And I think probably Rutherford,
8 who's from back home, or one of those guys is
9 talking and it's getting, word is getting out.
10 He's saying that, and I think to myself, that's
11 six years after he wrote me that letter, five
12 years after he wrote me that letter wanting the
13 DNA, and he's still -- that's not -- you know,
14 that's pretty compelling. You go, life goes on.

15 And then two years later he files an MAR
16 saying, Mr. Moore, I know you've got the DNA and
17 I know you got a confession from Rutherford, and
18 Pickens and Summey were involved, and you better
19 -- let's do something about it. The comfort
20 that I had that day in the district attorney's
21 office evaporated in the face of those things.

22 MR. SMITH: May I ask --

23 JUDGE SUMNER: Yes, sir.

24 MR. SMITH: But going back to that

1 moment and looking at the signs you had
2 going down the road, you had deception on
3 the polygraph?

4 A. Uh-huh (yes).

5 MR. SMITH: You had the confrontation,
6 mild as it might have been, with Damian
7 Mills. You had him sitting down with the
8 DA and admitting he did it. That's a lot,
9 isn't it?

10 A. Oh, it is, absolutely.

11 MR. SMITH: And have you ever had a
12 case before in which you had those three
13 kinds of things comforting you as a lawyer,
14 and it turned out not to be true?

15 A. No. That's very -- I mean, that's why my
16 reaction when I heard from the Innocence
17 Commission is, you know, why this case? That's
18 not to say that I don't understand it now.

19 JUDGE SUMNER: I'm certainly not
20 trying to be a Monday morning quarterback
21 of you, I would not dare to do that --

22 A. Right.

23 JUDGE SUMNER: -- but I think you,
24 correct me, if you will, you said in 2001,

1 I believe, your client was saying what
2 about the DNA, and your response was what
3 again, now?

4 A. Every client we had in those days was asking for
5 DNA about everything, and so I remember talking
6 to him about that. I think I would have said,
7 we'll get, I mean, if it's there, we'll get it,
8 we'll get the report. But asking him how
9 exactly he thought that was going to help him,
10 what DNA exactly? You know, I mean, I guess I
11 probably -- there's a note in there that
12 indicates that the bandanas were sent off.
13 There were two bandanas, and there were five
14 people. I think remember having that
15 conversation. So what if your DNA is not on --
16 you know, maybe you didn't wear a bandana or you
17 didn't -- I remember looking and trying to --
18 and I can't remember now what it was, but what
19 he was wearing, who was wearing what and so on.

20 So I mean, I just didn't see how that was
21 going to make -- it's -- I don't know why I
22 didn't think of it, but the fact that everybody
23 would have been excluded, you know, didn't occur
24 to me. I think that's what it -- had he, it

1 just excluded, him, I still don't think it would
2 have meant that much. But the fact that
3 everybody was excluded, that plus Summey later.

4 JUDGE SUMNER: Yes, ma'am.

5 MS. SURGEON: When you talked with
6 Mr. Kenny, did you get the impression that
7 he was going to just admit this because it
8 was in his best interest and do an Alford
9 type plea or something?

10 A. Right; yeah. I did not -- I think generally I
11 try hard to have a good relationship with
12 clients, especially clients in this situation,
13 and that's a function of the time you spend with
14 them. For one reason or another, I did not have
15 that relationship with Mr. Kagonyera, probably
16 because I didn't spend the time with him. I had
17 so -- I have a client right now who's serving
18 five life sentences, and I get a Christmas card,
19 you know, from him. That -- we got along fine.

20 And so I think Mr. Kagonyera expressed
21 frustration with me, you know. I mean, I don't
22 -- yeah, resignation, it could very well have
23 been. I mean, I remember saying, specifically
24 addressing that with him because he was

1 frustrated by a lot of things and not real
2 communicative and, you know, I mean, I -- you
3 know, I always wondered if there's, still wonder
4 if there's not more to the story. I mean, the
5 thing you always worry about is the client not
6 telling you -- it's what we call the long black
7 veil syndrome. They didn't commit the murder
8 because they were in the arms of their best
9 friend's wife, and they don't want to tell you
10 they were in the arms of their best friend's
11 wife. I don't care if they were in the arms of
12 their best friend's wife. For my purposes, that
13 gets them out of the crime they're charged with.

14 I felt like there was something. You know,
15 Kenny, tell me what it is, you know. Where were
16 you? Were you with Tisha? Were you with -- you
17 know. So I was frustrated, he was frustrated.
18 Did he throw up his hands at the end of the day
19 and say, I'll tell them whatever they want to
20 hear and take 15 years? You know, quite
21 possibly, yes, ma'am. And he still, you know,
22 may have gotten a decent deal even without the
23 murder. What I -- the reason I'm here is that's
24 not a reason for somebody to go through life

1 with a murder conviction for something they
2 didn't do, if that's -- I mean, I'm not here to
3 advocate for him, but that troubles me.

4 MS. ASHENDORF: And I'm not here to
5 trouble you, but --

6 A. Oh, I agreed to be here. I'm fine.

7 MS. ASHENDORF: -- if I had been your
8 client, and they -- I mean, is it customary
9 when a client -- when DNA is taken --

10 A. Right.

11 MS. ASHENDORF: -- and your client
12 asks you to get the DNA results, rather
13 than thinking all the things that you
14 thought --

15 A. Right.

16 MS. ASHENDORF: -- it would have been
17 a simple call to the DA?

18 A. Right; yeah. Right, to call the DA and say,
19 where's the DNA?

20 MS. ASHENDORF: Right.

21 A. You know, that's true. And what you would --
22 what normally would happen was you -- discovery
23 would be parceled out. So one day you would go
24 to the DA's office --

1 MS. ASHENDORF: Right.

2 A. -- and there would be an envelope with the lab
3 results in it. And I think I -- you know, I
4 fully expected to see that. Before that ever
5 came, as far as I knew, he's telling me, okay --
6 you know, when he -- and I don't think, going
7 back to your question, you know, I don't think I
8 thought -- I would have taken him over there if
9 I thought he was just -- I mean, I didn't know.
10 I really didn't know whether he was telling me
11 the truth or not. But I think I had a right to
12 expect that -- and he did, not me, Kenneth had a
13 right to expect that he could see that lab
14 result. And you know, you do, you do, you're --
15 lawyers are busy. We form opinions about cases,
16 and those opinions can be changed radically
17 overnight by a tiny piece of evidence. And I --
18 or not -- or any piece of evidence.

19 And I would have expected that to come in
20 the course of -- I mean, I don't know the last
21 time that I filed, before that I don't recall
22 filing specific discovery or what we call Brady
23 Motion looking for exculpatory evidence. There
24 were lawyers in Buncombe County in 2000 that did

1 not file the form discovery motion because we
2 had open file. Mr. Vickory can tell you, we had
3 open file in Buncombe County before it was the
4 law. So we really trusted the district
5 attorney's office.

6 Now, even though I had a right to expect
7 it, there's still a note in there that says it's
8 sent off, and I never saw it. And that -- I'm
9 not making an excuse for that. I should have
10 done that.

11 MR. VICKORY: May I ask an
12 additional --

13 JUDGE SUMNER: Sure.

14 MR. VICKORY: But you would not be
15 surprised, would you, if you had a client
16 go in and commit a robbery and leave no
17 DNA?

18 A. Right; that's right.

19 MR. VICKORY: I mean, wouldn't you be
20 shocked if you had a client walk into a
21 store and commit a robbery and leave some
22 DNA?

23 A. I don't think I've ever had a case -- I can't
24 think of a case that I've had, except maybe a

1 sex crime, where DNA made the difference. It
2 doesn't -- it happens on television, but it
3 really doesn't --

4 MR. VICKORY: And we know, don't we,
5 that DNA is very often not a part of a
6 case?

7 A. That's most often not a part of it. And it's
8 gotten better, you know, more precise now since
9 -- made us all aware of DNA, but in those days
10 it -- I mean, even 11 years ago I don't think it
11 was as significant as it was now. But again, I
12 should have seen that, I should have pushed for
13 that.

14 JUDGE SUMNER: Yes, sir.

15 MR. JENKINS: Mr. Devereux, going back
16 to your earlier testimony about the
17 girlfriend. I think, the question was, or
18 we had established a new theory based upon
19 his starting out saying he didn't commit
20 the crime and then --

21 A. Right.

22 MR. JENKINS: -- or saying he didn't
23 commit the crime after he said he did, that
24 she would testify that she was at home with

1 him during the crime. Did you ever
2 establish that as an alibi that you felt
3 that would hold in court?

4 A. She told her statement to the officers. Again,
5 I wouldn't rely on that. But she said that she
6 wasn't with -- she specified she had seen him
7 that day, but he wasn't with him during the
8 11:30 time period. And I remember being -- you
9 know, when that -- in the beginning thinking,
10 well, if that's the case, we're in good shape.
11 I don't recall speaking to her. I may have
12 spoken to, I think I spoke to -- because I saw
13 -- Kenneth was in custody, but Freddy Wadsworth
14 was in and out of the office, and remember
15 talking to him about it. What worries me now is
16 that I accepted, I assumed that Mr. Wadsworth
17 had Kenneth Kagonyera's best interest in mind.
18 He may have been looking after his daughter. So
19 I maybe shouldn't have assumed -- maybe Tisha
20 was -- you know, who knows? I don't know.

21 MR. JENKINS: I guess my question, had
22 it come down to it, he never had an alibi
23 during the crime?

24 A. No. I mean, and you know, again, I'm not here

1 to advocate or be a martyr. You've got four
2 guys. Somebody -- you would like -- I'd like to
3 see an alibi from somebody, but you had that in
4 a way from Brewton, and Brewton never -- Brewton
5 just said, no, and ended up finally that -- I
6 mean, that's the part of the case that after --
7 I mean, that was after my client was already
8 gone, but to dismiss against Brewton is pretty
9 astonishing.

10 MR. JENKINS: My other question, I
11 guess at some point you had to have a
12 private meeting with your client to discuss
13 the plea. Did he ever at any time convince
14 you by giving you any details of the crime
15 or going into any great detail of the crime
16 that he had committed it?

17 A. There was -- no. That's a great question.
18 There are times when something a client tells
19 you, maybe even inadvertently, you know they
20 were there, and then you do have the kind of
21 comfort that Mr. Smith is talking about; this
22 really -- he really did do this. I don't
23 remember that. I mean, I remember him -- if
24 you look at what, if you look at what he says to

1 -- I'm assuming you all have seen the statement
2 that was written down in the DA's Office. He's
3 going along and he names everybody that was
4 there, and then somewhere right in the middle of
5 the -- now, of course, it's not recorded, it's
6 what the officer wrote down, but all of a sudden
7 he tosses in Mr. Isbell's name. He has not
8 mentioned that Isbell is even there, he just
9 says Mr. Isbell did this and that and the other.
10 And it's almost like, you know, I've got to work
11 everybody in somehow. I mean, here's the list
12 of characters and here's what happened and, you
13 know. And if you, as I say in response to
14 Linda's question, when you go back and look at
15 -- when you know things you know now, the
16 statements that seemed so powerful at the time,
17 looked at against each other, really there's
18 some significant inconsistencies. So there
19 never was a moment when I felt he's telling me
20 stuff that he could only know if he was here.

21 Last night when I was reading the statement
22 that he made in the district attorney's office
23 and the statement that the other guys made, I
24 said to myself, if what Ms. Holloway told the

1 dispatcher and the first four officers that
2 interviewed her over a 12-hour period is true,
3 then these guys weren't there. It just doesn't
4 -- it's not at all consistent with what --
5 they're not consistent with each other and
6 they're certainly not consistent with what she
7 said at the beginning.

8 MR. JENKINS: And I just have one more
9 question, and this is, I guess, more
10 curiosity than anything. I know Mr. Smith
11 asked the question, was it kind of unusual
12 to meet with the district attorney. The
13 same could probably be said about two
14 codefendants meeting together --

15 A. Yeah, that was --

16 MR. JENKINS: -- for one to confront
17 the other to say you were involved in the
18 crime. That was something I needed to --

19 A. I don't recall ever doing that, and I did it
20 twice in this case, yeah.

21 MR. JENKINS: That's all I have,
22 Mr. Chairman.

23 MS. MONTGOMERY-BLINN: Commissioners,
24 that's page 101 of the brief, the statement

1 that was just being referred to; 101.

2 JUDGE SUMNER: Mr. Vickory has a very
3 quick question because he knows that I am
4 used to eating this time of day. No, no,
5 no, no, I can most certainly wait for one
6 more question. Yes, sir.

7 MR. VICKORY: I'm just interested in
8 -- I'm sure all the DA's offices provided
9 discovery back in 2000, provided
10 discoveries in different ways, many
11 different ways. How did Ron do it then? I
12 mean, did he let you look in his file or
13 did he --

14 A. No; no.

15 MR. VICKORY: -- just give you all
16 copies?

17 A. No, no, we got copies.

18 MR. VICKORY: You never got to
19 actually thumb through his file yourself?

20 A. In his office, no. We would get -- they would
21 copy everything for us. But you know, that
22 office -- I know you know Ms. Dreyer in that
23 office, she's the assistant. She and I have
24 done battle over the years royally. I've had

1 her tell me on the eve -- give me something on
2 the eve of trial that just killed their case.
3 So you know, I trusted them. And I guess I just
4 expected if there's, if anything that comes back
5 from the SBI is going to end up in an envelope
6 and we'll pick it up. I mean, they asked me
7 about it, I said, I'm sure it's in there, you
8 know, but it's not. And I could say, and we
9 didn't get it.

10 MR. VICKORY: well, that's obviously
11 the hardest --

12 A. No. They copied, they copied everything. We
13 didn't go through their file.

14 MR. VICKORY: The hardest thing for me
15 to wrap my head around is why there wasn't
16 -- have you gone to Ron or Ms. Dreyer or
17 anybody and asked, what in the world is
18 going on?

19 A. He and I had a case not long -- we're not -- we
20 had a case not long ago and alluded, the subject
21 of the Innocence Commission came, and I said,
22 look, I think it would be better if you and I
23 didn't discuss this, so we didn't. I haven't.
24 I mean, I -- whatever the outcome here, I intend

1 to ask him about it.

2 MR. BECTON: This may be about your
3 comment and may bring you some comfort, but
4 as I understand it, before you entered the
5 plea, Mills had implicated your client in
6 the jail. The alibi you thought you had in
7 his girlfriend did not pan out. On
8 September 26th Larry Williams had
9 implicated your client. On September 26th
10 Damian Mills had implicated your client.
11 On September 25th Teddy Isbell had
12 implicated your client. On September 24th
13 Aaron Brewton had implicated your client.
14 On 9/23, actually, Brewton told Fair that
15 your client was involved. On 10/8 somebody
16 named Bryson said that your client told him
17 about the case.

18 A. Millis, yeah.

19 MR. BECTON: On 10/21 somebody named
20 Bryson said your client implicated the
21 other people who were charged, and you were
22 still searching for a theory of the case.
23 Oh, and on 10/31 someone said that your
24 client was the shooter?

1 A. That's right.

2 MR. JENKINS: One other comment, if
3 Mr. BECTON is finished, about the
4 discovery, about the open file system. I
5 personally have been involved in a county
6 where the same has gone on way before the
7 discovery laws came into place. You took
8 the file to the district attorney's office,
9 they copied everything for the defense.
10 And we always had an agreement that
11 anything that came forward on the lawyer's
12 side went to the DA's office. So I
13 certainly understand your --

14 A. A lab report would have -- I mean, generally we
15 have -- there's a shelf in Mr. Moore's front
16 office, and very rarely are there weeks that
17 something for our firm is not on the shelf from
18 some agency or something, you know. So that's
19 the way it works. So there are -- or in a case
20 like this, sometimes he'll mail you the results
21 of like a lab test. But none of the attorneys
22 in this, as I understand it, nobody except
23 perhaps way late in the case Mr. Isbell's third
24 attorney may have gotten a copy of the DNA, but

1 none of the rest of us did.

2 JUDGE SUMNER: Thank you, sir.

3 A. Thank you, Judge.

4 MS. MONTGOMERY-BLINN: I'll ask that
5 Mr. Devereux be released, Your Honor.

6 JUDGE SUMNER: Certainly.

7 (THEREUPON, MR. DEVEREUX IS RELEASED
8 AS A WITNESS.)

9 * * * * *

10 JUDGE SUMNER: This would probably be an
11 appropriate place for us to take a brief moment
12 to relax.

13 (THEREUPON, THE LUNCHEON RECESS WAS
14 TAKEN FROM 1:40 P.M UNTIL 2:32 P.M.)

15 JUDGE SUMNER: Let me just say this for all
16 of your benefits at this point. We've got a,
17 well, we've got a certain amount of materials
18 we've got to cover in order to be sure we can
19 finish in the next two days, so we may have to
20 run a little bit longer than 5:00, all right?
21 So there are plenty of cookies in back and --

22 MS. ASHENDORF: As long as you're buying
23 drinks at the end of the day.

24 JUDGE SUMNER: I am, all the soft drinks

1 are on me. we'll try not to make it too much
2 longer for you, all right?

3 MS. MONTGOMERY-BLINN: I'm going to send
4 our makeshift coasters around in case anybody
5 needs one.

6 JUDGE SUMNER: Okay.

7 MS. MONTGOMERY-BLINN: Commissioners, I
8 have two things to hand out to you right now.
9 The first one is from Mr. Becton. It is a chart
10 that he made up about -- I'll let Mr. Becton
11 explain it, actually. I'll just pass it around,
12 and you may take one to Mr. Devereux as
13 requested.

14 MR. BECTON: I simply listed each of the bases
15 on which the people charged gave statements,
16 when their statements were given, and who they
17 implicated, and what they -- if they implicated
18 others. There's a separate chart of all the
19 people who were listed as suspects and what
20 people charged or others said about them. And
21 there's also a Crime Stoppers chart showing who
22 was implicated at various times during the two-
23 or three-year period.

24 MS. MONTGOMERY-BLINN: Okay.

1 JUDGE SUMNER: And thank you for your
2 efforts also.

3 MS. MONTGOMERY-BLINN: Thank you,
4 Mr. Becton.

5 MR. BECTON: Oh, and obviously, I've used
6 initials, so if it says no, that means he didn't
7 make a statement made, but he implicated KWB.
8 That would be Kenny, Williams, and Aaron, I guess.
9 Yeah.

10 MS. MONTGOMERY-BLINN: Okay.

11 MR. BECTON: And I have when the police
12 were done and, I guess, whenever the charge was
13 dismissed.

14 MS. MONTGOMERY-BLINN: All right, thank
15 you, Mr. Becton, Judge Becton. There's one more
16 handout about to go around right now, and this
17 is when Mr. Devereux was testifying before lunch
18 he mentioned an Engine, a letter to Engine, and
19 it's not in your briefs and it actually wasn't
20 part of our hearing because we've never been
21 able to actually verify who Engine is. We did
22 show it to Mr. Kagonyera. We've showed it to
23 the claimants, and Mr. Kagonyera does not
24 recognize it. It was in Mr. Devereux's file.

1 The presumption that we made was that it was
2 from his client, but when we interviewed him,
3 Mr. Kagonyera didn't recognize it. He said some
4 people had tried to nickname him Engine, but
5 that that wasn't his regular street name. So
6 we're passing it around so you can take a look
7 at it since Mr. Devereux mentioned it, and I'm
8 just telling you that I cannot say for sure who
9 it's from or who it's to, but it was in
10 Mr. Devereux's file when he provided to us in
11 discovery.

12 All right, we're going to turn now to
13 forensic testing, specifically DNA testing.
14 There is a DNA component to this investigation.
15 There was testing done in 2001 during the
16 investigation. There was a CODIS hit in 2007,
17 and the Commission has subjected evidence to
18 further DNA testing.

19 In 2000 the gloves and bandanas were
20 located along a roadside, and they became a part
21 of the sheriff's department's investigation.
22 And I'd like to call Mr. Lau to explain more to
23 you about those gloves and bandanas and how they
24 were located and what they look like.

1 Mr. Lau.

2 (THEREUPON, JAMIE LAU RETURNS TO THE
3 WITNESS STAND.)

4 EXAMINATION BY MS. MONTGOMERY-BLINN:

5 Q. Okay, Mr. Lau, I believe you're still under
6 oath.

7 Can you tell us a little bit about the
8 gloves and bandanas that were located by the
9 sheriff's department, if you know when they were
10 located and who collected them?

11 A. The gloves and bandanas in this case were
12 collected by Deputy Eddie Davis of the Buncombe
13 County Sheriff's Office. We spoke with
14 Deputy Davis and he confirmed that he was the
15 individual that collected these items. And they
16 were collected on the roadside near the Bowman
17 house the day after the crime.

18 Q. And was there anything other than gloves and
19 bandanas located at that time?

20 A. There was a blue shirt that was also located.
21 In a minute I'm going to show you Eddie Davis'
22 map from the day he collected the items or from
23 when he collected the items. It's unclear if
24 the shirt was collected the same day as the

1 bandanas because it wasn't submitted into
2 evidence until four days later.

3 Q. And these gloves and bandanas, is it correct
4 that they were identified by Tony Gibson?

5 A. Tony Gibson, who I testified about earlier,
6 according to the prosecution summary, identified
7 these gloves and bandanas as similar in color
8 and type as the ones worn by the perpetrators.

9 Q. Okay. So have you seen these gloves and
10 bandanas?

11 A. I have.

12 Q. Okay. And can you tell us about their
13 condition, and if you've got a photograph to
14 illustrate?

15 A. We do have photos of these items. I just want
16 to get out of everybody's way.

17 Q. You may stand, if you need to.

18 A. Thanks. Items 9 and 10, item 9 is a pair of
19 gloves, and that's how it was submitted as
20 evidence, as the pair. Item 10 is a gray
21 bandana. Item 11 is a single glove, it was a
22 brown colored glove. Item 12 was a red bandana.
23 And I just want to point out, this is how item
24 12 was when we reviewed these evidence items.

1 Item 12 was tied in the back right here. So
2 it's tied, and that's how it was when we
3 received it. Item 13 is a second red bandana,
4 and item 14 is another brown glove, which
5 appears to be a match to the prior brown glove
6 that you guys saw.

7 These items, their condition, they're in
8 pretty good condition having been ten years.
9 There's no sign of weathering, I guess, it
10 doesn't appear. They're clean. They just
11 appear like bandanas you might pull out of a
12 drawer or something of that nature. There
13 doesn't appear to be exposure to the sun,
14 fading, or anything of that nature.

15 Here is a map of sort of the critical areas
16 with regard to this homicide. The security
17 video that you've heard referenced quite a bit
18 this morning was at this Kounty Line - Reynolds
19 Station. That was approximately 5.9 miles from
20 the Bowman residence. The Bowman residence is
21 down here. This is Church Road. Church Road
22 runs north and it connects right here to Blue
23 Ridge Road. So the bandanas were found in this
24 area along Church Road before you got to the

1 intersection where it intersected with Blue
2 Ridge.

3 The navy blue t-shirt that I spoke about,
4 it was found along Old Fort Road just after --
5 if you took a left on Church Road onto Blue
6 Ridge Road here, it was found just after you
7 turn from Blue Ridge onto Old Fort Road.

8 Here is the sketch from the, here's the
9 sketch from Eddie Davis that he made, and this
10 sketch was provided to us by Mr. Davis when we
11 spoke with him at the Buncombe County Sheriff's
12 Office. When we spoke with Mr. Davis, he
13 indicated that he maintained his own file and
14 that he would search to see if he could find
15 items from his file that we had not previously
16 seen before. At that point in time he provided
17 us with this envelope with this hand drawn map
18 on it, as well as inside this envelope were some
19 photos that he took when they originally
20 collected the bandanas.

21 If you look at this map, I tried to inset
22 just for your guys' reference a more zoomed-in
23 version of the map you saw before. Here is
24 Church Road running away from the Bowman

1 residence. Here is where it intersects Blue
2 Ridge Drive, and then here is Old Fort Road that
3 it runs into. You can see the bandanas were
4 collected, the pair of gloves, a second glove,
5 another glove, and then the bandanas, bandana 1,
6 5, and 6.

7 If you want to know which -- according to
8 the Buncombe County evidence control form,
9 bandana 1 is one of the red bandanas. It
10 doesn't specify which red bandana it is. Item 2
11 is one of the brown gloves. Item 3 is one of
12 the brown gloves. Item 4 was the pair of gloves
13 you saw. Item 6 is the gray bandana that you
14 saw, and item 5 is a red bandana. And then you
15 can see here on Old Fort Road where the blue
16 shirt was located.

17 Q. Now, Mr. Lau, in the brief is a witness that the
18 sheriff's department spoke to name Matthew Cox,
19 and he said that they drove off in a particular
20 direction. Can you tell us with your map what
21 that direction is?

22 A. When we spoke with --

23 Q. And you can go back with that clicker.

24 A. When I spoke with Mr. Cox as a part of my

1 investigation, I spoke with him when we were
2 talking about the suspects, which direction he
3 saw the suspects after the homicide had
4 occurred.

5 Q. Mr. Cox was a neighbor of the Bowman's, is that
6 correct?

7 A. Mr. Cox was the neighbor. If you're staring at
8 the Bowman household, he was the neighbor
9 immediately on the right of the Bowman
10 household.

11 Q. And he was just a 16-year-old at the time of
12 the --

13 A. Mr. Cox was a teenager at that time. I believe
14 16 is accurate.

15 Mr. Cox said that the suspects ran from the
16 Bowman's house by his house. And if you're
17 looking at Church Road, if you're looking here
18 at Church Road, his house would have been north
19 of the Bowman household. So if the suspects ran
20 from the Bowman household past his house, they
21 would be headed in this direction, north, and
22 that's what he indicated to us.

23 I tried to clarify with Mr. Cox whether or
24 not he then saw the vehicle going that

1 direction, and at that point in time we got
2 disconnected and were unsuccessful in our
3 attempts to speak with him again. So we didn't
4 verify with him specifically which direction the
5 vehicle was going. We just know that the
6 suspects ran from the Bowman household in this
7 direction along Church Road.

8 Q. Thank you. And Mr. Lau, as part of your
9 investigation, did you explore the possibility
10 that these gloves, bandanas, items collected
11 were not at all related to this homicide, but
12 may be related to some other incident?

13 A. I did. In order to investigate whether or not
14 these bandanas could have came from another
15 incident, the way I accomplished that was I
16 subpoenaed records from the sheriff's
17 department. I subpoenaed records of all their
18 investigative records from September 4th to
19 September 19, 2000, in all property and violent
20 crimes.

21 Q. And why did you go back to September 4th?

22 A. Because when we looked at the bandanas we had to
23 be realistic and set some date with which they
24 could have been deposited on the roadside. Not

1 having seen that they were weathered at all or
2 had any fading, we thought that September 4th
3 was a realistic date that we could go back to
4 with regards to the investigative records.

5 Q. And what did you do when you got those reports
6 from the sheriff's department?

7 A. I reviewed each report that I received in
8 response to that subpoena.

9 Q. All right. And tell us about those reports.

10 A. There were no reports which indicated that any
11 property or violent crimes had occurred where
12 the perpetrators were identified as having worn
13 bandanas or gloves, bandanas specifically. I
14 actually cannot directly recall whether
15 gloves --

16 Q. Okay. Were any of those reports pulled as
17 possibilities or anything that you focused on
18 particularly?

19 A. I did notate three reports. I pulled out three
20 reports, and what was in those reports, one was
21 a breaking and entering that occurred on Church
22 Road. It occurred between January 2000 and
23 September 2000. It wasn't reported until this
24 period of time, but the owner had last secured

1 the house in January 2000 and hadn't been back
2 or had not noticed this item missing. The last
3 time he had seen the item missing was in January
4 -- excuse me, the last time he had noticed
5 having the item in his possession was in January
6 2000 and did not know when that item disappeared
7 between that point in time and the report in
8 September 2000.

9 Q. Okay. And another report?

10 A. I'm sorry, yes. A second was for a storage
11 facility located off of Highway 74. It was
12 reported on September 16th that a storage
13 facility had been broken into. The facility had
14 last been secured at 4:30 p.m. on
15 September 15th. There were no suspects and no
16 indications that bandanas had been used. It was
17 some of the storage units had been broken into.

18 Q. And is that the same as with the first, no
19 suspects or indications of bandanas?

20 A. Yes, that's correct.

21 Q. And the last report?

22 A. The last report I noted solely because of the
23 source of the report. The last report was a
24 report of a runaway child dated September 18th.

1 The report was reported by Heather Sommerset.
2 Heather Sommerset is the individual who,
3 according to police records, first located these
4 bandanas and notified the sheriff's department
5 that there were bandanas along the side of the
6 road on Church Road. Other than that, there was
7 nothing significant. I just thought that that
8 name having appeared in a police report the day
9 before she appears in this evidence control form
10 indicating to the law enforcement that those
11 bandanas were there, it just -- the similarity
12 between the names made me flag it.

13 Q. Now, obviously, Mr. Lau, you cannot confirm that
14 these gloves and bandanas are from this
15 incident?

16 A. No. There's no way I could say with certainty
17 that these were the bandanas and gloves used at
18 the incident, but these are the efforts that I
19 undertook to try and see if there were other
20 incidents where bandanas and gloves were used
21 during that time period.

22 MS. MONTGOMERY-BLINN: Commissioners,
23 do you have any questions about the gloves
24 and bandanas for Mr. Lau?

1 MR. JENKINS: You talked about the --
2 give me just a minute. The lady who
3 reported the runaway is also the person who
4 found the bandanas. Do we know who found
5 the shirt?

6 A. I can look on the form. I don't have it in
7 front of me, but it's possible it's notated on
8 that form.

9 MR. JENKINS: But it's not the same
10 person who found the bandanas?

11 A. I don't believe it's the same individual who
12 found the bandanas, no.

13 MR. JENKINS: And my other question
14 is, did Deputy Davis indicate why he would
15 maintain this information in a separate
16 file of his own instead of putting it with
17 the homicide investigative file?

18 A. It was just their common practice, the ID techs,
19 they kept their own files with regard to cases.
20 And he indicated that that was his practice at
21 the time. And he maintained all these files,
22 continued to have them in his possession. And
23 he actually left the interview with us, went,
24 searched through his files, found these ones,

1 and brought them back to us when we were
2 speaking with another officer.

3 MR. JENKINS: So he was an
4 identification technician?

5 A. Yeah, he was a crime scene tech.

6 MR. JENKINS: Okay. That's all I
7 have.

8 MR. BECTON: Did Somerset work for
9 the postal service, a driver?

10 A. She was the driver, yes.

11 MS. ASHENDORF: Jamie, it almost
12 looked like those things were strategically
13 placed in, I mean, in a line. They weren't
14 just discarded. They were -- it looked
15 like they just were placed there.

16 A. I can't speak. All I can show you is --

17 MS. ASHENDORF: Which makes you think
18 someone could have placed them there with
19 someone else's DNA on them?

20 A. This is the hand drawn map, and that's all we
21 know about their location.

22 MS. JOHNSON: Is there any indication
23 from the sheriff's office files whether or
24 not they did a canvas of the neighborhood

1 when that crime occurred and why they did
2 not locate these items?

3 A. They did a canvas of the neighborhood the next
4 morning. My understanding is that these were
5 located as part of that canvas. I don't know,
6 and I can't speak to whether or not that meant
7 they spoke with the postal worker and she said
8 they were here or how they came about that, but
9 they did canvas the neighborhood the following
10 morning.

11 Q. Mr. Lau, weren't these found the following
12 morning?

13 A. Yes.

14 Q. So we don't know whether these were found
15 before, during, or after the canvas, is that
16 right?

17 A. Correct.

18 MS. JOHNSON: Well, it says in the
19 time line that September the 18th is the
20 date of the crime, and then it says
21 September the 20th four gloves and three
22 bandanas were located alongside the road
23 and collected by deputies. So is that,
24 you're saying it was not on the 20th, it

1 was actually on the 19th that they located
2 those instead of two days later?

3 A. That's my understanding, and I'll double-check
4 to make sure that if the brief is incorrect,
5 that it's fixed. But I believe it was the 19th
6 that they were located.

7 JUDGE SUMNER: Any other questions?

8 MR. BECTON: You asked Cox about the
9 direction in which the subjects ran.

10 A. Uh-huh (yes).

11 MR. BECTON: Did he see a car at all?
12 You asked if he saw a car going in that
13 direction.

14 A. We got --

15 MR. BECTON: They would have been
16 running to the car as opposed to away from
17 the car.

18 A. We got disconnected at that point. We were
19 unable to make contact with him after that
20 point.

21 MR. BECTON: Okay.

22 A. So we didn't have the opportunity to verify
23 whether he saw the car and which direction that
24 car was headed, if he did see a car.

1 MR. BECTON: But they ran north?

2 A. Yes.

3 MR. BECTON: Presumably toward their
4 car as opposed to away from their car,
5 right?

6 A. I mean, I can't --

7 MR. BECTON: I'm asking.

8 A. I would say, yes, presumably towards their car.
9 I can't say if their car was parked in that
10 direction.

11 MR. BECTON: Was Cox's house south of
12 the Bowman's or north of the Bowman's?

13 A. North.

14 MR. BECTON: So they ran past his
15 house, but still hadn't gotten to
16 presumably their car?

17 A. That's my understanding. That's what
18 Matthew Cox told me.

19 Q. Mr. Lau, could I just ask that the photos that
20 were turned over to you by the sheriff's
21 department identification tech of the items long
22 the roadside, do those show the items -- and I'm
23 not trying to get you to draw a conclusion. Do
24 the items, are they laid, placed, or are they

1 crumpled heaps?

2 A. I would be happy to pass those photos around if
3 it's something the commissioners would like to
4 see. Sure.

5 Q. Okay.

6 A. I can actually pass them now, if you want.

7 Q. Sure.

8 MR. JENKINS: I've got another
9 question while you're doing that.

10 JUDGE SUMNER: Go ahead.

11 MR. JENKINS: I don't want to get too
12 technical with this, but we don't have any
13 indication of how far apart these sketches
14 are, items are on the road?

15 A. No, we don't.

16 MR. BECTON: But we know to the bend
17 it's three-tenths of a mile, from the house
18 to the curve?

19 A. It's approximately, it's approximately, from the
20 Bowman residence to where Church Road and Blue
21 Ridge Road intersect, it's approximately 1.5
22 miles.

23 MR. BECTON: Okay. What's the point
24 three then? I thought there was --

1 A. The point three is the approximate distance
2 between the bandanas and the navy blue shirt.

3 MR. BECTON: Okay.

4 MR. JENKINS: Do we know if this is a
5 heavily housed area? Is this a rural
6 community?

7 A. (Witness does not respond.).

8 MR. JENKINS: I guess my question is,
9 are there a lot of houses in between this
10 1.5 miles or is this just a stretch of land
11 where these bandanas were thrown out? Do
12 we know that?

13 A. It's not a subdivision. There is not houses on
14 top of houses.

15 MR. JENKINS: Okay. Thank you. I'm
16 just trying to think in my mind.

17 JUDGE SUMNER: More rural is what
18 you're saying; more rural?

19 A. It's a rural -- it's not a subdivision. I'm
20 sorry, the pictures are going around. Are there
21 any additional questions?

22 MS. MONTGOMERY-BLINN: May I approach
23 the witness, Your Honor?

24 JUDGE SUMNER: Yes.

1 A. Thank you.

2 Q. I've just handed you the evidence logs from the
3 gloves and bandanas. Does that help you answer
4 the question about what day they were collected
5 or submitted?

6 A. I see the date that they were submitted on the
7 20th.

8 Q. Submitted on the 20th. Does it say what date
9 they were collected?

10 A. They were submitted on the 20th.

11 Q. Okay.

12 MR. JENKINS: These pictures answered
13 the question I just asked regarding the
14 houses. You see plenty of them.

15 MS. MONTGOMERY-BLINN: Are there any
16 more questions for Mr. Lau?

17 MS. ASHENDORF: So they canvassed on
18 the day after, the 19th, but those weren't
19 located until the 20th?

20 A. They were submitted into evidence on the 20th.
21 And why I say that is because sometimes items
22 are collected and they don't get submitted into
23 evidence until --

24 MS. ASHENDORF: Right.

1 A. I'm looking through my notes right now for the
2 specific day in which they were identified as
3 collected by Mr. Davis when I spoke with him.

4 MS. MONTGOMERY-BLINN: May I approach
5 the witness, Your Honor?

6 JUDGE SUMNER: Yes, you may.

7 Q. Mr. Lau, I'm handing you an investigative report
8 and asking you to take a look at that paragraph
9 right there. And if you would, read it for the
10 commissioners.

11 A. According to the prosecution report, and this is
12 why I've been careful -- on Tuesday, on
13 September 19, 2000, while the neighborhood
14 canvas was being conducted by officers, a
15 subject by the name of Heather Sommerset, 6 Flat
16 Top Mountain Road, who was a postal carrier, had
17 spotted several what appear to be bandanas near
18 the end of Church Road near the intersection of
19 Blue Ridge Development Road lying on the sides
20 of the road. Officers responded, and the items
21 were collected for evidence purpose.

22 So according to the prosecution report,
23 they were collected on September 19th, the
24 morning after. They were submitted into

1 evidence on September 20th, 2000.

2 MR. BECTON: Do the cones represent
3 where items were found?

4 A. The cones have numbers on them, and those
5 numbers should correspond to the numbers on the
6 hand drawn sketch.

7 MS. MONTGOMERY-BLINN: May Mr. Lau
8 step down now?

9 JUDGE SUMNER: Yes. No further
10 questions?

11 MR. BECTON: I have one other. The
12 shoulders of the road look awfully narrow
13 on all the places, and there are curves in
14 it. Is that where you would park a car?

15 JUDGE SUMNER: Repeat that,
16 Mr. Becton, please.

17 MR. BECTON: I was just looking to see
18 where you would park a car. I see two sort
19 of sheriff's department cars parked on the
20 left side of the road.

21 MS. MONTGOMERY-BLINN: Can Mr. Lau,
22 step down.

23 JUDGE SUMNER: Thank you, sir.

24 (THEREUPON, JAMIE LAU STEPS DOWN FROM

1 THE WITNESS STAND.)

2 MS. MONTGOMERY-BLINN: And commissioners,
3 we're about to bring a couple of DNA experts in
4 to explain the testing that they conducted and
5 give you all of the details and answer all of
6 your questions. I'd like to give you a quick
7 overview so you have a roadmap of where we're
8 going and the context to put their information
9 in, but please, when they come in, know that
10 they are the DNA experts and I am not.

11 In 2001 during the investigation the gloves
12 and bandanas were sent to the SBI for comparison
13 with suspects. They compared it to everybody in
14 group B. The SBI located some profiles on the
15 bandanas, but they excluded the people from
16 group B. And the SBI did not use the language
17 excluded in their report, and we're going to ask
18 them a lot about that report to make sure that
19 we understand their language. And they also --
20 the victim was also not a match.

21 A DNA profile was obtained from one of the
22 bandanas, a complete profile. It was for an
23 unknown person. They weren't able to compare it
24 to anybody that they could find a match to, and

1 it was uploaded to the databank, CODIS, the DNA
2 databank for regular query.

3 Also in 2001 at that time serology was
4 conducted. It was conducted on the bandanas in
5 order of isolate where to test, but it was also
6 conducted on the van door that was seized from
7 Robert Wilcoxson's van. They did some testing
8 there for blood, and there was presumptive
9 indications for blood, but it could not be
10 confirmed. We will be giving you the bench
11 notes to this. It was not subjected to DNA
12 testing. The serologist that did this testing
13 is no longer with the SBI, but the commission
14 has asked an independent expert to review this
15 report and the bench notes, and she will be here
16 to testify.

17 In 2007 there was a CODIS hit on this
18 unknown profile, the one from the bandana that
19 had been uploaded to the data bank. This was
20 before the Commission got the case. That CODIS
21 hit was a match to Brad Summey. He's one of the
22 people from group A. In 2010 when the
23 Commission became aware, had the case and became
24 aware of this CODIS hit, they asked the SBI to

1 do a direct comparison to confirm the CODIS hit
2 or not. And so they compared the DNA from that
3 bandana to a profile from Brad Summey that the
4 Commission obtained voluntarily from Mr. Summey,
5 and it was a match.

6 In 2010 the Commission submitted the gloves
7 and bandanas to LabCorp for further testing.
8 During the course of the investigation the
9 Commission was able to obtain DNA samples from
10 all of the people in group A and all of the
11 people in group B to submit for direct
12 comparison, as well as the victim's profile.
13 And I will note, and I think you've heard, that
14 Lacy Pickens from group A is now deceased, but
15 his DNA had been preserved by the Asheville
16 Police Department because he was shot in a
17 police altercation, and they had saved that from
18 the autopsy or from that altercation. His DNA
19 was there, and they allowed us to go to court.
20 They didn't oppose getting the DNA so we would
21 have it for comparison. So we were able to
22 obtain everybody's DNA.

23 With more modern technology and extensive
24 testing, LabCorp was able to obtain additional

1 profiles from the gloves and bandanas. They're
2 going to come in here with all of those reports
3 and explain that all to you, but they did
4 exclude everybody from group B again from all of
5 the additional profiles. Lacy Pickens' DNA
6 could not be excluded from a pair of gloves.
7 The analyst will explain what cannot be excluded
8 means in this situation. Robert Rutherford's
9 DNA could not be excluded from a bandana. The
10 analyst will again come and explain what not be
11 excluded means, and they will give you
12 statistics about that, or at least I hope they
13 will.

14 In 2011 the Commission submitted the panel
15 from Robert Wilcoxson's van door to LabCorp for
16 DNA testing. It was able to be located in 2011
17 and we submitted it. I just note for you that
18 there was no indication that the killers had
19 blood on themselves, but we just wanted to test
20 it to be overcautious, especially since it had
21 been subjected to testing back then. Partial
22 profiles were obtained in some areas on the van
23 door. From those profiles they either were
24 insufficient from comparison or the victim's DNA

1 was excluded each time, but some were just
2 insufficient. They were very partial profiles.
3 Again, an analyst that did that testing will be
4 here to answer any questions you have.

5 In 2011 the Commission submitted the blue
6 t-shirt, the navy blue t-shirt to LabCorp.
7 Again, just to note here, it's unclear if it was
8 related to the gloves and bandanas or not. It
9 was found at a further distance from them, but
10 to be overly cautious we decided to submit it,
11 and a partial profile was obtained off of the
12 blue t-shirt. Every person from group A and
13 every person from group B was excluded from that
14 partial profile. It was just a partial profile
15 from one part of the t-shirt. That analyst will
16 be here to testify.

17 So I'm ready to bring in the DNA analyst
18 unless anybody has any questions for me and my
19 brief knowledge and this brief roadmap.

20 (No audible response.)

21 MS. MONTGOMERY-BLINN: No?

22 JUDGE SUMNER: No questions?

23 (No audible response.)

24 MS. MONTGOMERY-BLINN: All right.

1 JUDGE SUMNER: You may call her.

2 MS. MONTGOMERY-BLINN: First, as she's
3 coming in, to let you know, Ms. Clement from
4 LabCorp, Inc. is coming in, and she's going to
5 testify about the serology that was done back in
6 2001 since that analyst from the SBI is no
7 longer with the SBI. She's reviewed that, the
8 bench notes, is going to explain it. Then Tim
9 Baize from the SBI is going to come in and talk
10 to you about the CODIS hit. He was the one that
11 received the CODIS hit and did the direct
12 comparison. Then Shawn Weiss from LabCorp is
13 going to come in. He is the analyst that did
14 all of the Commission testing that was done at
15 LabCorp. So he is the one that actually did the
16 testing. So that's why we'll have three coming
17 in. And I think she's probably at the back door
18 right now.

19 The Commission calls Meghan Clement.

20 JUDGE SUMNER: Please be seated.

21 MS. MONTGOMERY-BLINN: Commissioners, we
22 are handing out this serology report from the
23 SBI, and the bench notes, and Ms. Clement's CV.
24 This is all coming around. I think the CV is

1 already coming around. The serology report and
2 the bench notes are coming out right now from
3 the SBI, and that's what Ms. Clement reviewed at
4 the request of the Commission.

5
6 THEREUPON,

7 Meghan Clement,
8 Having first been duly
9 Sworn, was examined and
10 Testified as follows:

11 EXAMINATION BY MS. MONTGOMERY-BLINN:

12 Q. Ms. Clement, how are you employed?

13 A. I'm employed as a technical director in the
14 forensic identify department at Laboratory
15 Corporation of America Holdings, Incorporated,
16 which has trademarked the name LabCorp.

17 Q. So we can call it LabCorp, is that right?

18 A. Yes.

19 Q. And how long have you been employed at LabCorp?

20 A. I've been employed there since November of 1994.

21 Q. And before that, where were you employed?

22 A. Prior to that I was employed at the Tarrant
23 County Medical Examiner's Office in Fort Worth,
24 Texas. I was employed there from March of 1991

1 through November of 1994. And prior to that I
2 was employed at the Albuquerque City Police
3 Department Crime Laboratory in Albuquerque, New
4 Mexico from March of 1985 through March of 1991.

5 Q. And tell us about your education.

6 A. I have a bachelor of science in biology from
7 Westfield State College in Massachusetts, and a
8 master of science in forensic sciences from the
9 University of New Haven in West Haven,
10 Connecticut. I've also attended graduate level
11 courses at the University of New Mexico in
12 Albuquerque as well as obtained graduate level
13 credits from the University of Virginia through
14 courses that I took at the FBI Academy in
15 Quantico, Virginia.

16 Q. And have you testified before as a DNA expert in
17 court or in other proceedings?

18 A. Yes, I have.

19 Q. About how many times, do you think?

20 A. I believe it's approximately 340 times now.

21 Q. And have you testified before this Commission
22 before as a DNA expert?

23 A. Yes, I have.

24 MS. MONTGOMERY-BLINN: Your Honor, if

1 everybody has --

2 Q. And Ms. Clement, your CV has been passed around.
3 I think I should grab it and just show it to
4 you.

5 MS. MONTGOMERY-BLINN: If I may, Your
6 Honor.

7 JUDGE SUMNER: Yes, ma'am.

8 Q. Just to confirm that this is, indeed -- will you
9 just take a look at that and tell me if it is,
10 indeed, your current curriculum vitae?

11 A. (Witness reviews document.) Yes, it is.

12 MS. MONTGOMERY-BLINN: Your Honor, I'd
13 ask that Ms. Clement be accepted before the
14 Commission as an expert and permitted to
15 testify as an expert in DNA technology and
16 testing?

17 JUDGE SUMNER: Any questions on the
18 tender of Ms. Clement?

19 (No audible response.)

20 JUDGE SUMNER: She's deemed to be
21 qualified.

22 MS. MONTGOMERY-BLINN: Thank you, Your
23 Honor.

24 Q. All right. Ms. Clement, did the Commission ask

1 you to review a serology report in this matter?

2 A. Yes.

3 Q. And were you able to do that?

4 A. I was, yes.

5 Q. And do you have a copy of that report before
6 you?

7 A. I do have a copy of the report.

8 Q. And what agency is this report from?

9 A. The agency was the State Bureau of Investigation
10 here in North Carolina.

11 Q. And did you also review bench notes for this
12 report?

13 A. I did, yes.

14 MS. MONTGOMERY-BLINN: And does every
15 commissioner have a copy of this now?

16 (No audible response.)

17 MS. MONTGOMERY-BLINN: Everybody has
18 one? Okay.

19 Q. Now, Ms. Clement, I understand that you did not
20 do this testing, but you've been asked as an
21 independent expert to review this report and
22 explain what the report and the bench notes
23 mean. Do you feel comfortable doing that?

24 A. Yes, I do.

1 Q. Okay. would you mind just walking us through
2 this report and telling us what it means and
3 what the results are?

4 A. Certainly. Generally, in any report the
5 original page, obviously, has the type of case,
6 the location, and then it has a list of the
7 items that were submitted. In this particular
8 case there were numerous items submitted, and I
9 don't know if you want me to go through every
10 single one of them, but there were a variety of
11 reference samples submitted from known
12 individuals. These were submitted as blood
13 samples. And then there were various questioned
14 samples that were submitted to be used to
15 identify whether there were any potential body
16 fluids that could be used for DNA testing.

17 Q. And can you tell us what those question samples
18 were?

19 A. Certainly. There were gloves; there was a gray
20 bandana; there was a couple of different red
21 bandana; and multiple other types of gloves.
22 Most of them were cotton gloves, but there were
23 -- let's see, item 9 was a pair of cotton
24 gloves; item 10 was a gray bandana; item 11 was

1 a cotton work glove; item 12 was a red bandana;
2 item 13 was a red bandana; and item 14 is a
3 cotton glove.

4 where you see underneath an original item
5 number something which is listed as the same
6 number dash one or dash two, what that indicates
7 is there was, indeed, a cutting taken from that
8 original item which was subsequently tested.

9 Q. And can you tell what type of testing was done
10 on these items?

11 A. Certainly. There were -- originally most of the
12 evidence items were looked at using a type of
13 light to determine whether something would
14 fluoresce, indicating it could be a body fluid,
15 and then if something fluoresced, they would
16 subject it to various types of serology tests.
17 And serology is simply the identification of
18 body fluids. So each of these items was looked
19 at with the light, looked at to see whether
20 there were any hairs that were present on the
21 items, and if there was something that was
22 visible, it was then tested.

23 For some of the items such as the scarves
24 where there was nothing visible, cuttings may

1 have been taken to determine whether there were
2 any body fluids in areas that the analyst
3 indicated or thought there might be a body
4 fluid.

5 Q. And I'm sorry, go ahead and tell us what
6 happened with these items when they tested them.

7 A. Shall I start with the item number 1 and just go
8 through?

9 Q. Please, that would be --

10 A. Okay.

11 Q. Whatever order makes the most sense to you or is
12 chronological.

13 A. Certainly. I talked about the gloves in the
14 samples. Another item that was submitted was a
15 vehicle door panel. On the vehicle door panel
16 -- and if you turn to page, the back of the
17 third page are the actual analyst's notes. He
18 indicates that there were some very faint stains
19 visualized by fingerprint powder, and so that
20 was covered by taped paper, and underneath it
21 was smudged. He tested these particular stains
22 for the presence of blood. The test is called
23 the phenolphthalin test, and he tested the red
24 areas, and he did obtain a positive result from

1 that area.

2 He then went on to test it for what's
3 called an ABACard, and it looks for anti-human
4 hemoglobin to determine whether it's human blood
5 or not, and he got a negative result on that.
6 He performed two tests, and he got a negative
7 result. He did not have sufficient quantity,
8 you'll see under this, underneath the
9 phenolphthalin there's something called
10 Takayama, and there's a QNS, which generally
11 stands for quantity not sufficient. So he ran
12 out of material and had nothing else to test at
13 that point. And he makes a note he used it all,
14 so he used all of the stain that he had
15 collected, and he cannot say it's human. The
16 reason he cannot say it's human is because the
17 anti-human hemoglobin gave a negative test. The
18 phenolphthalin is only a presumptive test, so
19 that only tells you whether it might be blood or
20 not.

21 Q. So can anybody say whether whatever they tested
22 was blood or not?

23 A. No.

24 Q. Now, when you say that the --

1 A. Not scientifically.

2 Q. Not scientifically, thank you. When you say --
3 it might be blood, right? It might not be
4 blood?

5 A. That's correct. That's about the best you can
6 say.

7 Q. Okay. When you said that the Takayama test was
8 negative, does negative mean that it is not
9 human blood or does negative mean it is either
10 not human blood or there was an insufficient
11 quantity or for some reason the test couldn't be
12 performed?

13 A. Any of the above. It could be that there just
14 was insufficient amounts of the red stain to
15 give a positive result, it could be that it was
16 negative for blood. You really don't know when
17 you get a negative result, you don't know why.

18 Q. Negative does not necessarily mean that it's not
19 blood?

20 A. That's correct.

21 Q. It could mean that? It could mean that the test
22 was incorrect in some way or unable to be
23 performed in some way?

24 A. He used controls, and he does indicate that the

1 positive and the negative controls were
2 accurate. So it would just potentially mean
3 that either the sample was too weak to give a
4 positive result if it truly were blood, or that
5 it wasn't blood. I mean, there's really no way
6 to tell one way or the other.

7 Q. Okay. And you said phenolphthalin is only a
8 presumptive test. Can you just tell us a little
9 bit more about why that's only presumptive?

10 A. Certainly. The phenolphthalin test is a
11 presumptive test, and it will cross-react with
12 numerous fluids, chemicals, et cetera, that
13 truly are not blood. So it's just an indication
14 that it could be blood if you get a positive
15 result.

16 Q. And you can't say anything about likelihood or
17 probability, is that correct?

18 A. No, I cannot.

19 Q. Okay. Can you tell us about -- now, was that
20 all the testing that was conducted on the van
21 door?

22 A. Yes, that's correct.

23 Q. And does it indicate whether the van door was
24 sent on for further testing such as DNA testing

1 or returned, or what happened with the van door?

2 A. In this particular report the remaining evidence
3 -- so basically the van door was held for pickup
4 by the investigating agency.

5 Q. And it was not subjected to further DNA testing?

6 A. Not according to this report, no.

7 Q. Not according to the report. And the analyst
8 that did this report, his indications are that
9 he used the substance up in this type of
10 serology testing, is that correct?

11 A. That is correct; that is correct. And in his
12 report he does clearly state that it revealed
13 chemical indications, however, further testing
14 was inconclusive.

15 MS. MONTGOMERY-BLINN: Commissioners,
16 before I move to the gloves and bandanas,
17 does anybody have any questions about the
18 van door?

19 (No audible response.)

20 Q. Ms. Clement, would you tell us about the next
21 set of testing that was done?

22 A. Certainly. The next few pages of the notes are
23 simply the reference samples that were submitted
24 and indicate which samples they belong to, what

1 numbers they were given, what they contained,
2 and most of the known reference samples had
3 generally two tubes of blood, a purple top tube,
4 and a red top tube, as well as hair reference
5 samples. So that would be item 2, item 3,
6 item 4, item 5, item 6, item 7, and item 8 were
7 all in reference to samples that were submitted
8 as knowns for various individuals.

9 Q. Those would be the blood that was drawn from
10 somebody for a direct comparison?

11 A. That's correct. Item 9 was a pair of blackish-
12 brown work gloves. There was nothing seen with
13 the visual eye. You can see a note, there's a
14 crime scope, which is negative, indicating there
15 was nothing that fluoresced, which could
16 indicate that there was a potential body fluid.
17 There was no hair identified, and no stain. It
18 does appear that he ~~swabbed~~ it and did try to
19 perform a phenolphthalin test to see if maybe
20 there was something he couldn't see with his
21 visual eye. That gave him a negative result, so
22 nothing further was done with these items.

23 Item 10 was a gray bandana. Again, he did
24 not see anything visually. He has a note, crime

1 scope, but it appears that he forgot to
2 designate whether it was positive or negative.
3 There's nothing after that. He did check a
4 likely spot, and you can see under the
5 phenolphthalin it was negative. He did not
6 observe any hair. He then went and took a
7 portion of cutting from an area, and I guess
8 this is also probably checked a likely spot
9 apparently where he thought a mouth might be
10 because he tested for amylase. And amylase is
11 an enzyme found in saliva, which breaks down our
12 food. And so he performed an amylase test on
13 this cutting that he took. And he actually took
14 both the front and the back cuttings and
15 combined them, and he did obtain positive, a
16 strong positive result for the presence of
17 amylase. And so those samples were retained and
18 sent on for DNA testing.

19 Then item 11 was a brown knit glove from a
20 left hand. He did not see anything visually.
21 The crime scope did not show any areas that
22 fluoresced. He did not see any hair. He
23 apparently swabbed it and did test for
24 phenolphthalin, which gave him a negative

1 result, and so no further analysis was performed
2 on item 11.

3 On item 12 we have a red bandana. It was
4 knotted in a circle. He did not see anything
5 visually. The crime scope was negative. There
6 was no hair collected from it. He did test a
7 portion of an area that he considered a likely
8 spot. It was negative for phenolphthalin,
9 however, he also subjected it to amylase looking
10 for the presence of amylase and saliva, and that
11 also gave a negative result. And if at the
12 bottom you see a little cc, that stands for
13 cloth control. Items of clothing, oftentimes
14 you will take a sample away from where you are
15 testing to be sure that you're not getting a
16 positive response from a background material
17 from something that might be on there either
18 from the wash or from somebody else who had
19 handled it or something like that. So the cc is
20 the cloth control, and that also gave a negative
21 result.

22 On item 13, another red bandana, Marlboro
23 Country, it visually did not have anything on
24 it. The crime scope showed no fluorescence.

1 There was no hair collected. He checked the
2 likely spot which he identified as 13-1, and it
3 gave a negative phenolphthalin result. However,
4 it did give a one-plus positive for amylase,
5 which is a weak positive result for the presence
6 of amylase. He also checked the cloth control
7 area. You can see a different area that gave a
8 negative control. So that gives him confidence
9 that the positive amylase is not all over the
10 bandana, it's actually coming from the spot that
11 he thinks -- from somebody who wore it. This
12 sample was retained for DNA testing.

13 And then item 14 is the last item. It was
14 a brown knit glove from a right hand. There was
15 nothing that fluoresced under the crime scope.
16 There was no hair that was collected.
17 Apparently he took a swab and tested it for
18 phenolphthalin, which gave a negative result.
19 He also tested it for amylase, that also gave a
20 negative result, so there was nothing further
21 done with this item.

22 Q. So those items now, the ones that he did
23 positive for amylase, which is a test for human
24 saliva or for saliva --

1 A. Correct.

2 Q. -- he submitted those where?

3 A. There were samples. Those samples were
4 transferred to another agent in the DNA analysis
5 unit for DNA testing.

6 Q. And what does the report indicate happened with
7 the rest of the evidence?

8 A. The remaining evidence was all held for pickup
9 by the investigating agency.

10 Q. Is there anything else in this report and bench
11 notes that you see that you haven't testified
12 about, any tests that were done that are not
13 reported or inconclusive?

14 A. No, all of the tests were reported.

15 Q. And you've just covered all of the tests that
16 were done?

17 A. Yes.

18 MS. MONTGOMERY-BLINN: Commissioner
19 questions?

20 (No audible response.)

21 MS. MONTGOMERY-BLINN: No? We'll ask
22 that Ms. Clement be excused.

23 JUDGE SUMNER: Thank you, ma'am.

24 Q. -- and then I'll ask Mr. Baize to come in.

1 A. Thank you.

2 (THEREUPON, MS. CLEMENT IS EXCUSED
3 FROM THE WITNESS STAND.)

4 * * * * *

5 MS. MONTGOMERY-BLINN: We're going to go
6 ahead and send around the next report. This is
7 the DNA report from 2001 that Mr. Baize is on
8 his way in to testify about.

9 The Commission calls Mr. Baize.

10

11 THEREUPON,

12 Timothy Baize,
13 Having first been duly
14 Sworn, was examined and
15 Testified as follows:

16 EXAMINATION BY MS. MONTGOMERY-BLINN:

17 Q. What is your name?

18 A. Timothy Baize.

19 Q. Where do you work, Mr. Baize?

20 A. I work at the State Crime Lab.

21 Q. How long have you worked there?

22 A. It will be seven years this August.

23 Q. Can you tell us, did you work anywhere before
24 then?

1 A. Before that I worked about three-and-a-half
2 years for LabCorp.

3 Q. For LabCorp, and before that?

4 A. Nowhere.

5 Q. Okay. can you tell us about your education?

6 A. I have a bachelor's of science degree in biology
7 from East Carolina University, I also took
8 coursework in biochemistry from North Carolina
9 State University.

10 Q. Can you tell us about your training in DNA
11 testing and technology?

12 A. Prior to working for the SBI, I did work for
13 LabCorp for three-and-a-half years. After that
14 I did an in-house testing program where it
15 tested mixed samples as well as known and
16 unknown samples for the SBI. I had to complete
17 and pass competency and proficiency tests as
18 well as complete a supervised casework program
19 working cases under a qualified DNA analyst.

20 MS. MONTGOMERY-BLINN: May I approach
21 the witness, Your Honor?

22 JUDGE SUMNER: Yes.

23 Q. Mr. Baize, I'm handing you what I believe is
24 your CV or your statement of qualifications, is

1 that correct?

2 A. Yes, it is.

3 Q. And is that a current statement?

4 A. Yes.

5 Q. And have you testified before, Mr. Baize?

6 A. Yes, I have.

7 Q. And have you been qualified during that
8 testimony as an expert in DNA testing and
9 technology?

10 A. Yes.

11 Q. And do you know how many times approximately
12 you've testified?

13 A. Approximately 28 times.

14 Q. That sounds like exactly.

15 MS. MONTGOMERY-BLINN: Your Honor, I
16 would ask that Mr. Baize be submitted
17 before the commission as an expert in DNA
18 testing and technology and be allowed to
19 testify as such.

20 JUDGE SUMNER: Any questions on the
21 tender?

22 (No audible response.)

23 JUDGE SUMNER: He's deemed to be
24 qualified.

1 MS. MONTGOMERY-BLINN: Okay. Thank
2 you, Your Honor.

3 Q. Now, Mr. Baize -

4 MS. MONTGOMERY-BLINN: May I approach
5 the witness, Your Honor?

6 JUDGE SUMNER: Yes.

7 Q. You may already have a copy of this. I'd like
8 to hand you an SBI laboratory report from 2001.
9 Do you have a copy of this?

10 A. I do.

11 Q. You do, okay. If you would like to keep your
12 copy, that's fine.

13 A. Okay.

14 Q. Now, Mr. Baize, I understand you did not work
15 for the SBI in 2001?

16 A. That's correct.

17 Q. And you, this report here, your name is not on
18 this report, you did not conduct this test?

19 A. I did not.

20 Q. But are you willing to testify about this
21 report, the testing that was conducted, and the
22 results?

23 A. Yes.

24 Q. Thank you. First off, do we have the -- does

1 the entire report include the report as well as
2 the bench notes?

3 A. (Witness reviews document.) I believe it does.

4 Q. As far as you can tell?

5 A. Yes.

6 Q. And is that 22 pages?

7 A. (Witness reviews document.) Yes.

8 Q. Can you walk us through this report and tell us
9 what was tested, what kind of testing was done,
10 and what the results were?

11 A. With this, this testing, what was asked to be
12 tested were blood stains from Walter Bowman.
13 There were two of those. There was a blood
14 stain prepared from Robert Wilcoxson, III, a
15 blood stain from Larry Williams, a blood stain
16 from Teddy Isbell, a blood stain from
17 Kenneth Kagonyera, a blood from Aaron Brewton, a
18 blood stain from Damian Mills, as well as a
19 cutting from a gray bandana, and a cutting from
20 a red scarf. All those items were asked to be
21 looked for for a DNA profile. There were all
22 extracted, and then the DNA profiles were
23 compared to those standards from the blood
24 stains.

1 Q. Were profiles obtained from those two cuttings,
2 from the bandanas or scarves?

3 A. Yes, they were.

4 Q. And I believe that the report talks about
5 item 10 first. Would you like to talk about
6 that one first?

7 A. Sure. The D --

8 Q. Go ahead.

9 A. I'm sorry.

10 Q. Yes, you just -- please.

11 A. The DNA profile obtained from the cutting from
12 the gray bandana, which was the laboratory items
13 10-1, did not match the DNA profile obtained
14 from the blood stains of the victim, Walter
15 Bowman, or the DNA profile obtained from the
16 blood stain of the suspects, Robert
17 Wilcoxson, III, Larry Williams, Teddy Isbell,
18 Kenneth Kagonyera, Aaron Brewton, and Damian
19 Mills.

20 Q. What can you tell us about the profile that was
21 obtained from this bandana? Was it a full
22 profile, a partial profile, a fragment; can you
23 tell us more about that?

24 A. This profile that was obtained was a full

1 profile. It was a profile from a, what we call
2 a single source. It came from one individual.

3 Q. And when you say a full profile, can you tell us
4 very roughly, what does that mean?

5 A. A full profile means that every area that was
6 tested gave a conclusion. We test -- currently
7 we test 16 areas. At the time this was done, I
8 do believe they do test 16. There were a couple
9 of slight differences, but there were still 16
10 tested. And all 16 areas gave a result, and
11 that indicates a full profile.

12 Q. Okay. Now, you said that the results were that
13 it did not match any of the comparison profiles?

14 A. That's correct.

15 Q. What does did not match mean in this context?

16 A. That means that the profiles obtained from the
17 blood stains, they were not a match in comparing
18 them to the unknown profile. They didn't match
19 up. We look at each area. If there's at least
20 one spot that does not match in a single source,
21 then that person did not contribute to that
22 profile.

23 Q. Is that the same as excluded?

24 A. Excluded typically is used with mixtures. If

1 we're talking about a single source profile,
2 it's either did not match or we will say match.

3 Q. So it's even more than excluded?

4 A. Uh-huh (yes).

5 Q. And does that mean those people whose blood
6 stains it was compared to, could that possibly
7 be their DNA that was located in this part of
8 this bandana?

9 A. No, it could not have been.

10 Q. Not possible?

11 A. Not possible.

12 Q. Now, I understand that does not mean that those
13 people didn't touch or handle the bandana, is
14 that correct?

15 A. That's correct. The area that was tested showed
16 a profile that did not match any one of those.

17 Q. Okay. Now, what was done with that unknown
18 profile then?

19 A. That unknown profile was searched through the
20 state CODIS database. At the time that it was
21 searched there was no hit, there was no matching
22 offender. At that point it continues to be
23 searched in the CODIS database until there is a
24 hit.

1 Q. And is that just a routine computer search that
2 is done periodically?

3 A. Yes, it is.

4 Q. And when you say until there is a hit, is that
5 because other people's DNA is continually being
6 uploaded into CODIS?

7 A. Correct. There's multiple offenders are added
8 all the time, as well as forensic unknowns, and
9 suspects from other cases are continually being
10 added.

11 Q. Now, if you don't mind, just to make sure that
12 we completely or that I completely understand
13 it, that profile, that full profile that was
14 obtained off of the cutting of the gray bandana
15 could not possibly be the profile of Walter
16 Bowman?

17 A. (Witness nods head affirmatively.)

18 Q. Robert Wilcoxson?

19 A. (Witness nods head affirmatively.) Correct.

20 Q. Okay. Can you say it out loud for the court
21 reporter?

22 A. I'm sorry, correct.

23 Q. Could not possibly be Walter Bowman?

24 A. Correct.

1 Q. Robert Wilcoxson?

2 A. Correct.

3 Q. Larry Williams?

4 A. Correct.

5 Q. Teddy Isbell?

6 A. Correct.

7 Q. Kenneth Kagonyera?

8 A. Correct.

9 Q. Aaron Brewton?

10 A. Correct.

11 Q. Or Damian Mills?

12 A. Correct.

13 Q. Thank you.

14 All right, and so that was uploaded in
15 CODIS. What else -- was anything else done with
16 that gray bandana?

17 A. At that time, no, it was not.

18 Q. Okay. And can you tell us about the next item,
19 I believe it's 13, 13-1.

20 A. The DNA profile that was obtained from the red
21 scarf, which was laboratory item 13-1, was
22 consistent with a mixture for multiple
23 contributors, and additional bands were present
24 which could not be accounted for by the standard

1 submitted.

2 Q. What does that mean, can you tell us? First
3 off, what does mixture mean?

4 A. A mixture is a sample that contains the DNA
5 profile from more than one individual. The fact
6 that there were additional bands, again, just
7 means that there were multiple people. These
8 individuals did not have those bands.

9 Q. Can you say anything about how many people it
10 was, just two or more, or can you specify
11 further?

12 A. Just from looking at the bands present, it
13 appears that there were at least two, and that's
14 pretty much all that I can say.

15 Q. So there was at least two profiles in the
16 mixture of profiles?

17 A. Uh-huh (yes).

18 Q. That was compared to the blood stains that were
19 submitted?

20 A. Correct.

21 Q. Okay. And can you tell us what those results
22 were?

23 A. The DNA profile obtained from the blood stains
24 of the victim, Walter Bowman, and the DNA

1 profile obtained from the blood stain of the
2 suspects, Robert Wilcoxson, III, Larry Williams,
3 Teddy Isbell, Kenneth Kagonyera, Aaron Brewton,
4 and Damian Mills was not present in the mixture.

5 Q. What does was not present mean?

6 A. That was kind of an older wording. Was not
7 present, nowadays we would say that they were
8 excluded from that profile.

9 Q. So looking at this report and the bench notes,
10 if you were doing this today you would use the
11 word excluded?

12 A. That's correct.

13 Q. Now, does excluded mean the same thing that we
14 just went through, it could not possibly be
15 their DNA?

16 A. It does. It more or less means that they could
17 not have -- they most likely did not contribute
18 to that profile. We're not saying it didn't
19 match. With excluded we're basically saying
20 that they were not present, they were not there,
21 so they could not have contributed to that
22 mixture profile.

23 Q. But again, of course you can't say that these
24 people never touched that bandana, just that

1 portion that a profile was obtained from could
2 not be theirs?

3 A. That's correct.

4 Q. Okay. Now, will you just take a look at -- and
5 I know you've seen these bench notes before, but
6 will you just take a look at them and go through
7 them and tell us if you see anything in there
8 that you've not just testified about or that's
9 not, and that's not in the report? Because they
10 do not mean anything to us so if you can walk us
11 through.

12 A. (Witness reviews document.) I don't believe
13 that there is. Basically, everything that was
14 done with the samples is reported out.

15 Q. And what was done with the cuttings and the
16 blood stains, were they returned or were they
17 maintained at the SBI, if you can tell?

18 A. They were maintained at the SBI. The procedure
19 at that time, they were saving those. I'm not
20 entirely sure exactly what the procedure was,
21 but they were saving those for a period of time.

22 Q. So they, according to this report, at least at
23 that time were maintained at the SBI?

24 A. Yes, they were.

1 MS. MONTGOMERY-BLINN: Commissioners,
2 before I move to the next report, do you
3 have any questions about this report? And
4 we can start passing out the next one.

5 MR. BECTON: I note that on page 2,
6 item 15-1 was referring to a red bandana.
7 You have the summary on page is 2 refers to
8 a red scarf. Are they one in the same
9 thing?

10 MS. MONTGOMERY-BLINN: I'm sorry,
11 Mr. Becton, were you asking a question?

12 MR. BECTON: Just a clarification.
13 Item 13-1 on page 2 talks about cutting
14 from a red scarf. This is item 13-1. On
15 page 2 on the DNA sample submission form,
16 13-1 is referred to as cuttings from a red
17 bandana. Are they one and the same?

18 A. Yes, they were one and the same. The red scarf
19 was how it was initially entered into the
20 system. The body fluid analyst probably just
21 used bandana just to keep things easy.

22 MS. MONTGOMERY-BLINN: Any more
23 questions about -- oh, yes.

24 MR. SMITH: How do you choose a

1 cutting? Where does the cutting come from?

2 A. It depends on what the body fluid analyst
3 tested. I believe the area that was tested
4 tested positive for saliva, and that was the
5 area that he cut.

6 MR. SMITH: Another question. please.

7 So the entire bandana would be examined?

8 A. Yes.

9 MR. SMITH: The whole piece of cloth
10 is examined?

11 A. Yes.

12 MR. SMITH: It isn't like you just
13 randomly choose a spot?

14 A. No. In this instance the bandana itself was
15 looked at by the body fluid analyst, and he
16 noticed one spot that was particularly of
17 interest. That's the area that he focused on
18 and took a cutting of to send to the DNA
19 analyst.

20 MR. SMITH: But you can't be sure that
21 there wouldn't be DNA on some other part of
22 the bandana that you just didn't look at?

23 A. That's correct.

24 MR. SMITH: So it's conceivable that

1 people would have touched this scarf and no
2 DNA would be found on the scarf that would
3 be connected to those individuals?

4 A. That's correct.

5 MR. SMITH: It's not a failsafe
6 system.

7 A. True; that is correct.

8 MR. SMITH: The fact that no DNA is
9 found on this scarf of these people doesn't
10 mean that those people didn't touch the
11 scarf?

12 A. That's correct.

13 MS. MONTGOMERY-BLINN: Any more
14 questions about that report, commissioners?

15 (No audible response.)

16 Q. Mr. Baize, I'd like to turn your attention now
17 to an October 1, 2007, report.

18 MS. MONTGOMERY-BLINN: Commissioners,
19 this has just been passed around. Have you
20 all received it?

21 (No audible response.)

22 MS. MONTGOMERY-BLINN: Has it made
23 it's way all the way around? It's coming.

24 MS. ASHENDORF: It's coming.

1 MS. MONTGOMERY-BLINN: It's coming,
2 okay. We'll wait until it's around.

3 Q. While it's coming around I'll just ask,
4 Mr. Baize, were you employed at the SBI on
5 October 1, 2007?

6 A. Yes, I was.

7 Q. And is this report your report?

8 A. Yes, it is.

9 Q. Do you have a copy of the report and bench notes
10 in front of you?

11 A. Yes, I do.

12 Q. Okay. And does the report indicate -- I'm
13 trying to sort out how many pages it is. It
14 looks like we don't have a total of page numbers
15 so I will just count how many I have. Is the
16 report that you're holding 14 pages?

17 A. I believe it was. (Witness reviews document.)
18 Yes.

19 Q. And does the report that you're holding end with
20 a telephone log?

21 A. Yes, it does.

22 Q. All right. Can you tell us what this report
23 states or what is this report?

24 A. This report is classified as a notification of

1 CODIS hit. What this is is once we receive a
2 CODIS hit confirmation in our laboratory, we
3 will make a phone call to the investigating
4 officers to let them know that there was a CODIS
5 hit. We then typically will wait up to at least
6 30 days to wait to receive a standard. If we
7 don't receive a standard in that time, we then
8 issue a report that basically just says there
9 was a CODIS hit, and we called and let somebody
10 know who that person was, and that information.

11 Q. Can you back up and just tell us, what is a
12 CODIS hit?

13 A. A CODIS hit is when the CODIS database has a hit
14 to either a convicted offender, a suspect
15 standard, or another forensic unknown. The
16 system will issue a report, which then goes to
17 our database section. They then do a
18 confirmation, which is they will take the sample
19 on file for that convicted offender, run that
20 sample to make sure that that matches what was,
21 what the hit was made to as far as the offender
22 sample. There's also some intel that's done.
23 That is then given to us, and we would then make
24 the phone call letting the officers know that

1 there was a hit.

2 Q. And you said there's a couple different kinds of
3 CODIS hits. Is this the type where there was an
4 unknown? Tell us about this type of CODIS hit.

5 A. This was a CODIS hit for the unknown from the
6 gray bandana that was entered to a convicted
7 offender.

8 Q. And who was the CODIS hit to?

9 A. The CODIS hit was to a Bradford Summey.

10 Q. All right. And you said that you wait 30 days
11 for a standard. Can you tell us a little bit
12 more about what you mean and what you mean even
13 by a standard?

14 A. Our policy now is that we wait 30 days before we
15 issue a report. I believe at this time there
16 was no set amount of time to wait. But what we
17 will do is we will make the phone call to let
18 them know who the offender was and that we need
19 an additional DNA standard, which typically is
20 either a cheek swabbing or a blood sample. If
21 we don't receive that in a certain amount of
22 time, we would then issue a report.

23 Q. So what you would be asking for in this case
24 would be a standard from, a cheek swabbing from

1 Brad Summey to compare to that DNA as opposed to
2 just the CODIS database profile?

3 A. That's correct.

4 Q. And so in this particular situation there was a
5 CODIS hit on the gray bandana to Brad Summey,
6 and then what did you do next?

7 A. Once I received the information on the CODIS hit
8 I made the phone call to Detective -- I
9 attempted to get in touch with
10 Detective Sprinkle. He was the investigator
11 listed on the SBI-5. I was informed that he no
12 longer worked there. I was then given
13 Lieutenant John Elkins' number. I called him
14 and then gave him the offender information, and
15 he said that he would speak to the DA and then
16 get back to me.

17 Q. And did he get back to you?

18 A. No, he did not.

19 Q. And are you looking at your phone log on the
20 back page?

21 A. Yes, I was.

22 Q. And do you have any independent recollection of
23 this or are you just looking at your notes?

24 A. Just looking at my notes.

1 Q. And if they had gotten back to you or somebody
2 had gotten back to you from any agency, would
3 you have noted that here?

4 A. Yes. I would have noted that they had obtained
5 the sample and they were sending it in or they
6 weren't going to be able to, that type of thing.

7 Q. And are there situations where agencies choose
8 not to send a sample, for whatever reason that's
9 pertinent to their investigation?

10 A. There's many times where we'll make the phone
11 call, and then we don't get the sample within
12 that allotted time, and then we -- we issue many
13 of these reports.

14 Q. And if they told you, if an agency called you
15 back and said, we're not going to submit a
16 sample, we don't need one, would you have noted
17 that on this phone log?

18 A. I would have noted that on there as well as in
19 the report itself.

20 Q. Okay. So that -- okay. And it also notes in
21 here that you spoke to somebody named
22 Roney Hilliard. Can you tell me about that?
23 That was -- was that the person that told you
24 Detective Sprinkle was not there?

1 A. Yes. I called and left a message to have
2 Detective Sprinkle call me back.

3 Detective Roney Hilliard called me and told me
4 that Sprinkle was no longer there, and then he
5 gave me Lieutenant John Elkins' number.

6 Q. So after nobody responded to let you know that
7 they wanted to send the standard or didn't want
8 to send the standard, what did you do?

9 A. I then -- it was a few months later. I then
10 issued this report and sent it out.

11 Q. When you say sent it out, who did this report go
12 to?

13 A. These reports, one would have gone to the DA's
14 office or should have gone to the DA's office,
15 and another one should have gone to the name on
16 this report, which was Detective Eddie Davis.

17 Q. And Eddie Davis from the --

18 A. Buncombe County Sheriff's Department.

19 Q. And which DA's office?

20 A. The Buncombe County DA's office.

21 Q. And how do those reports go to those offices?

22 A. At this time during 2007 we would have printed a
23 copy of the reports and given those to our
24 evidence tech. She would have put them in the

1 mail and sent them out.

2 Q. Is there any return receipt confirmation or
3 just --

4 A. There is not.

5 Q. And when the report was sent out, would it have
6 been this entire report or would it have just
7 been the first couple pages?

8 A. It would have just been the first page.

9 Q. will you take a look at and go through the bench
10 notes for this report and just tell us, is there
11 anything in here that is not in the report or
12 that you have not just testified about? Because
13 we do not understand what all of these notes
14 mean.

15 A. (Witness reviews document.) It does not
16 appear. The notes that are attached with this
17 report, these are actually the notes produced by
18 the database analyst who did the ~~confirmation~~.

19 Q. And that's not you?

20 A. Correct.

21 Q. But you were the one who made those direct --
22 these are your notes from the phone log?

23 A. That's correct.

24 Q. You're the one who made those phone --

1 A. Yes.

2 Q. There's a fingerprint verification in here, a
3 memorandum?

4 A. Uh-huh (yes).

5 Q. Can you tell us -- let me see. I'm not sure
6 what page it's on.

7 MR. JENKINS: Next-to-the-last, or
8 next-to-the-last piece of paper.

9 MS. MONTGOMERY-BLINN: Next-to-the-
10 last? Thank you.

11 Q. Yes, it says memorandum. Can you tell us what
12 that means?

13 A. Part of the CODIS verification is a fingerprint
14 identification. The DNA database will pull the
15 database card, which is the blood stain as well
16 as the fingerprint card taken at the time of
17 arrest for the conviction. Our section will
18 process the blood stain to make sure that it
19 matches up with what was entered in the system.
20 The fingerprint card is sent to the latent
21 evidence section. They then pull fingerprints
22 from, I believe the AFIS system, and they
23 compare those to what's on the card to make sure
24 that that matches up with that individual as

1 well. They then issue a memorandum that says
2 that.

3 Q. So at the time that this report was done there
4 was a CODIS hit to Brad Summey, but nobody sent
5 you anything for a direct comparison, so no
6 direct comparison had been done in this report?

7 A. Correct.

8 MS. MONTGOMERY-BLINN: Commissioners,
9 questions about this report, the CODIS hit?

10 MR. SMITH: May I ask a question the
11 way an English major would ask a question,
12 rather than a science major? What is the
13 meaning of this with respect to whether it
14 is almost for sure that Brad Summey touched
15 this gray bandana?

16 A. In reference to the CODIS hit?

17 MR. SMITH: Yes.

18 A. It's a very high possibility. CODIS basically
19 gives us probable cause or gives the agency
20 probable cause to get another DNA standard. We
21 then use that DNA standard to make the
22 comparison. We don't rely on the information in
23 CODIS to make that comparison until we get a new
24 standard.

1 JUDGE SUMNER: Did you get that in
2 this case?

3 A. Oh, we did eventually get that, yes.

4 MS. MONTGOMERY-BLINN: I'm about to
5 pass that out.

6 JUDGE SUMNER: Oh, I'm sorry.

7 MS. MONTGOMERY-BLINN: That's all
8 right. I can pass it out now, if you're
9 ready.

10 MR. BECTON: Before you go there, you
11 mentioned that you only sent the first page
12 to Detective Eddie Davis and to the DA's
13 office. Is that the first page that we
14 have here?

15 A. Yes, the very first page.

16 MR. BECTON: I know I see Summey's
17 name in four different places in here, but
18 I do not see it on the first page. So does
19 he not get Summey's name, he only gets the
20 database number 200600021?

21 A. That's correct. Up until just about a month or
22 so ago we did not put the offender's name on the
23 report. We have since changed that. But at
24 this time they would not have gotten that name

1 unless they spoke to the agency and then asked
2 them who it had hit to.

3 MR. BECTON: What's to keep the DA
4 from saying, well, of course I have a hit.
5 I've got four people that have already pled
6 guilty, if he only sees a little number
7 there?

8 A. Yeah, and that -- you know, they're always
9 welcome to call us as well and ask us about this
10 information, but I never received any
11 information, any calls back in this.

12 MS. JOHNSON: But you did make that
13 initial call to the law enforcement agency
14 and advise them that you did get a hit and
15 who it was?

16 A. Yes, I did.

17 JUDGE SUMNER: With a named individual
18 being attached to that also?

19 A. Yes. I gave them everything. There's a hit
20 page as well as with the intel. I would have
21 given the name, any information as far as Social
22 Security number, date of birth, where they -- if
23 the intel said where they possibly may be, I
24 would have given all that information.

1 MS. ASHENDORF: Who did you give that
2 to?

3 A. That was given to Lieutenant Elkins.

4 JUDGE SUMNER: Chief?

5 MR. VICKORY: Going back to the
6 memorandum, all that really says is, is
7 that saying that the sample that was
8 submitted to CODIS -- I'm a little confused
9 of how they matched the fingerprint to the
10 CODIS hit. Can you explain that to me?
11 I'm confused about -- I know it's an SID
12 number that's assigned to the FBI or the --

13 A. I can --

14 MR. VICKORY: -- when they are
15 fingerprinted, but --

16 A. I can try. When the cards come to us it's a
17 folded card that has all their information on it
18 with their fingerprints, and then inside is
19 attached a piece of filter paper which we then
20 put the blood stain on. Those fingerprints are
21 then compared to the AFIS database, I believe,
22 where they pull the fingerprints again to make
23 sure that what they have pulled matched what was
24 on the card that we said was the offender sample

1 from Summey.

2 MR. JENKINS: Okay. I understand now.

3 You also have a fingerprint card that's

4 associated with --

5 A. Yes.

6 MR. JENKINS: -- the standard?

7 A. That's correct.

8 JUDGE SUMNER: Chief, yours is

9 probably in there, too.

10 MR. JENKINS: Yeah, probably is.

11 That's all.

12 MR. VICKORY: You never did talk with

13 Ron Moore or let him know Summey had

14 matched up or --

15 A. No, I did not.

16 MR. VICKORY: What do you do

17 today?

18 A. Today our policy is once we receive the CODIS

19 confirmation that a hit has been made, we have,

20 I believe, five business days to notify the

21 investigating officer. Our policy is if we

22 cannot get in touch with them within the first

23 couple of days, we are then supposed to go up

24 the chain to his supervisor, his or her

1 supervisor. If we cannot get in touch with that
2 person, we would then call the DA's office at
3 that point.

4 MR. VICKORY: Do you send -- you don't
5 send these reports anymore?

6 A. No, the reports still go out. In fact, now with
7 our current paperless system, as soon as I
8 release this report it goes up to the FA Web,
9 which is readily available for the DA's office
10 to pull up and see this report, and it now will
11 have the offender information or the offender
12 name as well as the number there.

13 MR. JENKINS: But what goes up on that
14 website doesn't have any kind of a --
15 there's no index to it or anything.
16 Doesn't it just come in a mass bundle of
17 information to the DA's --

18 A. It does.

19 MR. JENKINS: -- whoever pulls up the
20 computer information for the DA's office?

21 A. It does. We are still sending a paper copy to
22 the law enforcement officer as well, so there
23 should still be two going out.

24 MR. JENKINS: You see the potential

1 problem though, don't you?

2 A. Oh, yes, sir.

3 MR. JENKINS: In a case like this
4 you've got an officer who's -- the
5 investigator is gone, and the DA's office
6 gets the case where, a 2007 case says we
7 might have a match here on this old case,
8 but it doesn't notify or alert anybody the
9 match to somebody who's not already in
10 prison for this event. We've got a
11 problem.

12 MS. MONTGOMERY-BLINN: Are there any
13 more questions about that particular
14 report? Okay, yes.

15 MR. JENKINS: I'm going to -- if I can
16 take up everybody's time. It's to expound
17 on your question.

18 MR. VICKORY: Yes.

19 MR. Jenkins: You said that this was a
20 CODIS hit. Is there a number associated
21 with that to say this is one in so many
22 million chances?

23 A. No. At the time, no, there's not.

24 MR. JENKINS: Okay. That's not until

1 the next --

2 A. That's not until we would get the standard and
3 then compare it back to the evidence to do the
4 numbers.

5 MR. JENKINS: That's all.

6 Q. Okay. Can I draw your attention to the next
7 report, which was July 26, 2010. I believe
8 that's the next report in this case. Please
9 correct me if you have any additional ones.

10 A. That is correct.

11 Q. Okay. And do you have bench notes for that one?

12 A. I do.

13 Q. You do?

14 A. Yes.

15 Q. And Mr. Baize, I just want you to know the
16 Commission right now does not -- has not been
17 given the bench notes yet for that report. So
18 I'm going to ask you to go through those bench
19 reports and just be aware the commissioners do
20 not have them in front of them. We have two
21 pages, which is the report. And is the report
22 itself two pages?

23 A. Yes, it is.

24 Q. And Mr. Baize, are you the analyst from -- that

1 signed on this report, that did this report?

2 A. Yes, I am.

3 Q. And was this report or this type of testing done
4 on behalf of a request by the North Carolina
5 Innocence Inquiry Commission?

6 A. Yes, it was.

7 Q. And can you please tell us what was submitted
8 and what type of testing you did and what the
9 results are?

10 A. What was submitted were buccal swabs from
11 Bradford Summey, and I, again, did a DNA
12 analysis on the buccal swabs to compare them
13 back to the items previously tested, which were
14 the gray bandana and the red scarf.

15 Q. Are buccal swabs cheek swab saliva?

16 A. Yes, they are.

17 Q. Or saliva or skin cells, whatever comes onto the
18 swab?

19 A. Yes, from the inside of the cheek.

20 Q. Okay. All right, please go ahead.

21 A. So in this case I received the standards. I
22 then did our normal extraction and DNA analysis
23 to get a profile for this Bradford Summey. I
24 then compared that to the original profiles

1 obtained by special agent Mark Beauday.

2 Q. What were the results?

3 A. The DNA profile obtained from the cutting from
4 the gray bandana, which was laboratory 10-1, and
5 that was previously submitted and analyzed,
6 matched the DNA profile obtained from
7 Bradford Summey. I then did population
8 statistics on that, and the probability of
9 randomly selecting an unrelated individual with
10 a DNA profile that matches the DNA profile
11 obtained from the cutting from the gray bandana
12 is one in greater than one trillion, which is
13 more than the world's population in the N.C.
14 Caucasian, black, Lumbee Indian, and Hispanic
15 populations.

16 Q. So does that mean if you lined up one trillion
17 people, only one of them would match this
18 bandana?

19 A. That's correct.

20 Q. And that one would be Brad Summey?

21 A. That's correct, unless he has an identical twin.

22 Q. An identical twin. And again, you said that
23 this was a full match for all of the points, all
24 the loci from the bandana to Mr. Summey?

1 A. That's correct.

2 Q. Now, does this mean that Brad Summey touched
3 this bandana?

4 A. It means that his DNA profile was on the
5 bandana.

6 Q. So somebody could have put it there, but his --

7 A. His profile was there.

8 Q. -- his DNA profile is on this bandana for sure?

9 A. That's correct.

10 Q. And in DNA testing match is not a word you get
11 to use unless it's that situation, right?

12 A. Correct. Everything that shows up in the
13 unknown profile has to match, has to be exactly
14 the same as what would be in the standard for us
15 to say a match.

16 Q. Now, will you take a look at your bench notes.

17 A. Okay.

18 Q. And just take a minute to please go through
19 them, and keep in mind we only have this report,
20 and tell us if there's anything else in those
21 bench report, bench notes that's not in this
22 report, that you have not testified to, or that
23 is of any significance.

24 A. (Witness reviews document.) There is not.

1 MS. MONTGOMERY-BLINN: Commissioners,
2 questions about this report?

3 (No audible response.)

4 JUDGE SUMNER: Appears to be none.

5 MS. MONTGOMERY-BLINN: All right.

6 Commissioners, any questions for Mr. Baize?

7 (No audible response.)

8 MS. MONTGOMERY-BLINN: None? All
9 right. We'll ask that Mr. Baize be
10 released, Your Honor.

11 JUDGE SUMNER: Thank you, Mr. Baize.

12 (THEREUPON, MR. BAIZE IS RELEASED FROM
13 THE WITNESS STAND.)

14 MS. MONTGOMERY-BLINN: And the Commission
15 will call Mr. Shawn Weiss.

16

17 THEREUPON,

18 Shawn Weiss,

19 Having first been duly

20 Sworn, was examined and

21 Testified as follows:

22 EXAMINATION BY MS. MONTGOMERY-BLINN:

23 Q. All right. Well, tell us your name, please.

24 A. Shawn, S-h-a-w-n, Weiss, W-e-I-s-s.

1 Q. And where are you employed?

2 A. Laboratory Corporation of America Holdings,
3 trademarked name, LabCorp.

4 Q. All right, and have you been employed any places
5 before that?

6 A. Roche Biomedical Laboratories, but that later
7 became LabCorp, so I've been with the same
8 company 21 years.

9 Q. Tell us about your educational background.

10 A. I have a bachelor of science in biochemistry
11 from North Carolina State. All my other
12 training is continual with the changing of the
13 technology. I've been working in the DNA field
14 for over 21 years.

15 Q. Have you testified before in court as a DNA
16 expert?

17 A. Yes.

18 Q. Do you know how many times?

19 A. Over 155 times.

20 Q. Okay. And Mr. Weiss, I've handed out what I
21 believe is your curriculum vitae.

22 MS. MONTGOMERY-BLINN: May I approach
23 the witness, Your Honor?

24 JUDGE SUMNER: Yes, ma'am.

1 Q. will you please just take a look and tell me if
2 that is, indeed, your CV and if it is accurate
3 and current?

4 A. Yes, last updated November 2010.

5 Q. All right.

6 MS. MONTGOMERY-BLINN: Your Honor, I
7 ask the Mr. Weiss be permitted to testify
8 before the Commission as an expert in DNA
9 testing and technology.

10 JUDGE SUMNER: Any questions from the
11 commissioners on the tender?

12 (No audible response.)

13 JUDGE SUMNER: He's deemed to be qualified.

14 Q. Okay. Mr. Weiss, I'd like to draw your
15 attention to, and if you don't have it, I'll
16 hand you a copy up, of a lab report from
17 November 2, 2010.

18 A. Yes.

19 Q. And you have your copy of that report?

20 A. Correct.

21 Q. And just to verify that we are looking at the
22 same report, it is eight pages and ends with
23 your signature and Meghan Clement's signature?

24 A. Yes. This is a combination of two reports and a

1 letter.

2 Q. Okay. But I am holding the same thing that you
3 are, from what I've just said to you?

4 A. Yes.

5 Q. All right. Can you please tell us what type of
6 -- well, tell us about this report, what was
7 submitted, what type of testing was done, and
8 what the results were.

9 A. In July 2010 we were submitted a pair of black
10 gloves, also submitted a single brown glove, two
11 different red bandanas, another brown glove, and
12 then reference samples from Walter Bowman,
13 Robert Wilcoxson, Larry Williams, Jr., Teddy
14 Isbell, Kenneth Kagonyera, Aaron Brewton,
15 Damian Mills, Bradford Summey,
16 Lacy Pickens, III, and then later we were
17 submitted, January 2011, Robert Rutherford's
18 reference sample. So I think that's ten
19 reference samples.

20 we also, the gloves and the bandanas we ran
21 PCR analysis of DNA. This is preliminary chain
22 reaction. We ran what's called an ABI Minifiler
23 kit. This is different than the regular
24 profiler co-filer kits or the Identifiler.

1 Minifiler is designed for -- it's a little more
2 sensitive than the current kits. Fewer
3 laboratories run it. However, it still runs
4 eight of the thirteen CODIS markers that are
5 available, but it is highly sensitive.

6 Q. Is it something that you tend to use when you're
7 looking at older evidence?

8 A. That's correct, older evidence or degraded or
9 evidence that might have been exposed to
10 elements outside as DNA breaks down over time
11 and being exposed to outside exposure.

12 Q. Now, you said you were running this. How did
13 you obtain whatever you're running this on? Did
14 you cut these items? Did you swab them? Did
15 you scrape them? Please tell us about that
16 process.

17 A. The gloves, the black gloves, again, that was a
18 pair of gloves. We swabbed the inside of these
19 gloves. The brown gloves, there was two
20 individual brown gloves. We also swabbed the
21 inside of these to find out who was wearing
22 these gloves. And then the two bandanas, we
23 also swabbed those. These items we didn't take
24 any cuttings from.

1 Q. Now, those, when you say swabbed, did you swab
2 the entire surface that you're talking about?

3 A. In our practice we try to swab no more than
4 half. We always try to preserve some of the
5 evidence in case another laboratory wants to
6 test it. In this situation we were swabbing
7 about half of inside area of these gloves and
8 the bandana.

9 Q. So a larger surface area than just a small
10 cutting would be?

11 A. That's correct.

12 Q. Okay. All right, and so then when you swabbed
13 them, that's when you ran the Minifiler on
14 whatever you obtained on the swabbing?

15 A. That's correct.

16 Q. Okay. And can you please tell us about what
17 results you obtained?

18 A. For the black pair of gloves and also one of the
19 bandanas we obtained mixtures from more than one
20 individuals. Actually, on these samples three
21 or more individuals. So these were mixtures
22 that were seeing a lot of different individuals.
23 We compared these to all ten reference samples.
24 Actually, on the first report, to nine reference

1 samples. We were able to exclude all nine
2 individuals to the black gloves and one of the
3 bandanas.

4 Q. Can you tell us just so that we've got it in our
5 head the item numbers for those items?

6 A. Sure. The black gloves is item 9; the bandana
7 is item 13. We also obtained a mixture of three
8 or more individuals from glove 11. In this
9 situation we were able to exclude all the
10 reference samples except for Larry Pickens, III.
11 He could not be excluded as a contributor to the
12 DNA, the mixture in the sample.

13 Q. Do you mean Lacy Pickens?

14 A. Oh, Lacy Pickens, yes. However, due -- we were
15 seeing additional peaks that failed to meet
16 reporting standards at all the markers that were
17 obtained, and that was at eight, eight markers.
18 Each one of those we were seeing additional
19 activity that failed to meet reporting
20 standards. Because of that, we weren't able to
21 calculate any statistical estimates for that
22 item.

23 Q. Now, when you say there was additional activity,
24 you're talking about the mixture, is that right?

1 Is that what you mean?

2 A. Correct. In our testing we have thresholds.
3 When we see a DNA peak it has to meet that
4 threshold. If the peak does not come above that
5 threshold, we cannot report it. So this mixture
6 was seeing a lot of additional activity that
7 didn't meet our threshold. The reason we have
8 to set threshold is in what we call
9 electroforesis sometimes you might have
10 artifacts or peaks that may or may not be DNA.
11 So we have to draw a line to say anything below
12 this we're not going to make a conclusion about
13 because it doesn't meet our threshold. This is
14 standard in all DNA testing laboratories.

15 Q. Okay. So let me just make sure that I
16 understand. We're talking about item 11 right
17 now, the single glove?

18 A. Correct.

19 Q. All of the other people that you compared it to,
20 Walter Bowman, Robert Wilcoxson, Larry Williams,
21 Teddy Isbell, Kenneth Kagonyera, Aaron Brewton,
22 Damian Mills, and then later Robert Rutherford,
23 all of those people are excluded?

24 A. That's correct.

1 Q. It cannot be their DNA?

2 A. That's correct.

3 Q. And we're left now with Lacy Pickens?

4 A. Yes. He is the only person we could not exclude
5 from that mixture.

6 Q. Now, can you tell me more about -- I know you
7 cannot exclude. You said you cannot do stats
8 because of that mixture. You cannot tell us
9 statistically probabilities, right?

10 A. That's correct. Because of that additional
11 information, we don't know if we're having
12 dropout from that mixture or information that's
13 not coming out. Because of that, we're not --
14 it's always been in the forensic field that you
15 can't calculate statistical estimates for a
16 sample that you know that we might have fallout
17 from some results that could be present,
18 however, are not strong enough to give us a
19 result to call.

20 Q. Is there anything unusual about Mr. Pickens'
21 profile that's also unusual about the profile
22 that was obtained on this glove?

23 A. Yes. One of our markers or addresses is labeled
24 what we call FGA. He had an allele at one of

1 these that is kind of rare. We have a ladder
2 that we compare to the population. He was
3 actually falling below the ladder. We saw this
4 same allele on the glove also.

5 Q. When you say the ladder, I'm not sure I
6 understood what you meant there.

7 A. When we're making comparisons, when a DNA
8 profile -- our computer program is comparing it
9 to known calls within the population. So all
10 the possible combinations we're seeing at that
11 marker we have to run what we call a ladder when
12 we're doing our testing.

13 Q. So this is saying that Lacy Pickens has one of
14 the alleles. And how many alleles are there in
15 somebody's DNA?

16 A. There's thousands, but four at this marker, most
17 individuals either have one or two.

18 Q. Okay. And his is an unusual one or rare one
19 that is not in -- that is uncommon for the world
20 population?

21 A. That's correct.

22 Q. And whoever's DNA is on the inside of this glove
23 also has that same rare allele that is unusual
24 for the rest of the population?

- 1 A. That's correct.
- 2 Q. But you can't give me any statistics? We can't
- 3 say -- when we say unusual, that's about all we
- 4 can say, or rare?
- 5 A. That's correct, because, again, the mixture is
- 6 not giving us all the information that possibly
- 7 could be there.
- 8 Q. Okay. Can you speculate any more or say any
- 9 more about this?
- 10 A. No.
- 11 Q. Have I exhausted all that you can say about
- 12 this?
- 13 A. Yes.
- 14 Q. Okay. All right, now, I believe you said that
- 15 item 12, the red bandana, excludes everybody?
- 16 A. Yes. We retained very little results for the
- 17 sample. We only got results at three markers.
- 18 So it was insufficient for inclusionary
- 19 purposes, however, we were able to exclude all
- 20 individuals that were compared to that sample.
- 21 Q. And let me just clarify, so item 9, item 12, and
- 22 item 13 are excluding all the people that the
- 23 Innocence Commission asked you to compare them
- 24 to?

- 1 A. We get to 13 --
- 2 Q. Oh, I'm sorry. I thought you had already --
- 3 A. -- on the second report.
- 4 Q. Okay, I apologize. Well, let me just ask you
- 5 about what excluded means at this point. It
- 6 means that the DNA you obtained could not be
- 7 those people that you compared it to?
- 8 A. That's correct.
- 9 Q. But it does not mean that those people didn't
- 10 ever touch these items, just that you were not
- 11 able to obtain their DNA on the location that
- 12 you swabbed on these items?
- 13 A. Yes.
- 14 Q. And it doesn't mean that whoever's DNA is on
- 15 those items wore the items last?
- 16 A. That's correct. DNA can't tell time. If five
- 17 people wore or put on the same glove, there's a
- 18 lot of factors involved. Different individuals
- 19 shed cells at different rates. Also time, if I
- 20 wore it for five minutes, and someone else wore
- 21 it for two days, the person that wore it longer
- 22 is actually going to deposit more cells there.
- 23 But our testing can't determine how long
- 24 somebody wore it or who wore it before the other

1 person wore it.

2 Q. Can testing even pick up maybe the store clerk
3 or the person who packaged it in the
4 manufacturing facility, those kinds of things?

5 A. Yes, especially with the Minifiler kit that
6 we're running is very sensitive, and it's not
7 unusual to pick up people that are handling
8 evidence.

9 Q. Okay. All right, now I apologize. I think you
10 were about to go to item 13 or wherever you're
11 next to go in your report, please do.

12 A. We just talked about bandana 12. Glove 14,
13 again, is a mixture for more than one
14 individual. At least one of them is a male, and
15 again, same situation, we could not exclude Lacy
16 Pickens, III. Again, we weren't able to
17 calculate statistical estimates because at the
18 markers we're seeing additional peaks that
19 failed to meet reporting standards. So again,
20 we weren't able to calculate statistical
21 estimates. And then the source, I mean, all the
22 other reference samples are excluded. So it's
23 the same situation that we saw with the other
24 glove 11 sample.

1 Q. Did those gloves appear to be a pair to you?

2 A. Yes. We were wondering that also when we
3 received them, but they were packaged
4 individually.

5 Q. But one was a right glove, one was a left glove,
6 the same type, as far as you could tell?

7 A. That's correct. They were both brown in color,
8 and they appeared to be a pair.

9 Q. Okay. And the same thing about the rare allele,
10 Lacy Pickens' rare allele is also the same rare
11 allele as is located on the profile in that
12 other glove?

13 A. That's correct. Again, we're seeing an allele
14 that's rare, and again, it falls below the
15 ladder that we compare it to in testing.

16 Q. Now -- oh, I'm sorry. Can you go to the next
17 report then that you have?

18 A. Yeah. The next report we were provided a sample
19 from Robert Rutherford. We compared them to the
20 same samples, glove 9, glove 11, bandana 12,
21 bandana 13, and glove 14. We were able to
22 exclude him from all items except for the
23 bandana 13. We could not exclude him as a
24 contributor to the DNA of the sample. And this

1 time we were able to calculate statistical
2 estimates. Using six markers of the nine that,
3 or eight that we tested we were able to come up
4 with a random match probability of including --
5 of somebody that would be included in that
6 mixture. We compared this to the African-
7 American, Caucasian, and Hispanic populations.
8 So for African-Americans it's 1 in 370, for
9 Caucasian it's 1 in 311, and for Hispanic it's 1
10 in 1,390. What does this mean? If you could go
11 out and randomly pick 100,000 people at random
12 and test them, you would expect anywhere from
13 300 to 400 individuals would also, of those
14 100,000 people chosen at random, could also be
15 in this sample.

16 Q. Now, did the Commission ask you to also take a
17 look at what you had found from this item and
18 compare it and combine it with what the SBI had
19 found from their original testing of this item?

20 A. Yes.

21 Q. And tell us what that means, what -- or explain
22 to the Commission what it was that we asked you
23 to do.

24 A. We were informed that the SBI, North Carolina

1 SBI also tested bandana 13, and they were able
2 to obtain some results at different markers than
3 we were able to obtain. So we were able to --
4 we were asked to combine their results with our
5 results to come up with a statistical estimate.
6 Again, the probability of randomly selecting an
7 unrelated individual with a DNA profile that
8 would be included in the mixture of the DNA
9 obtained from the bandana, this time we're
10 taking our six markers and four of their markers
11 for a total of ten. The statistical estimates
12 for African-American is 1 in 6,060, for
13 Caucasians it's 1 in 4,440, for Hispanic it's 1
14 in 25,600. And again, I can use the same
15 example. If you took 100,000 people at random,
16 tested them, now we're, instead of being up in
17 the 300, 400 range of individuals that could be
18 included in that mixture, now we're down to
19 about 25 or 30 individuals could be included in
20 that same mixture.

21 Q. That was out of 100,000?

22 A. Correct. And again, these are just estimates.

23 Q. What if you broke that down to just the African-
24 American population?

1 A. African-American population is 1 in 6,060. So
2 you're talking around 20 individuals if you took
3 about 100,000 people and tested them at random.

4 Q. Now, you've got your bench notes there. Is
5 there anything in the bench notes that's not in
6 this report that you haven't testified about
7 today?

8 A. No, just the other reports.

9 Q. Okay. The van door, the blue t-shirt reports?

10 A. That's correct.

11 Q. Okay.

12 MS. MONTGOMERY-BLINN: Before we get
13 to those let me ask the commissioners if
14 they have any questions about these
15 reports.

16 MR. SMITH: Can we do -- I'm sorry,
17 did I interrupt you?

18 MR. JENKINS: No, no, no. Go ahead.

19 MR. SMITH: No, you go; you go.

20 MR. JENKINS: How often does a report,
21 a DNA report from one agency go to another
22 lab to create one DNA report, Is that
23 something you do routinely?

24 A. Yes. Because we're a private laboratory, we're

1 getting results from laboratories all across the
2 country, and they will ask us to take their
3 results and combine it. Sometimes we won't even
4 test a sample, and they'll ask us to compare it
5 to a sample that we tested.

6 MR. JENKINS: Is the reason that you
7 would be able to obtain a sample larger
8 than their sample is because they were
9 taking it from a different place on the
10 item or is it because -- can you further
11 explain that because I don't think I
12 understand?

13 A. Yes. Even though if you have the bandana, and
14 we take a swabbing from this side, and they take
15 a swabbing from another side, there might be
16 more cells present on one side of the bandana
17 versus the other. So it's not unusual for
18 different laboratories to get same but similar
19 results. One might get more than the other. As
20 a private laboratory we're usually getting
21 evidence secondhand, meaning someone has already
22 tested or looked at the items.

23 The other thing is with this Minifiler kit
24 we're actually picking up -- our markers are

1 different sizes. The Minifiler is actually
2 picking up the larger sizes. In their report
3 they were actually picking up the smaller sizes.
4 And the markers that they were picking up are
5 not included in the Minifiler kit.

6 MR. JENKINS: Okay. That answers my
7 question. The other question I have is,
8 going back to this report where you have a
9 unique allele, I think you were saying.

10 A. Allele.

11 MR. JENKINS: Allele, excuse me. But
12 all you can really say about that is that
13 there's a unique allele there, but that's
14 as far as you can go with it?

15 A. That's correct.

16 MR. JENKINS: You couldn't say that
17 three more or five more in this room could
18 have the same thing?

19 A. That's correct.

20 MR. JENKINS: Okay.

21 A. Yeah, because the mixture, we're seeing three or
22 more individuals, it's, we can't put any
23 statistical estimates on that. And then if we
24 just chose that one marker and put it on it,

1 then we would be biased by picking and choosing
2 what we want to do. We have to look at the
3 overall profile. But we can make the comment,
4 yes, there is something unique here that this
5 person also has, however, we can't put
6 statistical estimates because we're not seeing
7 all the information present at that marker.

8 MR. BECTON: Well, I guess I have a
9 follow-up then. Using your, I think, your
10 statistics, if you took 100 African-
11 American men at random and Rutherford was
12 one of them, am I to understand you to say
13 that Rutherford and 19 others out of the
14 that 100,000 would be a match for what you
15 found?

16 A. Yes, that's possible. The example, if you could
17 put all those 100,000 people in like a stadium -

18 MR. BECTON: Right.

19 A. -- and then if you look at the --

20 MR. BECTON: And Rutherford was one of
21 them.

22 A. Correct.

23 MR. BECTON: Are you saying only 19
24 other people --

1 A. Correct, and that's just an estimate. And what
2 you would do is if you look at the bandana
3 profile, and you start going through and you see
4 the numbers that are on the chart, you say, if
5 that -- you know, have everyone stand up and
6 say, if you have that, you have to stay
7 standing. By the time you go through all the
8 numbers, you would have approximately 20
9 individuals still standing that would have that
10 same profile that we were seeing.

11 MR. VICKORY: The threshold levels
12 that you use, are they different than the
13 SBI's?

14 A. There in the field, most labs range anywhere,
15 what we call RFUS or peak heights, anywhere from
16 75 to 150. However, different machines might
17 give different thresholds, so each machine might
18 be different even in the same laboratory, and
19 all that's found out through validation. With
20 electrophoresis some of these scanners, they have
21 a tendency to -- what we call noise or baseline
22 noise, to be more on one machine versus another.
23 So we're constantly monitoring these machines to
24 make sure that the thresholds stay about the

1 same. So most laboratories are somewhere
2 between 75 and 150, but every laboratory is
3 different.

4 MR. VICKORY: I guess I've never seen
5 statistics this low with the SBI. I was
6 wondering, do they cull them out at a
7 different level than you do?

8 A. The main reason that these are so low is because
9 we have mixtures with three or more individuals.
10 So the computer program is taking all the
11 different combinations of those numbers and
12 calculating, could this person be an 8-8, and 8-
13 12, an 8-14, an 8-15. So it's taking all those
14 possible combinations. When you see high
15 numbers, that profile becomes more unique and
16 you can say, given the size of that number, one
17 in greater than the world population that, yes,
18 that DNA came from that person. Most of those
19 are from single source samples. When you get in
20 the mixture calculations, those numbers tend to
21 come down because now it's possible for more of
22 the population to be actually included in that
23 mixture.

24 MR. VICKORY: I guess I'm just kind of

1 wondering why the SBI -- do they report it
2 differently than you do, I guess, is what
3 I'm getting at?

4 A. They might be using a likelihood ratio where
5 we're using a random match probability. There's
6 three or four different calculations that
7 forensic laboratories can use for statistical
8 estimates. Likelihood ratios have a tendency to
9 be a lot higher, but likelihood ratio in this
10 situation wouldn't apply because we can't come
11 up with theories of prosecution and defense for
12 our mixture calculation because there's too many
13 individuals that possibly could be in the
14 mixture.

15 MR. JENKINS: So we don't, just for a
16 point of clarification, we don't really
17 know which method the SBI uses in
18 comparison on a sample that's a mixture?
19 Do we know that for sure?

20 Q. Do you know this?

21 A. A lot of times they have a tendency to use
22 likelihood ratios, but they just started doing
23 calculations on mixtures not too long ago. I've
24 been to a couple court cases where they don't

1 even calculate statistics. But more and more
2 courts across the country, because we testify
3 across the country, are requiring if you're
4 going to say someone's included, you have to
5 include some kind of statistical estimate to put
6 a weight onto that evidence. But until recently
7 they haven't calculated statistical estimates on
8 mixtures.

9 I've seen reports where mixtures sometimes
10 you can determine a major and a minor component,
11 and they'll say -- they'll calculate saying --
12 they'll pull out that profile and calculate just
13 for the major or just for the minor. This
14 statistical estimate here, we're doing all the
15 possible combinations because we're seeing it
16 from three or more individuals. And again,
17 that's going to make that profile more rare, and
18 that's why the numbers are coming down.

19 Q. Can I ask then, is the conclusion -- and I know
20 you cannot say anything conclusory about this,
21 but that another lab might do exactly what you
22 did, but come up with different statistics?

23 A. Yeah. I mean, they -- it's not unusual. You
24 know, if someone has a different -- we use the

1 FBI PopStats program. Someone might use another
2 program that might throw in -- there's data
3 values that are involved in these calculations,
4 and that's for small population subset groups.
5 Some might use a higher to be more conservative,
6 someone might use a lower one to be less
7 conservative. You know, in a situation that
8 would apply to, say, a subset of Lumbee Indians.
9 That way you would have a higher data value. So
10 different labs will put in different
11 calculations into their statistical estimates.
12 And again, there's different programs out there
13 also.

14 Q. We've got more reports.

15 MS. MONTGOMERY-BLINN: Any questions
16 about this report, any more about this
17 report?

18 (No audible response.)

19 MS. MONTGOMERY-BLINN: Is the next
20 report going around? Okay.

21 Q. While it's going around, Mr. Weiss, if I can
22 just turn your attention to the April 20, 2011,
23 report. And again, I don't have bench notes for
24 this, but you do, is that correct?

1 A. (Witness does not respond.)

2 Q. You have bench notes? You've reviewed the bench
3 notes for this?

4 A. Yes.

5 Q. You conducted the testing for this report?

6 A. Yes.

7 Q. And as soon as it gets around, I'll start asking
8 you -- okay.

9 If you will, take a look at the report and,
10 please, tell us what was tested, how was it
11 tested, and what results did you get?

12 A. March 31, 2011, we were given a door panel.
13 This was a complete door panel. We looked at
14 six different areas. The first three areas we
15 looked at, at the bottom of this door panel
16 there was like a carpet area on the side of the
17 panel. We saw some staining. We did a
18 presumptive test for blood on these items. They
19 came back negative for blood so we stopped
20 testing on those, those areas of the door.

21 Next we looked at an area near the handle
22 of this door panel. We could tell where someone
23 else was swabbing in this area. We also saw a
24 serology report where it was very -- some blood

1 was determined to be on this door.

2 Q. Was that from the SBI, that serology report?

3 A. That's correct.

4 Q. You looked at the parts that they had tested to
5 decide where to do your testing?

6 A. That's correct.

7 Q. I'm sorry. Please, go ahead.

8 A. And we could tell that some very large areas
9 were swabbed. We swabbed in those areas and
10 around those areas. We tested three different
11 areas around the door handle and we obtained
12 some very limited results. Two of those areas
13 we only obtained two results, two of our
14 markers.

15 Q. Two out of how many markers?

16 A. We tested -- again, we used the Minifiler kit,
17 those test for eight markers, also what we call
18 Amelogenin to determine whether it was male or
19 female, and one of the samples actually gave us
20 one marker. So again, we're getting very
21 limited results. We compared this to Walter
22 Bowman and we were able to exclude him from two
23 of the areas, and then one of the other areas we
24 could not draw a conclusion. We're just not

1 seeing enough information to say whether that
2 DNA from that sample came from him or not. So
3 that sample was insufficient.

4 Q. would that be insufficient for anybody or just
5 Walter Bowman?

6 A. We said insufficient for inclusionary purposes.
7 We could actually compare somebody and exclude
8 him. Because we were seeing similarities to
9 Walter Bowman, we just could not, we could not
10 exclude him on the one area.

11 Q. That's one out of eight --

12 A. The other two areas --

13 Q. -- possible alleles?

14 A. We only got results at two markers.

15 Q. Okay. So he -- I'm sorry, please continue.

16 A. So two of the areas we were able to exclude him,
17 and then one of the areas it was insufficient
18 for inclusionary purposes, and we could not make
19 a conclusion whether he was included or
20 excluded. And if you're looking at the report
21 of the sample that we labeled F, area F, is the
22 one that we could not make a conclusion whether
23 he was there or not.

24 Q. And do you know what type of substance you were

1 getting DNA from? Could you tell if it was
2 blood or sweat or saliva or skin cells?

3 A. No. Again, we were looking at a very shiny area
4 that appeared to be already swabbed. We could
5 not determine whether that DNA came from what
6 type of cell. Whether it was skin cells,
7 saliva, blood, we could not tell.

8 MS. MONTGOMERY-BLINN: Commissioners,
9 do you have any questions about this
10 report?

11 (No audible response.)

12 MS. MONTGOMERY-BLINN: No? Okay.
13 We're going to send another report around,
14 the last one.

15 Q. And just as that's going around, Mr. Weiss, I'm
16 looking at the April 22, 2011, supplemental
17 certificate analysis. Is that also what you're
18 looking at?

19 A. Yes.

20 Q. And it's three pages?

21 A. Correct.

22 Q. And are you the person who, the scientist who
23 conducted this testing and drafted this report?

24 A. Yes.

1 Q. All right. Will you please walk us through this
2 report?

3 A. April 18, 2011, we got a t-shirt and we were
4 asked to see if we could determine who was
5 wearing this t-shirt. We took two samples from
6 this area, from the collar area of the t-shirt.
7 We swabbed and cut mainly because we were
8 limited on the time that we had to process this
9 sample, so we did two preps at once. Again, we
10 took one of the preps to amp to our Minifiler
11 kit, and the other sample we amp to what we
12 call Identifiler Plus kit. Identifiler Plus kit
13 is a new kit that we have in our laboratory.
14 It's the new, improved Identifiler, if you could
15 say. It's designed to help filter out
16 inhibitors that prevent us from getting results.

17 On this sample of the swabbing, it gave us
18 results at four markers. And again, we tested
19 eight, nine if you count Amelogenin, and we
20 compared it to all ten reference samples, and
21 were able to exclude all ten individuals.

22 Q. Okay. So that means the ten people that you
23 compared it to, their DNA was not present in the
24 portion of the shirt that you tested?

1 A. That's correct.

2 Q. And of course, just as we went through before,
3 that doesn't mean that those individuals didn't
4 have any contact with that shirt or touch that
5 shirt, just not on the portion that you tested?

6 A. That's correct.

7 Q. And it doesn't mean that whoever last wore that
8 shirt's DNA is located on that shirt?

9 A. Yes.

10 Q. And --

11 A. And then also the shirt cutting, we weren't able
12 to get any results from that prep.

13 Q. From the second prep?

14 A. That's correct.

15 Q. And if the Commission would like you to, are you
16 capable of cutting and testing other areas on
17 the shirt?

18 A. Yes.

19 MS. MONTGOMERY-BLINN: Commissioners -

20 Q. Oh, and I'm sorry, the area of the shirt that
21 you tested was the collar of the shirt?

22 A. Yes. When we have shirts, when we're trying to
23 find out who wears a shirt we usually go for the
24 collar area and also the armpits of the shirt.

1 Again, we were limited on the time that we had
2 to process this sample so we only tested one
3 area, but we took a cutting and a swabbing to
4 try to get results. One of the reasons we took
5 a swabbing, this shirt had really -- it was a
6 really dark color, and clothing dyes sometimes
7 inhibit PCR, so it sometimes is better to swab,
8 other times it's better to cut, so we did both
9 processes.

10 Q. And did you select the collar in part because
11 there was some wear on the collar?

12 A. Yeah. It looked like there was a little bit of
13 wear on the collar area of the shirt.

14 MS. MONTGOMERY-BLINN: Commissioners,
15 questions about this report or any general
16 questions at all for Mr. Weiss?

17 JUDGE SUMNER: There appear to be
18 none.

19 MS. MONTGOMERY-BLINN: All right.
20 I'll ask that Mr. Weiss be allowed to step
21 down and leave.

22 JUDGE SUMNER: Thank you, sir.

23 A. Thank you.

24 (THEREUPON, MR. WEISS STEPS DOWN FROM

1 THE WITNESS STAND.)

2 * * * * *

3 MS. MONTGOMERY-BLINN: Your Honor, would
4 you like to take a short break before we move
5 into the next part of our presentation?

6 JUDGE SUMNER: We'll take about five
7 minutes.

8 (THEREUPON, A SHORT RECESS WAS TAKEN.)

9 MS. MONTGOMERY-BLINN: All right, we are
10 now going to turn our focus to what we've
11 labeled group B. Just a reminder, in the front
12 of your briefs is that handout that summarizes
13 the names of group B and group A just to keep
14 them straight because I know it's kind of
15 complex. But group B, this is the group that
16 was the focus of the sheriff's investigation.
17 It includes Kenneth Kagonyera, Robert Wilcoxson,
18 Larry Williams, Teddy Isbell, Damian Mills, and
19 Aaron Brewton. Kagonyera, Wilcoxson, Williams,
20 and Mills pled to second degree murder. Isbell
21 ultimately pled to conspiracy to commit armed
22 robbery. Charges were dismissed against
23 Aaron Brewton, He pled to some other charges at
24 the time. And the Commission staff was able to

1 interview each person from group B. So we're
2 going to go through our interviews and discuss
3 these people.

4 Kenneth Kagonyera, all of his sheriff's
5 interviews are included or summarized in your
6 brief. He denied involvement in the crime in
7 three separate interviews with the sheriff's
8 department. On November 30, 2001, Mr. Kagonyera
9 confessed to District Attorney Ron Moore, the
10 district attorney's investigator, and his
11 attorneys. That confession is on page 101 or
12 the summary report of that confession is on page
13 101 in the brief. As you've noted, none of the
14 interviews are recorded, so we don't have
15 transcripts, we just have the sheriff's
16 department summaries or, in that case, the DA
17 investigator's summary.

18 Mr. Kagonyera pled guilty on December 13,
19 2001. He also pled to an unrelated assault with
20 a deadly weapon with intent to kill, inflicting
21 serious injury, cruelty to animals, drug
22 possession, and breaking and entering. The
23 convictions were consolidated for one sentence,
24 and he was sentenced to the mitigated range for

1 144 to 189 months.

2 (THEREUPON, MR. KAGONYERA'S RECORD IS
3 DISPLAYED ON THE SCREEN.)

4 MS. MONTGOMERY-BLINN: This is
5 Mr. Kagonyera's record. And while you're taking
6 a look at that, I am going to be calling Mr. Lau
7 to testify. And this record includes the things
8 that he pled to.

9 (THEREUPON, JAMIE LAU RETURNS TO THE
10 WITNESS STAND.)

11 EXAMINATION BY MS. MONTGOMERY-BLINN:

12 Q. All right, Mr. Lau, you are still under oath.
13 Can you tell us when Mr. Kagonyera first
14 contacted the North Carolina Innocence Inquiry
15 Commission?

16 A. Sure. Mr. Kagonyera first contacted the
17 Commission on August 26, 2008, by letter. He
18 stated in that letter that DNA could prove his
19 innocence.

20 Q. Okay. And as part of the Commission procedures
21 we routinely send out a questionnaire. Was that
22 done in this case?

23 A. It was.

24 Q. And when did he returned and completed

1 questionnaire arrive at the Commission?

2 A. February 23, 2009.

3 Q. And what did he write on that questionnaire
4 about his innocence or guilt?

5 A. He wrote that he was innocent because he did not
6 commit this crime. He had no knowledge of it.
7 He says that DNA and a confession of a federal
8 inmate will prove his innocence.

9 Q. Did you have the opportunity to interview
10 Mr. Kagonyera?

11 A. I did have the opportunity to speak with
12 Mr. Kagonyera. We met three times.

13 Q. Three times. And is Mr. Kagonyera currently in
14 custody?

15 A. Yes, he is.

16 Q. Were all those meetings in the Department of
17 Corrections facility?

18 A. They were.

19 Q. Tell us about the first meeting.

20 A. The first meeting we didn't speak in regards to
21 this crime. We met him on March 1, 2010. We
22 didn't conduct an interview of him at that time.
23 At that time we met with him to have him
24 complete the Affidavit of Indigency because the

1 decision had been made to move the case into
2 formal inquiry.

3 Q. You say to complete a -- did you give him all of
4 his options regarding an attorney, and he chose
5 to complete the Affidavit of Indigency?

6 A. Yes, that's correct. I explained to him that he
7 had the opportunity to complete that form. I
8 also explained that completing that form doesn't
9 insure that he will be deemed indigent or that
10 he would be given an attorney. I just explained
11 to him that if that's the form he opted to sign,
12 we would submit it to the judge and see what
13 would happen from there.

14 Q. And did you also bring the documents should he
15 have chosen to waive his right to an attorney or
16 hire his own attorney?

17 A. I did.

18 Q. All right. And was Mr. Kagonyera ultimately
19 determined to be indigent by a judge?

20 A. Yes. Judge Sumner reviewed that affidavit and
21 deemed him indigent and assigned counsel.

22 Q. Okay. And did Indigent Defense Services assign
23 a specific attorney to represent Mr. Kagonyera?

24 A. Yes, that's correct.

- 1 Q. And who is that attorney?
- 2 A. That attorney is Mr. Frank Wells.
- 3 Q. And when Mr. Wells was appointed to represent
- 4 Mr. Kagonyera, what's the next thing that
- 5 happened in regards to the case?
- 6 A. Mr. Wells met with Mr. Kagonyera. At that time
- 7 he had with him a copy of the Commission's
- 8 waiver of procedural safeguards. He reviewed that
- 9 form with him presumably, and that form was
- 10 signed by Mr. Kagonyera and submitted to the
- 11 Commission.
- 12 Q. And his attorney as well?
- 13 A. And his attorney signed that form as well.
- 14 Q. Okay. When's the next time you met with
- 15 Mr. Kagonyera?
- 16 A. I met with him on November 17, 2010 to conduct a
- 17 full interview at that time.
- 18 Q. And who was present during that interview?
- 19 A. Ms. Smith from the Commission and also
- 20 Mr. Wells, his attorney.
- 21 Q. Now, to note, for convenience sake, you also
- 22 later on were present while I conducted a
- 23 deposition of Mr. Kagonyera, is that correct?
- 24 A. That is correct.

1 Q. And the --

2 A. Mr. Wells was also present at that deposition,
3 and Ms. Pretty from our Commission was also
4 there.

5 Q. Thank you. And that deposition. you've prepared
6 that as a handout to go home with the
7 Commissioners tonight, is that correct?

8 A. Yes, that deposition has been given to each of
9 the commissioners, is my understanding.

10 Q. The transcript of that or it has been or will
11 be, is that correct?

12 A. The transcript has been or will be given to each
13 commissioner before they leave tonight.

14 (THEREUPON, A DISCUSSION WAS HAD OFF
15 THE RECORD WHICH WAS NOT REPORTED BY THE
16 COURT REPORTER.)

17 Q. So in order to be efficient and save time and
18 knowing that the commissioners will enjoy reading
19 that deposition tonight, what I'd ask you to do,
20 Mr. Lau, is just tell us, was he consistent in
21 the second interview with the later deposition,
22 and describe any inconsistencies or any
23 additional information from this interview.

24 A. Our interview on November 17, 2010 was

1 consistent with the later deposition that we
2 conducted. There are a few things that were
3 included in the interview on November 17th that
4 were not part of the deposition, and one of
5 those was information about an individual named
6 Richard Darity. According to Mr. Kagonyera,
7 Mr. Darity was jail with him at the Buncombe
8 County Detention Facility and told Mr. Kagonyera
9 that Robert Rutherford had been stopped and
10 questioned by the Buncombe County Sheriff's
11 Office with regard to this case while
12 Mr. Rutherford was traveling from his
13 girlfriend's house back to the Asheville area.

14 I was able to speak with Mr. Darity in an
15 attempt to confirm this information that was
16 conveyed by Mr. Kagonyera, and Mr. Darity did
17 not confirm that information. He said he didn't
18 know or have that information. Additionally,
19 Mr. Kagonyera during the course of this
20 interview spoke of one Kevin Polk as a federal
21 inmate in the Buncombe County detention facility
22 with him while he was being held there on these
23 charges. Mr. Kagonyera told us that when
24 Mr. Polk saw him at the detention facility, he

1 expresses surprise to Mr. Kagonyera that they
2 were still being held. And Mr. Polk told
3 Kenneth Kagonyera that he knew that
4 Robert Rutherford had committed this crime
5 because Rutherford confessed to Kevin Polk while
6 they were out at a club together prior to
7 Mr. Polk being incarcerated.

8 Q. That's what Mr. Kagonyera told you?

9 A. That's what Mr. Kagonyera told me that
10 Kevin Polk told Mr. Kagonyera that
11 Robert Rutherford confessed to him at a club.

12 Q. Now, were you able to locate Kevin Polk?

13 A. I was able to locate Kevin Polk.

14 Q. And what did Mr. Polk have to say?

15 A. According to Mr. Polk, he confirmed the account
16 of Mr. Kagonyera that Robert Rutherford had
17 confessed to him of his involvement as well as
18 the involvement of Lacy Pickens and
19 Bradford Summey.

20 Q. And we intend to cover this interview and play
21 this interview more at a later part in the
22 hearing, is that correct?

23 A. That is correct. The final thing with regard to
24 that deposition or the second interview on

1 November 17th that was not part of the
2 deposition was I asked him specifically why he
3 believed his codefendants confessed and
4 implicated him. His response was that, "we were
5 all young so no one really had a bone to pick,
6 so to speak, and people were just scared. So
7 they pretty much would just save yourself kind
8 of, you know. You could say kind of, well, I'm
9 going to say this just to tell them what they
10 want to hear and/or maybe I won't get the death
11 penalty or maybe I won't get a life sentence,
12 you know, not really knowing that you're
13 implicating yourself to felony murder, you know,
14 and trying to -- I guess you can say, you know,
15 they -- I can't remember exactly what was said
16 but, you know, they say if you help us, we'll
17 help you. Uh-huh (yes), kind of, you know, if
18 you tell us what we want to know, we'll help
19 you, and then, you know, it all started from
20 there."

21 So Mr. Kagonyera said that to me in
22 response to my question about why he believed
23 his codefendants had confessed and implicated
24 him. Other than that, everything else is

1 largely consistent with the deposition.

2 Q. And you were present during that deposition?

3 A. I was present during that deposition.

4 Q. That was on April 8, 2011?

5 A. Yes, that deposition was April 8, 2011.

6 Q. Okay. I'm going to play a portion of the
7 deposition and ask you, Mr. Lau, to confirm
8 whether or not it is that deposition.

9 (THEREUPON, A PORTION OF

10 MR. KAGONYERA'S DEPOSITION IS PLAYED.)

11 Q. Mr. Lau, were you present when this video was
12 made?

13 A. I was.

14 Q. And do you believe that this is a fair and
15 accurate representation of what you saw that
16 day?

17 A. It was.

18 Q. Now, you talked to Mr. Kagonyera's attorneys, is
19 that right?

20 A. I did.

21 Q. And you talked to Mr. Devereux, who testified
22 here today?

23 A. Yes.

24 Q. And did you talk to his other attorney,

1 Al Messer?

2 A. Yes, I did.

3 Q. And did Mr. Messer provide you with an
4 affidavit?

5 A. Mr. Messer has provided an affidavit to me in
6 lieu of testifying today.

7 Q. Okay.

8 MS. MONTGOMERY-BLINN: May I approach the
9 witness, Your Honor?

10 JUDGE SUMNER: Yes.

11 Q. Mr. Lau, I'm handing you a copy of some
12 documents. Is that the affidavit from
13 Mr. Messer?

14 A. Yes, this is.

15 Q. Is there anything that Mr. Messer said in
16 addition to this affidavit?

17 A. No. I believe the substance of what we spoke
18 about is here.

19 Q. Okay. I'll give the commissioners some time to
20 read that affidavit.

21 (THEREUPON, THERE IS A PAUSE IN
22 TESTIMONY AS THE COMMISSIONERS REVIEW THE
23 AFFIDAVIT.)

24 JUDGE SUMNER: Anyone need any additional

1 time?

2 (No audible response.)

3 A. To provide context to some of what you are
4 reading I think it's important that at that
5 November 17, 2010 interview of Mr. Kagonyera,
6 before I spoke with Mr. Messer I asked
7 Mr. Kagonyera if he didn't commit this crime,
8 then where did his statement, where did the
9 information contained in his statement to the
10 district attorney come from, the statement that
11 he gave the district attorney in the presence of
12 his attorney implicating himself. Mr. Kagonyera
13 told me that that statement was generated after
14 he received his discovery, reviewed the
15 discovery, and decided at that point in time it
16 was in his best interest to accept a plea. So
17 that's why in paragraph 17 Mr. Messer discusses
18 Kagonyera's claims as to where his information
19 came from.

20 Q. Did you also talk to Mr. Kagonyera's appellate
21 attorney, John Wade Meyers?

22 A. Yes, I did.

23 Q. And Mr. Meyers simply was his attorney for
24 appealing the plea?

1 A. Yes. He was appointed to represent him in his
2 appeal of the plea.

3 Q. And did Mr. Meyers tell you whether or not he
4 had ever met with Kagonyera?

5 A. He didn't specifically recall whether or not he
6 had met directly with Mr. Kagonyera. They did
7 have communication through the mail, and that
8 was certainly reflected in the file he provided
9 the Commission.

10 Q. So you were able to obtain a copy of that file?

11 A. Yes, I was.

12 Q. And you said there was mail communication, and
13 were you able to see a copy of those letters?

14 A. Yes, I was.

15 Q. And can you tell us what those letters
16 contained?

17 A. Well, first I think it's important Mr. Meyers
18 told me that he reviewed the record for the plea
19 hearing and the sentencing hearing, and he found
20 that there was no error, and he submitted an
21 Anders brief. He also had the appellate
22 defender's office review the materials in his
23 conclusion, and they agreed with him with regard
24 to his conclusion.

1 Q. And an Anders brief is simply a brief where an
2 attorney says they couldn't, they couldn't
3 locate any errors?

4 A. An Anders brief is a brief indicating that they
5 found no errors with the plea hearing and the
6 sentencing hearing.

7 The review of the file shows that
8 Mr. Kagonyera had wrote to him, and in four
9 different letters, letters on October 2002,
10 January 2003, May 2003, and June 2003 he told
11 Meyers that DNA test results had been withheld.
12 He asked Meyers to make a motion for a new trial
13 based on the DNA as newly discovered evidence
14 and ineffective assistance of counsel. Meyers
15 responded to him and said that that issue could
16 only be addressed in an MAR and couldn't be
17 addressed in a direct appeal, which he was
18 appointed to represent him on.

19 Q. So that was four different letters from
20 Mr. Kagonyera that asked for --

21 A. Yes, there were four letters pointing to the DNA
22 as potential evidence.

23 Q. And was Mr. Kagonyera indicating that he didn't
24 know what the results of the DNA yet were, but

1 wanted them, or that he now knew?

2 A. No, he did not know what the DNA results -- he
3 was asking his appellate counsel to obtain those
4 DNA results.

5 Q. So he still did not know the results of the DNA
6 testing?

7 A. It doesn't appear that he knew the results --

8 Q. According to those letters?

9 A. -- of the DNA testing at that time.

10 Q. Okay. Anything else with Mr. Meyers? Did
11 Mr. Kagonyera take any action?

12 A. Kagonyera filed a grievance with the state bar
13 based on Mr. Meyer's representation, but that
14 grievance was dismissed, it went nowhere.

15 Q. Were you able to review any other agency files
16 in relation to Mr. Kagonyera?

17 A. Yes. I reviewed his file, the Prisoner's Legal
18 Service file that they had for Mr. Kagonyera.

19 Q. So did Mr. Kagonyera apply to Prisoner Legal
20 Services after his conviction?

21 A. Yes, he did.

22 Q. And did he claim that he was innocent when
23 applying to Prisoner Legal Services?

24 A. Yes, he did.

1 Q. Is there anything inconsistent with the
2 innocence claim that Mr. Kagonyera is making
3 with the Commission to the claims that he made
4 at Prisoner Legal Services?

5 A. No.

6 Q. Was he focusing more on procedural errors when
7 he was writing to Prisoner Legal Services?

8 A. No, he was maintaining his innocence.

9 Q. Did he write to them -- well, when did he start
10 writing to them, and when was the last
11 correspondence that you're aware of?

12 A. He wrote to PLS between 2003 and 2009.

13 Q. And he wrote multiple times?

14 A. He wrote multiple times. He was --

15 Q. Go ahead.

16 A. He was asking for assistance in his -- with his
17 case. He actually was trying to get them to
18 obtain his DNA testing results or to have
19 testing done because he knew that the items of
20 evidence were collected. In 2009 he asked for
21 assistance with the MAR. That is in the
22 commissioners' brief saying that the MAR had not
23 been responded to.

24 Q. Well, let's just clarify on that MAR.

1 Mr. Kagonyera filed a pro se Motion for
2 Appropriate Relief?

3 A. Yes, that's correct.

4 Q. When did he file that?

5 A. He filed that Motion for Appropriate Relief in
6 2008.

7 Q. And what did the judge do?

8 A. The judge ordered the district attorney's office
9 to respond to Mr. Kagonyera's pro se MAR.

10 Q. And then what happened?

11 A. The district attorney's office in a response, I
12 believe, dated July 29, 2008, the district
13 attorney's office responded to that MAR and said
14 that -- it said a couple of things.

15 Q. And this is in the commissioner brief?

16 A. And it's in the commissioners' brief, and maybe
17 if they would read it, he said that Kagonyera's
18 assertion of a federal inmate's confession as
19 reason for his MAR, that the confession's inmate
20 had problems because the federal inmate was
21 seeking to curry favors on his -- or it appeared
22 that the federal inmate was seeking to curry
23 favors on federal charges when giving the
24 confession. He said that it was further

1 undermined, the credibility of the inmate's
2 confession was further undermined by the fact
3 that Lacy Pickens, who the federal inmate -- who
4 is Robert Rutherford from group A, who the
5 federal inmate implicated was in prison on the
6 day of the homicide. And he said that DNA test
7 results were either inconclusive or negative,
8 and he indicated a willingness to compare all
9 the evidence items collected in this case to DNA
10 standards from Robert Rutherford, Lacy Pickens,
11 and Bradford Summey.

12 Q. And was that done?

13 A. That comparison never took place.

14 Q. So in 2009 when Mr. Kagonyera was writing to
15 Prisoner Legal Services and asking for help with
16 the MAR that he filed and it not being answered,
17 the MAR from the court file that you've reviewed
18 had not yet been complied with --

19 A. There had been --

20 Q. -- had not been complied with?

21 A. Well, we're skipping over --

22 Q. I'm sorry.

23 A. There's a step missing here.

24 Q. Please explain the judge's order.

- 1 A. So the judge required the district attorney's
2 office to respond to Mr. Kagonyera's pro se MAR.
3 That response was done in July of 2008. The
4 judge issued an order after receiving that
5 response commanding the SBI to make the
6 comparison of the DNA profiles of Bradford
7 Summey, Robert Rutherford, and Lacy Pickens to
8 the bandanas and gloves collected in this case.
9 The judge further ordered that the district
10 attorney provide him with such processes
11 necessary to obtain DNA standards from
12 Mr. Rutherford, Mr. Pickens, and Mr. Summey by
13 August 15, 2008. When I began reviewing this
14 case in January 2010 no DNA standards had been
15 obtained and no comparison had been undertaken.
- 16 Q. And what's the current status of that Motion for
17 Appropriate Relief?
- 18 A. The current status of that Motion for
19 Appropriate Relief is it's currently being held
20 in abeyance. The resident superior court judge
21 down there held it in abeyance while the
22 Innocence Commission reviewed the case when he
23 learned that it was in our process.
- 24 Q. And do you recall when it first, when the judge

1 first decided to hold it into abeyance or first
2 made that decision?

3 A. The judge decided to hold it in abeyance -- I
4 don't have the exact date in front of me, but it
5 was sometime after January 2010.

6 Q. Okay. So when Mr. Kagonyera was writing to
7 Prisoner Legal Services in 2009, that MAR was
8 still pending and not complied with?

9 A. That MAR was pending, and the order -- there had
10 not been any comparison made between the items
11 collected and Bradford Summey, Lacy Pickens, and
12 Robert Rutherford as ordered by the court in
13 August of 2008.

14 Q. Okay. And did Prisoner Legal Services respond
15 to Mr. Kagonyera?

16 A. In different responses they either denied his
17 claim or did not respond to the letters he
18 wrote.

19 MS. MONTGOMERY-BLINN: Commissioners,
20 do you have any questions for Mr. Lau about
21 his interviews with Mr. Kagonyera or his
22 research about Mr. Kagonyera?

23 MR. BECTON: If I understand,
24 Rutherford was in Buncombe County so that

1 the order could be complied with for almost
2 a year?

3 A. Yes, that's correct, and no DNA standard was
4 obtained while Mr. Rutherford was in Buncombe
5 County.

6 MR. BECTON: And then he was sent back
7 to federal prison?

8 A. Then he was sent back to federal custody.

9 MR. BECTON: And then during that year
10 no stay was in, had been issued by any
11 superior court judge in Buncombe County?

12 A. No. Maybe I should rephrase that. There's
13 nothing in the file indicating that to be the
14 case.

15 MS. ASHENDORF: But a judge did order
16 the district attorney to make that
17 comparison of DNA?

18 A. Yes.

19 MS. ASHENDORF: And he didn't, right?

20 A. He had not done it by the time we began
21 reviewing the case.

22 MS. ASHENDORF: Is that not contempt?

23 MR. VICKORY: Was there a lawyer? Did
24 he have a lawyer, Ken Kagonyera have a

1 lawyer at this point for the MAR?

2 A. He did not have a lawyer appointed for the MAR.

3 JUDGE SUMNER: Ms. Surgeon.

4 MS. SURGEON: I was just wondering,
5 how did it finally get to the judge's
6 attention that something needed to be done
7 with the MAR if Prisoner Legal Services
8 didn't respond?

9 A. I'm sorry. If I believe what you're asking is,
10 how did the MAR come to be held in abeyance?

11 MS. SURGEON: No. How did the judge
12 get to realize that it had been filed pro
13 se and then issued an order for the DA to
14 get the comparisons made?

15 A. When it was filed pro se it came before the
16 judge and he ordered the district attorney to
17 respond, and then he gave an order following the
18 district attorney's response, and that's the end
19 of the record with regard to the court file.

20 MR. SMITH: Was an order issued
21 requiring Rutherford to consent to swabs or
22 testing or was anything like that ever done
23 or was -- did you feel it was necessary as
24 you looked at the documents?

1 A. I'm not sure I understand. Can you --

2 MR. SMITH: Let me rephrase it.

3 A. Please.

4 MR. SMITH: Rutherford, Rutherford
5 comes back and is there for a year?

6 A. Yes.

7 MR. SMITH: For testing?

8 A. He was brought back on a writ of ad -- of habeas
9 corpus to have tests and --

10 MR. SMITH: Yes.

11 A. And there was no NTO in the record requiring it
12 providing a DNA sample. He was brought back on
13 the writ in August of 2008, at the end of August
14 of 2008. He was in the Buncombe County
15 detention facility, I don't have the exact
16 dates, for approximately a year. A detective
17 from the Buncombe County Sheriff's Office went
18 to speak with him, that's reflected in your
19 guys's brief, Mr. Roney Hilliard. I spoke with
20 Mr. Hilliard. I asked him, were you asked to
21 obtain a DNA standard when you went to visit
22 Mr. Rutherford, and he responded that he did not
23 recall being asked.

24 MR. SMITH: But it wasn't done?

1 A. But it was not done.

2 MR. SMITH: Would Mr. Rutherford, so
3 far as you know, would he have cooperated
4 and provided a sample without an order from
5 a court, or do you know?

6 A. I can speak to my experience with
7 Mr. Rutherford. I sought a sample from him when
8 we began this case. I went down to -- he was in
9 custody in, I believe it was Georgia. I'm
10 sorry, it must not have been Georgia. But he
11 was in federal custody and I went to visit him
12 while he was in federal custody.

13 MR. SMITH: Objection, leading.

14 A. I apologize.

15 Q. Mr. Lau, was he in Talladega, Alabama?

16 A. He was in Talladega, Alabama. And I went to
17 visit Mr. Rutherford while he was in custody for
18 the purpose of obtaining a DNA standard for
19 comparison in this case. At that point in time
20 he indicated first that he would. I said, I'm
21 prepared to take that standard from you now.
22 And when I began to open up the collection kit
23 to obtain that DNA standard, he then refused and
24 said he would not do it without an attorney or

1 without some sort of order requiring him to do
2 it.

3 we then, as far as the time line goes, we
4 then went back to visit him after he was moved
5 to Texarkana, Texas, for the purpose of
6 obtaining a DNA standard. Before we went to
7 Texas to obtain that standard we had sought a
8 writ on our own to move him back to North
9 Carolina because at that point in time we could
10 request a nontestimonial order requiring him to
11 provide that sample. When he received notification
12 of our intent to move him back to North Carolina,
13 he actually called me and told me that I had his
14 full cooperation with collecting the DNA
15 standard as long as he was not brought back to
16 North Carolina.

17 MR. JENKINS: Did you ever ask him if
18 he just refused while he was in Buncombe
19 County or if nobody ever attempted to
20 obtain a sample, or do we know?

21 A. I don't believe I ever asked him the question.

22 MR. VICKORY: Switching back to
23 Mr. Kagonyera, since all this came up with
24 the Innocence Commission, have you offered

1 him another opportunity, so to speak, for a
2 polygraph? Has that come up?

3 A. No, we have not.

4 MR. VICKORY: I mean, the issue hasn't
5 -- he hasn't offered, and you haven't asked
6 him to have one?

7 A. It has not come up.

8 MR. BECTON: Regarding item number 10
9 in the affidavit from Mr. Messer, I recall
10 the general advice that I provided to
11 Mr. Kagonyera. The advice that I gave was
12 based on the number of statement against
13 him, particularly Mr. Mills' statement.
14 The results of the polygraph exam was
15 another factor.

16 Do we know what that general advice
17 was? Was that -- it looks like it was the
18 answer you should plead guilty. Do you
19 know what his advice was?

20 A. I can't necessarily speak for him.

21 MR. BECTON: This is an affidavit that
22 he prepared, and so --

23 A. We had -- this affidavit is based on our
24 discussion with him. We do have a transcript of

1 our interview with him that may specifically
2 answer that question, but I don't recall it off
3 the top of my head what he's referring to with
4 general advice there.

5 MR. BECTON: Now turning to paragraph
6 17.

7 A. Uh-huh (yes).

8 MR. BECTON: Is it your understanding
9 that he received the discovery material
10 piecemeal? I guess people were making
11 confessions --

12 A. That's what Mr. --

13 MR. BECTON: -- over time?

14 A. That's what Mr. Kagonyera alleges.

15 MR. BECTON: Is that what
16 Mr. Kagonyera said or is that what
17 Mr. Messer said?

18 A. That's what Mr. Kagonyera said to us --

19 MR. BECTON: That he received it
20 piecemeal?

21 A. -- that he received his discovery piecemeal.

22 MR. BECTON: And it was almost a year
23 after the crime before he confessed?

24 A. It was November 29th, I believe, when he met

1 with the district attorney, of 2001. The crime
2 occurred in September of 2000.

3 MR. BECTON: And other people charged
4 were confessing as early as three weeks
5 afterwards, or actually a couple of weeks
6 or so after the alleged crime, the crime?

7 A. I believe the earliest statement, and you guys
8 can consult your brief on this --

9 MR. BECTON: On the 24th?

10 A. -- is September 25th or September 24th by
11 Teddy Isbell.

12 MR. JENKINS: I have a follow-up
13 question to that one after Ms. Surgeon.

14 MS. SURGEON: Did he ever say from
15 whom he got his discovery by piecemeal?

16 A. He said that his attorneys were bringing him
17 statements, and would bring him one statement,
18 show him the statement, and tell him that this
19 person is saying this, and he would -- his best
20 interest would be to plea, and that they would
21 bring him a statement one day, at a later date
22 bring him another statement, and that's how he
23 received those statements, and then at some
24 point he received his full discovery, is what he

1 said.

2 MR. JENKINS: That's what I was
3 wanting some clarification on because
4 somewhere I either read or heard testimony
5 that he said he decided to plead guilty
6 after reading his discovery, but there
7 wasn't any discussion about piecemeal, it
8 was just after reading the discovery. Was
9 that something that was testified to or --

10 A. I don't know if I -- I don't believe I've
11 testified to that. From what Mr. Kagonyera told
12 me, he received the statements in the fashion I
13 described, and at some point before he gave his
14 complete confession he had received or reviewed
15 all of his discovery. But initially he was
16 being brought statements of the others
17 implicating him before the point in time at
18 which he finally was able to review or received
19 his complete discovery. But he did have his
20 complete discovery, according to Mr. Kagonyera,
21 prior to giving his statement to the district
22 attorney, and he said his statement was largely
23 based on what he had seen in discovery.

24 MR. JENKINS: And wouldn't it be fair

1 to say that he received his piecemeal
2 discovery because that's the way the
3 information was coming in? It wasn't --
4 people weren't all talking on the same date
5 at the same time. They were giving
6 statements at different times and different
7 -- making different allegations. Would
8 that be a fair statement, based on the
9 brief that we've seen?

10 A. (Witness does not respond.)

11 MR. JENKINS: I guess that's an unfair
12 question.

13 A. I was going to say I can't -- the person that
14 could answer that question is probably here,
15 but --

16 MR. JENKINS: Yeah. I would submit to
17 the other commissioners that by him saying
18 it was piecemeal, I don't know of any other
19 way he could have received it. If the
20 information was coming in --

21 JUDGE SUMNER: You might want to hold
22 that.

23 MS. MONTGOMERY-BLINN: I'd be happy to
24 recall Mr. Devereux, if that would be

1 helpful.

2 MR. JENKINS: I'm sorry?

3 MS. MONTGOMERY-BLINN: I said, I'd be
4 happy to recall Mr. Devereux if that would
5 help answer some of these questions as
6 well. I believe he is still here.

7 Mr. Devereux: Nobody wants to hear
8 any more from me today.

9 MR. BECTON: I have a question.

10 A. Sure.

11 MR. BECTON: At one point you
12 mentioned that he said -- or I guess it was
13 from the video that no defense was being
14 developed, they were just bringing you
15 statements. Did you ask him or have you
16 uncovered any evidence that could have been
17 in discovery? If all of our witnesses are
18 not here and discovery does not appear, and
19 if everybody who said they were there with
20 him, said they were in the house with him,
21 did he indicate what could have been
22 brought forth on his behalf?

23 A. He indicated that the DNA evidence was something
24 that --

1 MR. BECTON: Okay.

2 A. -- he wanted, knew of, and was trying to obtain.

3 MR. BECTON: He didn't get those
4 results though?

5 A. No.

6 MS. MONTGOMERY-BLINN: Any more
7 questions for Mr. Lau in relation to
8 Kenneth Kagonyera?

9 (No audible response.)

10 MS. MONTGOMERY-BLINN: I'd ask that
11 Mr. Lau come down for just a minute.

12 JUDGE SUMNER: Yes.

13 (THEREUPON, JAMIE LAU STEPS DOWN FROM
14 THE WITNESS STAND.)

15 * * * * *

16 MS. MONTGOMERY-BLINN: All right. Robert
17 Wilcoxson is the other Commission Claimant and
18 member of group B. All of Mr. Wilcoxson's
19 sheriff interviews are included or summarized in
20 the brief. He was interrogated two times by the
21 sheriff's department. He always denied
22 involvement in the crime including during the
23 law enforcement interviews.

24 He pled guilty on August 15, 2002. As part

1 of his plea unrelated driving charges or
2 unrelated charges were dismissed. They include
3 driving without a license and reckless driving,
4 speeding and no insurance, resisting arrest, two
5 counts of that, possession of a schedule II,
6 possession of stolen goods, fleeing to ellude,
7 two counts of fleeing to ellude, at least one of
8 those is from that van chase, and driving
9 without a license. One of those is also from
10 that van chase that was described during the
11 police report.

12 He was sentenced to 150 to 189 months. At
13 his sentencing on September 10, 2002 he
14 apologized to the victim's family. That
15 transcript is included in your brief. I'll show
16 you his criminal record. Well, actually his
17 criminal record is right down here at the
18 bottom.

19 (THEREUPON, MR. WILCOXSON'S RECORD IS
20 DISPLAYED ON THE SCREEN.)

21 MS. MONTGOMERY-BLINN: The second degree
22 murder is from this case. The only other
23 conviction that he had was for no operator's
24 license. But I will note we only put

1 convictions on here, but he did have a murder
2 charge, a prior murder charge in Michigan when
3 he was a teenager, and that charge was
4 dismissed.

5 I'll also tell Mr. Becton that we did ask
6 Mr. Kagonyera in the deposition what he thinks
7 he would have presented if he had gone to trial,
8 and that is in the deposition transcript that
9 you'll be reviewing tonight.

10 The Commission calls Jamie Lau, recalls
11 Jamie Lau.

12 (THEREUPON, JAMIE LAU RETURNS TO THE
13 WITNESS STAND.)

14 EXAMINATION BY MS. MONTGOMERY-BLINN:

15 Q. Mr. Lau, did you have the opportunity to
16 interview Robert Wilcoxson?

17 A. Yes, I did.

18 Q. How many times did you meet with Mr. Wilcoxson?

19 A. I met with Mr. Wilcoxson once with Mrs. Smith,
20 and then I participated or I was at the
21 deposition that you conducted with Mr. Wilcoxson
22 on April 12th.

23 Q. Okay. And is it your understanding that that
24 deposition has been transcribed and will be

1 provided to the commissioners to read tonight?

2 A. That is my understanding.

3 Q. Now, let's talk about that November 22nd -- was
4 your first interview on November 22, 2010?

5 A. Yes, That was the date of my first interview.

6 Q. Okay. And tell me, at this time was
7 Mr. Wilcoxson an applicant to the Commission?

8 A. Mr. Wilcoxson was not an applicant to the
9 Commission at this time. We were interviewing
10 him or attempting to speak with him with regards
11 to our investigation of Mr. Kagonyera's claim.

12 Q. So it was just Mr. Kagonyera's claim you were
13 investigating at that time?

14 A. Yes.

15 Q. And where was Mr. Wilcoxson when you interviewed
16 him?

17 A. He was at Scotland Correctional Institute.

18 Q. Okay. Now, the commissioners I know they have
19 not read the deposition yet, but tell us -- you
20 have, and you were present. Was this interview
21 consistent with the deposition?

22 A. Yes, it was.

23 Q. Okay. And please tell us what additional
24 information is contained in this interview.

1 A. The additional information that was contained
2 was he mentioned that he was riding around in
3 the van with Mr. Kagonyera, the van that was
4 subsequently part of that police chase. He says
5 a woman named Tangie Harper came up to the van
6 and said Kenny had something to do with the
7 shooting to himself and Mr. Kagonyera, and that
8 Kenny was -- or Mr. Kagonyera acted surprised
9 and denied knowing what was going on. And
10 shortly thereafter was the chase that involved
11 the van that Mr. Wilcoxson and Mr. Kagonyera
12 were a part of.

13 Q. This was after the homicide?

14 A. This was after the homicide, yes. They were in
15 a van. Mr. Wilcoxson and Mr. Kagonyera were in
16 a van together, and Tangie Harper came up to them
17 and told Mr. Kagonyera that the word was
18 Mr. Kagonyera had been involved in the Bowman
19 homicide, and Mr. Kagonyera was surprised and
20 denied knowing anything about it.

21 Q. Okay. What else was in addition or inconsistent
22 with the deposition?

23 A. He also said that he was approached by the
24 district attorney and the district attorney

1 asked him to provide a statement, and that it
2 was either going to be Aaron Brewton or
3 Mr. Wilcoxson, implying that one or the other
4 was going to end up ultimately -- what he was
5 stating, that it was going to be either him or
6 Aaron Brewton that was going to come out with
7 the longest sentence, is what he was saying.

8 Q. Now, did Mr. Wilcoxson during this interview ask
9 you about the Commission process and what was
10 going to happen?

11 A. He did. He asked me to explain what the
12 Commission process was, and I did. It's very
13 standard when we initially approach someone to
14 explain who we are, what we do, in our initial
15 attempt to try and get the individual to speak
16 with us, and that occurred here. So we did
17 explain to him the Commission process.

18 Q. And you always explain to him that the
19 Commission doesn't represent the claimants?

20 A. Yes, we do.

21 Q. And did Mr. Wilcoxson have any questions for
22 you?

23 A. He did ask how he could be involved with regards
24 to this claim. He said initially when he

1 started speaking with us that he was innocent
2 for this claim, and at the conclusion he asked
3 how he could be involved.

4 Q. And what did you tell Mr. Wilcoxson?

5 A. I told him that he would have to send a letter
6 to the Commission indicating that he's innocent
7 of this charge and then at that time we would
8 consider including him in the claim.

9 Q. And did he send a letter?

10 A. Yes, he did.

11 Q. Okay. And when did you receive the letter?

12 A. We received the letter on November 24th. It was
13 two days after we had met with him on November
14 22nd.

15 Q. You received it two days afterwards?

16 A. Yes.

17 Q. Okay. And did you have any contact with anybody
18 else in his family?

19 A. His mother also called me after we met with him,
20 and she informed me that she had materials in
21 the matter and that she would voluntarily send
22 them to the Commission.

23 Q. Now, when you interviewed Mr. Wilcoxson, did you
24 suggest that he apply to the Commission?

1 A. No. I did not suggest that he apply. I
2 actually was very careful not to do that.

3 Q. Did you encourage him to apply to the
4 Commission?

5 A. No, I did not.

6 Q. When he asked you you simply informed him of the
7 ability to apply?

8 A. Yes, I did.

9 Q. And after that, did the case become the
10 Kagonyera and Wilcoxson case?

11 A. Yes, it did.

12 Q. After Mr. Wilcoxson applied, did he have an
13 attorney assigned to him?

14 A. In this matter, yes, he did.

15 Q. Okay. And was this the same procedure as you
16 went through with Mr. Kagonyera?

17 A. Yes, it was. At that -- for Mr. Wilcoxson we
18 didn't meet specifically with him. We sent him
19 a letter informing him of his options with
20 regards to if he would like to complete an
21 Affidavit of Indigence, he had that option or he
22 could waive counsel or he could hire his own
23 attorney, and he returned that to us, and in the
24 same process counsel was appointed.

1 Q. Okay. And who was his -- who is his assigned
2 attorney?

3 A. He is currently represented by Chris Fialko.

4 Q. And did Mr. Fialko meet with Mr. Wilcoxson and
5 return to you the Commission signed waiver of
6 procedural safeguards and privileges?

7 A. Yes, he did.

8 Q. Okay. And once Mr. Wilcoxson waived his
9 privileges, including the attorney-client
10 privilege, were you able to interview his past
11 attorneys?

12 A. Yes, I was.

13 Q. Okay. And who was that?

14 A. I interviewed Mr. Jack Stewart.

15 Q. Okay.

16 MS. MONTGOMERY-BLINN: May I approach
17 the witness, Your Honor?

18 JUDGE SUMNER: Yes, ma'am.

19 Q. Mr. Lau, I'm handing you a document. Will you
20 take a look at it and tell me what it is?

21 A. This is an affidavit that Jack Stewart provided
22 to the Commission with regard to his
23 representation of Mr. Wilcoxson in this case.

24 Q. And just to clarify, and I think we need to go

1 back a little bit with the affidavit from
2 Al Messer because I think Mr. Becton asked about
3 this, did Mr. Stewart write this affidavit
4 himself?

5 A. The way these affidavits are generated is we
6 conduct an interview. We have recordings of
7 those interviews as well as the transcript of
8 those interviews that are available, if the
9 commissioners would like to review those
10 transcripts. At the conclusion of the interview
11 as a convenience to the attorneys just to save
12 time we go ahead and consolidate that interview
13 into an affidavit. It becomes an affidavit.
14 They have it to review. They're asked to make
15 any changes they want. We just provide the
16 draft to them as a convenience to save them
17 time. Then they make the -- review it, make
18 whatever changes because it's their affidavit
19 and their words, sign it, and have it returned,
20 notarized and returned to us.

21 Q. All right.

22 MS. MONTGOMERY-BLINN: We'll give the
23 Commission some time to read this
24 affidavit.

1 (THEREUPON, THERE IS A PAUSE IN
2 TESTIMONY AS THE COMMISSIONERS REVIEW THE
3 AFFIDAVIT.)

4 JUDGE SUMNER: Anyone need additional
5 time?

6 (No audible response.)

7 JUDGE SUMNER: You may continue.

8 Q. All right. Did Mr. Stewart still have a file in
9 this case?

10 A. No, he did not.

11 Q. Okay. If you received any discovery materials
12 in this case or did you -- were you able to
13 obtain any of Mr. Wilcoxson's discovery?

14 A. I was able to receive materials from
15 Mr. Wilcoxson's discovery that were provided to
16 me by his mother in response to -- as I said,
17 she called me in December after I met with
18 Mr. Wilcoxson and she offered to provide me with
19 the discovery materials that she had, and she
20 did so.

21 Q. Did Mr. Stewart indicate to you when you met
22 with him on March 31st and conducted the
23 interview that turned into this affidavit, did
24 he indicate to you whether he now represents

1 anybody who is related to this case or involved
2 in this case?

3 A. Yes. He spoke with us about Mr. Matt Bacoate.

4 He --

5 Q. Go ahead.

6 A. He said that he was currently representing
7 Mr. Matt, Mr. Bacoate in a federal
8 investigation.

9 Q. And Mr. Bacoate, just to clarify, is the
10 director of Life on Life's Terms, now called New
11 Life Options?

12 A. Yes, Mr. Bacoate is the director of Life on
13 Life's Terms, now called New Life Options.

14 Q. Okay. Did you obtain any other agency files
15 during representation of Mr. Wilcoxson?

16 A. I received a file from Prisoners Legal Services,
17 yes.

18 Q. Can you tell us about their file?

19 A. He applied first for help following an MAR and
20 seeking to rescind his plea. He never admits
21 guilt in his application to PLS. There are
22 letters in the PLS file that are so faded I was
23 unable to read the letters and understand
24 entirely what Mr. Wilcoxson was saying, but in a

1 response letter from PLS to Mr. Wilcoxson they
2 indicate that he says that he is innocent of the
3 offense, but claims of actual innocence are not
4 legal grounds to invalidate his plea, and that
5 is the response he received from Prisoners Legal
6 Services. There is nothing inconsistent in his
7 PLS file with the claim he has now filed to the
8 Commission.

9 Q. You said that you were present during the
10 deposition of Mr. Wilcoxson on April 12, 2011?

11 A. Yes, I was.

12 Q. And who else was present during that deposition?

13 A. Yourself, Mr. Wilcoxson's attorney,
14 Chris Fialko, and Ms. Pretty from the
15 Commission.

16 Q. All right, Mr. Lau, I'm going to play what I
17 believe is a clip from that deposition.

18 MR. JENKINS: Just one question of
19 clarification.

20 A. I'm sorry.

21 MR. JENKINS: I'll wait until after
22 the video.

23 Q. No, no, go ahead, please.

24 MR. JENKINS: Did you say that there

1 was nothing in his previous statements
2 consistent or inconsistent with what he is
3 claiming now?

4 A. Inconsistent, there was nothing inconsistent.

5 MR. JENKINS: There was nothing
6 inconsistent, okay.

7 A. He was claiming -- well, from what I could read
8 because I couldn't make out the letters, the
9 letter in response from Prisoners Legal Services
10 told him that claims of actual innocence are not
11 legal grounds to invalidate a plea. So he
12 seemed to have been claiming innocence to PLS
13 based on that letter that they sent to him in
14 response, and that wouldn't be inconsistent with
15 what he's currently claiming to the Commission.

16 MR. JENKINS: Thank you.

17 (THEREUPON, A PORTION OF
18 MR. WILCOXSON'S DEPOSITION IS PLAYED FOR
19 THE COMMISSION.)

20 Q. Mr. Lau, were you present when this video was
21 made?

22 A. Yes, I was.

23 Q. Is it a fair and accurate representation of the
24 deposition or a portion of the deposition of

1 Mr. Wilcoxson?

2 A. Yes, of that portion.

3 Q. Okay.

4 MS. MONTGOMERY-BLINN: Commissioners,
5 do you have questions for Mr. Lau about
6 Robert Wilcoxson and the investigation
7 surrounding Mr. Wilcoxson?

8 MR. JENKINS: Is there a copy of the
9 letter, correspondence to Mr. Easley
10 available?

11 A. We do not have a copy of that letter.

12 MR. JENKINS: That's all.

13 MR. VICKORY: Do you have a polygraph
14 in this case with him?

15 A. Actually, yes, there was. Thank you. We
16 received a polygraph from the SBI. They
17 conducted that polygraph and it was
18 inconclusive. We do have the records from that
19 polygraph.

20 MR. VICKORY: And that was recently or
21 was it back then?

22 A. No, that was back in 2000 during the course of
23 the original investigation.

24 MS. JOHNSON: Did he take one

1 polygraph or two? Did he actually take
2 two?

3 A. To our knowledge, one.

4 JUDGE SUMNER: Excuse me, say that
5 again, please. I did not hear that.

6 MS. JOHNSON: Just trying to determine
7 if he actually submitted to one polygraph
8 or two. I wasn't sure.

9 JUDGE SUMNER: Thank you.

10 Q. Okay. We're going to talk about Teddy Isbell
11 next.

12 MR. BECTON: Was there an answer to
13 the question? One or two?

14 MS. JOHNSON: Just one.

15 A. To my knowledge, one.

16 Q. Would Mr. Lau just like to stay up there?

17 A. Please.

18 MS. MONTGOMERY-BLINN: If that's all
19 right?

20 JUDGE SUMNER: That's fine.

21 Q. Okay. Next we're going to talk about
22 Teddy Isbell.

23 JUDGE SUMNER: I'm sorry. Mr. Becton
24 has a question.

1 MR. BECTON: In looking at the --
2 we've got the transcript of the plea. It
3 states this on this evidence of -- his
4 lawyer gets up and says he's not that bad,
5 he turned himself in voluntarily, he never
6 confessed. He stands up and says, "I want
7 to tell you I'm sorry for everything that
8 happened. There's really nothing I can say
9 but apologize and ask for mercy. I have a
10 daughter, and I understand how you feel.
11 Whatever happened, it happened the way it
12 went down. Sometimes you've got to pay the
13 cost. We were both dealt wrong hands.
14 We've got to deal with that. I've got to
15 serve time. You all got to take a loss."

16 So even in his plea he's not saying
17 he's guilty or that he's done anything, but
18 that he's sorry. Am I correct? Is that
19 all --

20 A. That's the entirety of that portion of the plea.

21 MR. BECTON: Now, the form that is --
22 form signed?

23 JUDGE SUMNER: Yes, sir; yes, sir.

24 MR. BECTON: Or is he -- or do you

1 have to --

2 JUDGE SUMNER: Sworn to and signed.

3 MR. BECTON: Okay. Is that part of
4 the record?

5 JUDGE SUMNER: That is part of the
6 record.

7 Q. You're asking for the plea transcript?

8 MR. BECTON: Oh, I'm good. I thought
9 I looked through it a minute ago.

10 JUDGE SUMNER: You want to repeat it?
11 Go ahead.

12 MR. BECTON: For the record, I
13 mentioned that the state put on this case
14 that's sent to hearing. Mr. Stewart stood
15 up and said things on Mr. Wilcoxson's
16 behalf, and Mr. Wilcoxson stood up, and on
17 page 70 of the transcript he says, "I want
18 to tell you I'm sorry for everything that
19 happened. There's really nothing I can
20 say, but apologize and ask mercy from you
21 and the judge. Like I say, I have a
22 daughter, too. So I understand how you all
23 feel. Whatever happened, it happened the
24 way it went down. Sometimes you've got to

1 pay the cost. We both were dealt, we both
2 were dealt the wrong hand. We've got to
3 deal with what we've got to deal with.
4 I've got to serve the time, and you all
5 have got to take a loss. I'm sorry to my
6 heart. I'm sorry Ms. Bowman."

7 And my question was, did he ever admit
8 guilt? We know he never confessed, and
9 even at the sentencing hearing he does not
10 seem to be saying that he was involved at
11 all. He's simply saying whatever happened
12 happened, and I'm sorry for what happened,
13 am I correct?

14 A. There is the plea transcript, which I think is
15 what you're referring to as far as forms. On
16 that plea transcript it's indicated that he
17 answered yes to do you accept -- are you --

18 MR. BECTON: In fact guilty?

19 A. -- in fact guilty? Yes, and we can make you a
20 copy of that plea transcript if you like. It's
21 only the front and back and --

22 MR. BECTON: I've seen it a long time
23 ago so --

24 A. Okay, yes, he did.

1 MS. ASHENDORF: It sounded like to me
2 in what you read that he was admitting he
3 was guilty. He was sorry.

4 MR. VICKORY: She said it sounds like
5 he was guilty.

6 MS. ASHENDORF: Yeah. That's what it
7 sounds like to me.

8 MS. MONTGOMERY-BLINN: Commissioners,
9 I'll tell you that I did ask him about that
10 in the deposition that you'll be reading
11 tonight.

12 MS. ASHENDORF: It's ambiguous.

13 JUDGE SUMNER: And I think some of
14 these comments and questions may be
15 pertinent after we conclude with the formal
16 presentation. Sheriff, go ahead.

17 MS. JOHNSON: I did find on Wilcoxson,
18 I had made a notation on my suspect list
19 that he had taken two polygraphs. And on
20 page 46 it says that he took a polygraph
21 examination at the SBI that was
22 inconclusive, and then he took another one
23 submitted by -- through his attorney that
24 proved deceptive, is that correct? So

1 there were two. He did submit to two
2 polygraphs.

3 MR. JENKINS: It's on page 46.

4 A. I'm sorry, I'm not recalling whether or not that
5 was the case.

6 MR. JENKINS: You did say that you all
7 were unable to find the report from the
8 first one?

9 A. The two polygraphs that I know we have
10 information on is the polygraph of
11 Kenneth Kagonyera, Mr. Kagonyera's polygraph
12 that showed deception, and we have the
13 handwritten notes from Mr. Devereux's file.

14 MR. JENKINS: Well, wait a minute.
15 This says under wilcoxson, polygraphs, but
16 it reads October 4, Robert Wilcoxson, and
17 then on October 9th Kagonyera.

18 MS. JOHNSON: It does.

19 MR. JENKINS: It's under the --

20 Q. May I --

21 MR. JENKINS: -- under the label of
22 Wilcoxson.

23 MS. MONTGOMERY-BLINN: May I approach
24 the witness?

1 JUDGE SUMNER: Yes.

2 A. I'm sorry if there's confusion in the brief.

3 MS. MONTGOMERY-BLINN: I take
4 responsibility for all things in the brief.

5 A. Yes. So Mr. Kagonyera submitted to a
6 polygraph -

7 MS. JOHNSON: I'm responsible for not
8 reading the names.

9 Q. I apologize.

10 A. It's okay.

11 MR. SMITH: May I ask a quick
12 question?

13 JUDGE SUMNER: Yes, sir, you may.

14 MR. SMITH: Why is Mr. Bacoate being
15 investigated by the feds?

16 A. That's an excellent question. It pertains to
17 the program that he's running, and it pertains
18 to some things we'll get to with Mr. Aaron
19 Brewton about potentially providing money to
20 work out --

21 MR. SMITH: Okay.

22 Q. And just to clarify, Mr. Lau, you don't know
23 why? You don't have -- you're not -

24 A. No, no, I'm sorry. Yes.

1 Q. -- federal report or anything, right? we just
2 are aware that it is happening?

3 A. We are aware that there is a federal
4 investigation, and -- we are aware that there's
5 a federal investigation.

6 Q. Okay. Mr. Isbell.

7 MS. MONTGOMERY-BLINN: Any more
8 questions, commissioners?

9 (No audible response.)

10 MS. MONTGOMERY-BLINN: No? Okay.

11 All of Mr. Isbell's sheriff interviews
12 are included or summarized in the brief.
13 He was interviewed four times and made
14 inconsistent statements implicating himself
15 and others. His plea and his sentencing
16 history are also in the brief. Mr. Isbell
17 is no longer in custody and was interviewed
18 three times by Jamie Lau and Lindsay Guice
19 Smith, and I'm going to show you his
20 criminal record.

21 (THEREUPON, MR. ISBELL'S RECORD IS
22 DISPLAYED ON THE SCREEN.)

23 MS. MONTGOMERY-BLINN: This is just
24 the convictions, part one, part two, part

1 three. Did you guys look through this?

2 (No audible response.)

3 MS. MONTGOMERY-BLINN: All right. I
4 asked Mr. Lau to remain in the witness
5 chair. I remind him that he's still under
6 oath.

7 A. Let me just clarify on that last point. We
8 don't know why Mr. Bacoate is under federal
9 investigation. It has been confirmed to us by
10 his attorney. What we know about Mr. Bacoate
11 and allegations made towards Mr. Bacoate that
12 were made through the course of our
13 investigation will come out as we move through
14 some of these codefendants.

15 MR. SMITH: Thank you.

16 Q. All right. Mr. Lau, were you able to locate
17 Mr. Isbell?

18 A. Yes, I was.

19 Q. And can you please tell us how you managed to
20 locate Mr. Isbell?

21 A. Mr. Isbell's Facebook page indicated that he was
22 employed at New Life Options. New Life Options
23 is the program that Mr. Bacoate is an executive
24 director of. The program is located at 60 Flint

1 Street in Asheville. We went to 60 Flint Street
2 in an effort to engage Mr. Bacoate to ask him if
3 Mr. Isbell worked there or if he had information
4 on where we could locate him, and we were able
5 to locate Mr. Isbell at that time.

6 Q. All right. Tell me about that.

7 A. We located Mr. Isbell at New Life Options, which
8 is the program that I've discussed, and we
9 located him there on December 7, 2010. We went
10 into New Life Options, we asked for Mr. Bacoate.
11 As Mr. Bacoate was bringing us into his office
12 we saw Mr. Isbell slipping through a door into
13 another room. We asked Mr. Bacoate if
14 Mr. Isbell was there. He asked us the purpose.
15 We explained a bit about why we were there, and
16 he said he would check. He went and then
17 Mr. Isbell entered the room and we were able to
18 speak with him, and Mr. Bacoate returned as
19 well.

20 Q. Okay. And Mr. Isbell was willing to speak with
21 you?

22 A. Mr. Isbell was willing to speak with us. He
23 asked that Mr. Bacoate remain during the
24 interview.

1 Q. And did Mr. Bacoate remain during the interview?

2 A. Yes, he did.

3 Q. Was Mr. Isbell cooperative during your
4 interview?

5 A. Yes, he was cooperative and willing to answer
6 our questions.

7 Q. What did Mr. Isbell tell you?

8 A. Mr. Isbell said that during his statement on
9 September 25th, which is what we initially asked
10 him about because Mr. Isbell had given that
11 statement where he implicated himself as well as
12 some of these other individuals. Mr. Isbell
13 said he was high on crack cocaine during that
14 statement, it was inaccurate, and that he knew
15 Mr. Kagonyera and Mr. Wilcoxson did not commit
16 this crime. He did however say he provided a
17 shotgun to Mr. Kagonyera following the break-in
18 at Mr. Lewis Bethea's residence or apartment
19 because Mr. Bethea was looking for
20 Mr. Kagonyera, and Isbell said because of that
21 fact he had retrieved the shotgun for
22 Mr. Kagonyera.

23 He said that his statement with regards to
24 his statement on September 25th was not

1 voluntary. They took him from his hotel room to
2 the sheriff's station. They took Annette, his
3 girlfriend, Ms. Hines, in a different car. He
4 asked to leave. They told him he needed to stay
5 because somebody was on his way. That someone
6 else was the district attorney, Ron Moore. He
7 said he did not ask for the district attorney to
8 be present as conveyed in the summary report for
9 that statement. He told us that he knew
10 Aaron Brewton and Leon Bowman did it. He knew
11 for a fact, but didn't have any direct evidence
12 of this, but he told us that he knew that for a
13 fact.

14 Q. So he knew it for a fact, but he couldn't
15 provide you any facts?

16 A. Exactly. I would say fair. He couldn't provide
17 us any other information except he knew for a
18 fact that it was those two individuals.

19 Q. Okay.

20 A. He said he took a conspiracy plea because he
21 would have gotten more jail time for a felon in
22 possession of a firearm. He said Mr. Bacoate
23 gave him money to get a hotel and was the only
24 one who knew he was at that hotel. He denied

1 having ever told his mother that he was involved
2 in the Bowman homicide. He denied any
3 involvement with the murder or any direct
4 knowledge of who, other than -- any direct
5 knowledge of anything about the murder, other
6 than he knew that it was Aaron Brewton and
7 Leon Bowman who did it.

8 Mr. Bacoate, who was also present during
9 that interview, said that Isbell during that
10 period of time had been in his program but was
11 relapsing. He said Isbell came to him worried
12 that his fingerprints would be on the gun.
13 Mr. Bacoate convinced, Mr. Bacoate convinced
14 Mr. Isbell to speak with law enforcement.
15 Mr. Bacoate called Lieutenant Sam Constance from
16 the Buncombe County Sheriff's Office, had
17 Mr. Constance come to the Life on Life's Terms
18 location to conduct an interview with
19 Mr. Isbell. Mr. Bacoate told us that Lieutenant
20 Constance then gave Teddy, or Mr. Isbell, money
21 for a hotel room.

22 Q. Is that in conflict with what Mr. Isbell said?

23 A. Mr. Isbell said that Mr. Bacoate gave him money
24 to get a hotel room. Mr. Bacoate said that it

1 was Lieutenant Constance who gave Mr. Isbell
2 money for the hotel room. Lieutenant Constance
3 called Bacoate, Mr. Bacoate, because he wanted
4 to speak with Mr. Isbell again, and Mr. Bacoate
5 told Lieutenant Constance where Mr. Isbell was
6 staying, and Lieutenant Constance then went and
7 picked up Mr. Isbell from the hotel and brought
8 him to the sheriff's station.

9 Mr. Bacoate remembered being present in the
10 interrogation room with Isbell, with
11 Lieutenant Constance and with Mr. Moore.
12 Mr. Bacoate said Isbell was rattling and
13 contradicting. He said he knew that Mr. Isbell
14 was high and not coherent, and Mr. Isbell also
15 had not had sleep. Mr. Bacoate said he left at
16 approximately 10:30 because the interrogation
17 was making him sick to his stomach.

18 Mr. Bacoate said he didn't provide an
19 affidavit on behalf of Mr. Isbell about the fact
20 that he was under the influence of drugs and did
21 not have sleep because he did not have direct
22 knowledge of him being under the use of drugs or
23 not having any sleep, he appeared to be in that
24 condition.

1 Q. Can you just back up for a second and say, and
2 explain what affidavit he -- when you say he
3 didn't provide an affidavit --

4 A. I'm sorry.

5 Q. -- who asked him to provide an affidavit?

6 A. Mr. Isbell's attorneys asked Mr. Bacoate to
7 provide an affidavit based on his perspective of
8 what he witnessed during the course of that
9 interrogation or interview at the sheriff's
10 station on September 25th, and Mr. Bacoate said
11 he did not provide that because he didn't
12 believe he could since he didn't personally see
13 Mr. Isbell using drugs or have personal
14 knowledge of his lack of sleep, he just
15 understood that to be the case.

16 Q. You said that Mr. Isbell said that he had to
17 leave the interrogation because it was making
18 him sick?

19 A. He said it was making himself physically sick,
20 Mr. Bacoate said that.

21 Q. Mr. Bacoate was sick?

22 A. Mr. Bacoate said he had to leave the
23 interrogation because the interrogation was
24 making him physically ill.

1 MR. JENKINS: Now, who was actually
2 being -- said they were sick from the
3 interrogation, Mr. Bacoate?

4 A. Mr. Bacoate, yes.

5 MR. JENKINS: Did he say why he was
6 sick from the interrogation?

7 A. I have it marked here. He said, "it disturbed
8 me. What made me sick was the fact that when
9 Teddy came to me and I called the police on him
10 basically because I couldn't let him sit there
11 involved and not notify the police, I was the
12 one calling them. Now they've got him in
13 interrogation and it's gone from my fingerprints
14 may be on the gun to interrogation about
15 involvement in the murder. So I'm getting kind
16 of sick now because he's a friend of mine as
17 well as I've been with him a long time. So I'm
18 getting kind of sick thinking he's going down
19 for murder.

20 So when they was talking to him, what was
21 making me sick was they were talking to somebody
22 -- this is like talking to a drunk. It's a
23 different drug, but if you talk to somebody
24 that's dead drunk, and they're just sitting

1 there talking and rattling and rattling and
2 rattling, and you're still asking questions,
3 asking questions. So I believe that the
4 statement was derived off of him just ranting
5 and saying stuff."

6 He said while he was in the interrogation
7 he was physically getting ill as he was watching
8 it, and those were his statements regarding --

9 MR. JENKINS: And he indicates that he
10 left at 11:00-something?

11 A. Approximately 10:30.

12 MR. JENKINS: And the interrogation,
13 do we know what time the interrogation
14 ended?

15 A. I do not.

16 MR. JENKINS: Okay. I just was
17 curious.

18 Q. Isbell conveyed to us during that interview that
19 he had been doing drugs for three weeks straight
20 and had not had sleep. Isbell's --

21 Q. I'm sorry. Can I just ask, during the time you
22 interviewed him or during the time that the
23 sheriff's department first interrogated him?

24 A. I'm sorry. That's prior to the statement on

1 September 25th he indicated to us that he had
2 been doing drugs for three weeks straight and
3 had not had sleep.

4 Mr. Isbell said that his attorney -- I'm
5 sorry, Mr. Isbell said that his attorney tried
6 to have Mr. Moore disqualified because he had
7 made himself a witness in the case.
8 Specifically he said to us -- this is Reed.
9 "Okay, we were supposed to go for a motion
10 hearing. He said, he being Reed," and Reed is
11 Mr. Reed Brown, who was his attorney at that
12 time. "He said, well, he said, man, we might can
13 get Ron Moore and them off the case, and they
14 got a special prosecutor down in Raleigh they
15 are sending to come up here and try this case,
16 he said, but I spoke with Ron this morning. Ron
17 said if you do this, if you go through with this
18 right here, he's going to bring all of your
19 codefendants back. What he was going to do was
20 set aside their plea, offer them lesser time, or
21 let them out period to testify against me, and
22 he was going to get me a life sentence. He said
23 that the thing that I can't do, he said -- I
24 remember him saying one of the conventional

1 rules is you got a criminal record, and we don't
2 believe in putting -- I ain't going to put you
3 on the stand because Ron Moore can bring your
4 criminal background out, and the jury is going
5 to hear, and the jury, they don't believe police
6 lie."

7 He made those statements with regard to the
8 reaction to Mr. Brown's motion to disqualify the
9 district attorney. Following this interview --

10 Q. Is there indeed a motion from Mr. Brown in the
11 court file to disqualify the district attorney?

12 A. Yes, there was that motion in the court file.

13 Q. Was that motion ever calendared and heard?

14 A. There is no indication that motion was ever
15 calendared or heard.

16 Q. Okay. Please go ahead.

17 A. Following our interview with Mr. Isbell I
18 contacted Mr. Brown to speak to him with regards
19 to this matter, and Mr. Isbell had given us
20 permission to speak with Mr. Brown. The
21 interview took place on December 14, 2010. It
22 was a phone interview with Mr. Brown. And I
23 asked first whether Mr. Brown recalled filing
24 the motion to disqualify Mr. Moore. Mr. Brown

1 at the time I spoke with him was currently a
2 prosecutor himself, and my understanding is now
3 he has gone back into private practice. I asked
4 Mr. Brown first whether he recalled filing the
5 motion, and he indicated, he indicated that he
6 recalled filing the motion. Afterwards I asked
7 Mr. Brown if he could remember Mr. Moore saying
8 to him -- and I phrased it this way, that he
9 would go after Isbell with all that Moore could
10 if Mr. Brown went through with the motion. He
11 said he remembered Moore telling him something
12 to that extent. Mr. Brown further said, "it
13 would not surprise me with regard to anything
14 Mr. Moore did", and "this whole case smelled."

15 He told me he did not have any personal
16 knowledge of any wrongdoing, but had heard
17 stories from his clients. He remembers
18 Mr. Isbell telling him he was high when he gave
19 the statement. Mr. Bacoate confirmed that to
20 Mr. Brown. He recalls Mr. Isbell saying that he
21 brought a gun to the codefendant, Mr. Kagonyera,
22 but did not remember Mr. Isbell telling him
23 more. He said his policy would not have been to
24 ask Mr. Isbell specifically or directly if he

1 was involved.

2 JUDGE SUMNER: You indicated that Mr.
3 Brown had gone to work for the district
4 attorney's office?

5 A. He was not employed with the Buncombe County
6 District Attorney's Office.

7 JUDGE SUMNER: Not employed?

8 A. He was employed at another district attorney's
9 office when I spoke with him.

10 Q. All right. Were you able to interview
11 Mr. Isbell again or did you attempt to interview
12 him again?

13 A. I did make an attempt to interview him again. I
14 was unsuccessful contacting him at the phone
15 number he had given me previously in our prior
16 interview, so I went to New Life Options and
17 found him in his apartment at the New Life
18 Options location on 60 Flint Street in
19 Asheville.

20 Q. And did he consent to another interview?

21 A. Yes, this time Mr. Isbell did consent to a
22 second interview.

23 Q. Who was present during this interview?

24 A. Ms. Smith from the Commission was also present

1 during this interview.

2 Q. Was Matt Bacoate present during this one?

3 A. Matt Bacoate was not present during this
4 interview. I should say that in the first
5 interview as well as this interview Mr. Isbell,
6 as far as the statements from Mr. Bacoate of him
7 rambling on and on, Mr. Isbell, his demeanor is
8 very scattered. He begins with one subject
9 matter, and it quickly goes into another topic,
10 into another topic, and sometimes he becomes
11 difficult to follow. During this interview he
12 was slightly more focused, but he remained
13 difficult to follow while we interviewed him.

14 At this interview Mr. Isbell told me that
15 Mr. Bacoate knew that Mr. Moore was looking for
16 him and that Mr. Bacoate had asked him what
17 happened when he came to his office on
18 September 25, 2000 when he gave his first
19 statement to the police. I believe that's the
20 day, the date of that. He said that Mr. Bacoate
21 called Mr. Moore, and Mr. Bacoate then called
22 Lieutenant Constance.

23 He said he tried to leave the interview
24 room during the statement at the Buncombe County

1 Sheriff's Office, but was told that he had to
2 wait. He learned that he was waiting for
3 Mr. Moore. At this time he said he did not ask
4 for Mr. Moore or Mr. Bacoate to be present
5 during that interview.

6 Q. And that's in contradiction to not only the
7 sheriff's department report, but the statement
8 that he gave you the last time you interviewed
9 him?

10 A. Yes. That's in contradiction to the sheriff's
11 report and his first interview statement that he
12 had asked Mr. Bacoate to be present, but not the
13 district attorney.

14 MR. JENKINS: And this was a
15 noncustodial interview?

16 A. This was --

17 MR. JENKINS: He was not in custody
18 during this interview?

19 A. He was during the -- I believe the police report
20 says it's a noncustodial interview. He said he
21 was asked to leave, asked to leave, that they
22 told him to wait. He said he never told
23 Mr. Bacoate, his girlfriend, Ms. Hines, or his
24 mother that he was present. He said Mr. Bacoate

1 got the reward money.

2 Q. Mr. Lau, present during what?

3 A. I'm sorry, that he was present during the Bowman
4 homicide. He said that Mr. Bacoate got the
5 reward money. He later indicated or said to us
6 that Mr. Bacoate was not going to play ball with
7 us.

8 Q. What did he say that Mr. Bacoate got reward
9 money for doing?

10 A. For bringing Mr. Isbell to law enforcement when
11 Mr. Isbell gave his statement.

12 Q. Did you later have the opportunity to ask
13 Mr. Bacoate about this?

14 A. I did ask Mr. Bacoate about this in a deposition
15 that week. Mr. Bacoate confirmed that he did,
16 indeed, receive the reward money in this case
17 for bringing Mr. Isbell forward.

18 Q. Go ahead.

19 A. According to Mr. Isbell, Mr. Bacoate negotiated
20 his first plea with the district attorney.

21 Q. Negotiated Mr. Isbell's first plea?

22 A. That's correct. Mr. Isbell said that one of his
23 lawyers had threatened Mr. Bacoate to have him
24 charged with practicing law without a license

1 based on the fact that Mr. Bacoate was working
2 out Mr. Isbell's plea with the district
3 attorney.

4 He now said in contradiction to his earlier
5 statement that Leon Bowman was involved. He now
6 told me that he was with Leon Bowman the night
7 of the homicide. He told me that
8 Mr. Shawn Bowman was not present in the home
9 during the shooting, but he did not have any
10 specific direct knowledge of where Shawn Bowman
11 was or why Shawn Bowman wasn't -- he told me
12 that Mr. Shawn Bowman was not in the home.

13 while we were interviewing him there was a
14 knock at the door. Police officers at that
15 point in time picked up Mr. Isbell for an
16 outstanding child support warrant, and said that
17 they had just -- they had received a call that
18 Mr. Isbell was at the location we were
19 interviewing him at.

20 Q. And that location was?

21 A. And that location was the 60 Flint Street
22 location, his apartment at the Life on Life's
23 Terms program.

24 Q. And did that conclude that interview?

1 A. That concluded that interview, yes.

2 Q. Did you have a chance to talk to Mr. Isbell
3 again after that?

4 A. I did speak with Mr. Isbell on one final
5 occasion. It was on April 14th. I contacted
6 Mr. Isbell to speak with him about whether or
7 not he would be willing to sign a waiver to
8 allow us to review his Prisoner Legal Services
9 file. He consented to signing the waiver and
10 spoke with myself for about five minutes.
11 Mr. Isbell volunteered that he knew that Robert
12 Rutherford, Lacy Pickens, and Brad Summey were
13 the real perpetrators of the crime. When
14 pressed for how he knew this information, he
15 avoided the question and changed the subject.

16 Mr. Isbell said that the district attorney
17 had been trying to get a hold of Mr. Isbell for
18 the past few weeks, the past few weeks meaning
19 the few weeks prior to April 14, 2011.

20 Mr. Isbell also said that he spoke with
21 Mr. Shawn Bowman, but did not say more about the
22 conversation that they had.

23 Q. Okay. So you said that Mr. Isbell, you were
24 asking him for a waiver so that you could review

1 his Prisoner Legal Services file, and am I
2 correct that you needed a waiver from him
3 because he had not --

4 A. Because he was --

5 Q. -- applied to the Commission and waived
6 procedural safeguards and privileges?

7 A. That is correct.

8 Q. And did he provide you with a waiver or did he
9 sign a waiver?

10 A. He did provide the waiver.

11 Q. For the Prisoner Legal Services?

12 A. For the Prisoners Legal Service file.

13 Q. And were you able to obtain a copy of the
14 Prisoners Legal Services file on Mr. Isbell?

15 A. I was able to receive that file, and when I
16 reviewed that file Mr. Isbell had wrote
17 Prisoners Legal Service asking for help on an
18 MAR because he had the confession of
19 Mr. Rutherford. Well, I'm sorry, because he
20 said the confession of Mr. Rutherford had been
21 suppressed. So at that point in time he knew
22 about the confession and wanted to proceed with
23 the MAR based on that.

24 Q. And in the Prisoner Legal Services file did

1 Mr. Isbell admit his guilt?

2 A. No, he did not.

3 Q. Did he say anything that contradicts his claims
4 today? I mean, I understand it's difficult
5 since his claims are --

6 A. I was going to say I can't really answer that
7 question because his claims today are all over
8 the place.

9 Q. Okay. But he denied guilt?

10 A. He denied guilt.

11 Q. Okay. Did you speak to Mr. Isbell's mother,
12 Edith Isbell?

13 A. I did speak with Mr. Isbell's mother.

14 Q. And why did you want to talk with her?

15 A. Because according to the report of the interview
16 on September 25, 2000 with Mr. Isbell, Detective
17 Forest Weaver from the Asheville Police
18 Department contacted Mr. Isbell's mother, and
19 then Mr. Isbell's mother confirmed to Forest
20 Weaver, Detective Weaver, that Mr. Isbell had
21 confided in his mother that he was present
22 during the Bowman homicide.

23 I contacted Mr. Isbell's mother to ask her
24 whether she recalls Mr. Isbell having indeed

1 confided this information to her. She told me
2 -- and I should state first, she wasn't in good
3 health. When I called her and spoke with her,
4 it was clear that she was on a breathing
5 machine, and I asked her if I could call her
6 back at a better time or if there was a better
7 time to speak, and she said she would like to
8 speak now, go ahead. I asked her if Mr. Isbell
9 had ever confided in her that he was a part of
10 this crime. She said that -- I asked her if she
11 remembered Mr. Isbell telling her he was present
12 during this crime. She said, "Teddy has not
13 confessed to me about anything because if he
14 had, I wouldn't have anything to do with Teddy,
15 because there's one thing about it, God giveth
16 and God taketh away."

17 "Now, let me just ask you another question.
18 I don't think I'll have any more questions for
19 you. Forest Weaver from the Asheville Police
20 Department said he spoke with you and you told
21 him that Teddy was, Teddy told you he was
22 involved."

23 "I did not tell Forest Weaver nothing.

24 Okay. So did you speak with Forest Weaver?

1 Yes, I did.

2 And what do you recall telling him?

3 Forest and me, I do not remember at the
4 time. And like I told you, I'd had a seizure.
5 when you, and when you have epilepsy, I can't,
6 sometimes I can't even remember what happened
7 yesterday, but -- and you talk about something
8 that happened in 2000."

9 So that's what Ms. Isbell said to me
10 regarding the statement by Mr. Isbell, Teddy
11 Isbell, and his involvement in the Bowman
12 homicide.

13 MS. MONTGOMERY-BLINN: Commissioner
14 questions in relation to this portion of
15 the investigation?

16 MR. JENKINS: Do we know why a
17 detective from the Asheville PD interviewed
18 the mother instead of the Buncombe County
19 Sheriff's Department? What was his
20 involvement, do you know?

21 A. I've asked that question to individuals from the
22 Buncombe County Sheriff's Department that have
23 indicated that they don't specifically remember
24 why he was involved.

1 MR. JENKINS: Okay.

2 MS. MONTGOMERY-BLINN: Any other
3 questions?

4 MR. SMITH: The bottom line is we have
5 no idea what this man is saying now or are
6 we pretty strongly of the view that he
7 would deny that he had anything to do with
8 it?

9 A. I think the one thing that he's been consistent
10 with is his denials that he's had nothing to do
11 with this. With regards to what other
12 information he has about this specific incident,
13 he's not been consistent.

14 Q. And just to clarify, that's during our
15 investigation. He did admit guilt in different
16 ways during the sheriff investigation, is that
17 correct?

18 A. He did in that statement that you guys have from
19 the Buncombe County Sheriff's Office. I'm
20 sorry, not of the statement, the summary report
21 from the Buncombe County Sheriff's Office
22 interview of him on September 25, 2000.

23 MR. SMITH: So he has sometimes said
24 he did, and sometimes said he didn't, but

1 most recently he said he didn't?

2 A. In all interviews we've conducted with him he
3 said that he did not.

4 MR. JENKINS: And he also said, just
5 for clarification, that he did not in his
6 PSL or PLS file that you subpoenaed?

7 A. In his PLS file he asked for help on an MAR
8 because the confession of Robert Rutherford had
9 been suppressed, was what he was asking for. He
10 did not admit guilt. I do not believe he
11 specifically -- I don't believe, and we can look
12 at the file, that he specifically said, I'm
13 innocent of this crime. That may be the case,
14 but I'd have to look at the file.

15 Q. And just to clarify with that, Prisoner Legal
16 Services, the questionnaire that they sent
17 Mr. Isbell is about -- or could you just tell us
18 about that? Do they ask him, are you innocent?
19 Do they ask claimants whether they are innocent
20 or not?

21 A. I would have to review the file, I don't
22 specifically remember. And I'd be happy to if
23 you want to hand it to me.

24 MR. SMITH: You indicated that

1 Mr. Bacoate got the reward for bringing him
2 forward, meaning what when you say bringing
3 him forward, bringing him forward to give
4 information or bringing him forward to
5 admit responsibility? I wonder what
6 bringing him forward meant.

7 A. I asked him if he -- I asked Mr. Bacoate
8 specifically if he received money for bringing
9 Teddy Isbell forward to provide the statement
10 that he gave on September 25, 2000 in this case,
11 and he said that he did.

12 MR. JENKINS: So he felt sick to his
13 stomach because he was being interrogated,
14 but on the same side he's collecting reward
15 money for bringing him in there, is that
16 correct?

17 A. That's accurate.

18 MR. VICKORY: Was this money Crime
19 Stoppers money or was it -- do you know?

20 A. I don't know. He said he received, I want to
21 say he said he received \$200 to \$300 in reward
22 money.

23 MS. MONTGOMERY-BLINN: May I approach
24 the witness, Your Honor?

1 JUDGE SUMNER: Yes, ma'am.

2 Q. Mr. Lau, I'm handing you what I believe is a
3 Prisoner Legal Services file on Mr. Isbell. If
4 you will just take a look at that.

5 A. Sure, thank you. (Witness reviews document.)
6 Mr. Isbell does specifically maintain in a
7 letter to Prisoner's Legal Services that he was
8 innocent for the crime, and he asked them to
9 assist him with the MAR after receiving the
10 statement from Robert Rutherford, the confession
11 or learning of the confession from
12 Robert Rutherford.

13 MR. JENKINS: Do we know how far back
14 that goes, what date that was that he said
15 that?

16 A. This letter was received by Prisoners Legal
17 Service on October 1, 2004. It's dated what
18 looks to be September 2, 2004. He says
19 specifically that he has been maintaining his
20 innocence for 47 months to no avail.

21 MR. BECTON: Am I correct that the
22 only time he's admitted any involvement was
23 three days afterwards on September 25th
24 when he said, yes, I helped plan, and

1 implicated Kenny, Wilcoxson, Williams, and
2 somebody named Dea Johnson?

3 A. That's the only record we have of him admitting
4 involvement.

5 MR. BECTON: And three days later he
6 said he was not involved at all?

7 A. Although, I'm sorry, I would say that the plea
8 transcript, as you pointed out earlier, would
9 also have an admission.

10 MR. JENKINS: I'm not sure of the
11 connection with this. The plea that he
12 took, he received --

13 MR. BECTON: -- plea, yes.

14 MR. JENKINS: So the amount of time he
15 received included other crimes as a
16 consolidation. If I read the plea - my
17 question is, when he pled guilty, did he
18 plead guilty to other crimes and what was
19 his sentence? Was it a lesser sentence?

20 MR. BECTON: It looks like in the file
21 he pled guilty to accessory after the fact
22 to murder and was released on September 10,
23 2006.

24 JUDGE SUMNER: Judge, you need to keep

1 your voice up.

2 MR. BECTON: The summary states that
3 he pled guilty to accessory after the fact
4 to murder and was released from prison on
5 September 10, 2006.

6 JUDGE SUMNER: Any other questions?

7 Q. Mr. Lau, since we're on that, did Mr. Isbell
8 plead -- how many times did Mr. Isbell enter a
9 plea to this crime?

10 A. Twice.

11 Q. Can you explain?

12 A. He -- well --

13 MS. MONTGOMERY-BLINN: May I approach
14 the witness, Your Honor?

15 JUDGE SUMNER: Yes, ma'am.

16 MS. MONTGOMERY-BLINN: I'm handing the
17 witness a portion of the brief just to
18 refresh his recollection.

19 A. Mr. Isbell initially entered an Alford plea on
20 March 28, 2002, to accessory after the fact to
21 commit, to accessory after the fact for first
22 degree murder. He subsequently asked that his
23 plea be withdrawn. There's a hearing from
24 September 9th where his motion to withdraw his

1 plea was heard. At that hearing he said that
2 Mr. Bacoate and not his attorneys had negotiated
3 his plea. Mr. Isbell was ultimately allowed to
4 withdraw his plea.

5 There's a bit of, there's a bit of
6 procedural gap here that we were unable to fill.
7 Mr. Isbell had that hearing, and at the
8 conclusion of the hearing they continued it so
9 Mr. Bacoate could testify at a later date with
10 regards to Mr. Isbell's motion to withdraw his
11 plea. We don't or we have been unable to find
12 anything regarding when it was re-calendared and
13 heard, and Mr. Bacoate has told me that he does
14 not recall or did not testify in this matter for
15 Mr. Isbell. I asked him if he had testified
16 with regards to Mr. Isbell's motion to withdraw
17 his plea, and he said no.

18 The next thing we have or we were able to
19 find was on December 11, 2003, Mr. Isbell
20 appeared and was allowed to enter another plea.
21 And on December 11 Mr. Isbell pled to conspiracy
22 to commit armed robbery.

23 Q. Is there any documentation in the file, an
24 order, or some kind of documentation about the

1 withdrawal of the plea or, I mean, about -- yes,
2 the withdrawal of the plea?

3 A. We had sought the transcript from the
4 continuation hearing, and this particular file,
5 the court reporter went to look for when a
6 hearing took place on that so she could do the
7 transcript, and looked at this file and could
8 not find when that took place. The only thing
9 she found was the December 3 -- the December 11,
10 2003 hearing when Isbell was allowed to enter
11 another plea. So my answer is we reviewed --
12 Mr. Isbell's case had different court files, and
13 we reviewed files from the homicide, files from
14 the 2003 plea, but we didn't specifically review
15 the file for this case number, and our review
16 did not turn up anything, and the court reporter
17 was unable to find anything about a hearing
18 where this plea was ruled on or where the motion
19 to withdraw plea was ruled on.

20 MR. BECTON: Point of clarification, I
21 have assumed, and perhaps I was wrong, that
22 the summary of the plea of guilty to
23 conspiracy to commit armed robbery involved
24 the Bowman incident. Are you telling me

1 now that was a different case altogether?

2 A. No, it involved the Bowman homicide.

3 MR. BECTON: Okay.

4 A. But it was given a different case number in
5 2003. It's got an '03 case number.

6 MR. BECTON: Okay.

7 JUDGE SUMNER: And no order appears in
8 the files wherein a judge struck the
9 results or made any findings of fact
10 supporting the withdrawal to get to the
11 next plea?

12 A. This is where I said the court reporter was
13 unable in that file -- because that plea that he
14 entered in 2002 had a '02 case file, and there's
15 -- they were unable to find anything, any record
16 regarding a hearing because they were looking to
17 transcribe that hearing because it had been
18 continued on September 10, 2000 -- I'm sorry,
19 2002. There's a transcript from this matter
20 where Teddy's seeking a ruling on his motion to
21 withdraw the plea. At that time Matt Bacoate
22 was not present, and they continued it so
23 Mr. Bacoate could testify. After that the court
24 reporter was unable to locate anything in the

1 file indicating that another hearing took place
2 until the December 11, 2003, hearing.

3 JUDGE SUMNER: I don't want to belabor
4 the point, particularly in view of the
5 hour, but was an inquiry made of the
6 Clerk's Office as to what might have
7 happened to the court reporter's notes from
8 that hearing? I ask this because most
9 clerks are very, very particular about
10 those type matters.

11 A. Uh-huh (yes), and what -- the court reporter
12 herself obtained the '02 file number. The court
13 reporter went through the court file, not her
14 own records, seeking records indicating when
15 that hearing took place, and was unable to find
16 any other hearing in that file other than the
17 December 11, 2003.

18 JUDGE SUMNER: I apologize for asking
19 the question. Thank you.

20 A. That's --

21 JUDGE SUMNER: Yes, sir.

22 A. -- how that file number was reviewed.

23 JUDGE SUMNER: Thank you.

24 MR. JENKINS: One point, just, I have

1 to ask this. You said he was -- entered
2 the first time an Alford plea then?

3 A. Yes.

4 MR. JENKINS: I'm pleading guilty for
5 my best interest, not saying I'm guilty to
6 the charges?

7 A. Uh-huh (yes).

8 MR. JENKINS: Okay.

9 MS. ASHENDORF: Did you ask Matthew
10 Bacoate if he was called back? Since there
11 wasn't any record, did you happen to ask
12 him whether he was called back in a
13 continuation so he could testify?

14 A. I asked Mr. Bacoate if he testified in this
15 matter, and he said no.

16 MS. MONTGOMERY-BLINN: All right.
17 We're ready to move on to Damian Mills.
18 Can you take any more?

19 JUDGE SUMNER: It's about 6:55. I
20 just got a message from my wife, and if I
21 want to stay married I need to take two
22 minutes to call her or I may be staying in
23 Raleigh forever.

24 MS. MONTGOMERY-BLINN: would you like

1 a recess for everybody to grab a snack and
2 try to continue?

3 JUDGE SUMNER: No, no, no, not that
4 long. I just want to make a quick phone
5 call and I'll be right back, if you don't
6 mind. If you will indulge me for three
7 minutes.

8 MS. MONTGOMERY-BLINN: Three minutes,
9 Your Honor.

10 (WHEREUPON, A SHORT RECESS WAS TAKEN.)

11 MS. MONTGOMERY-BLINN: All right. So we're
12 going to talk next about -- and Mr. Lau may just
13 remain in his seat. We're going to talk next
14 about Damian Mills. He's another of the people
15 that was originally a suspect and ultimately
16 convicted in the murder. He was interviewed by
17 law enforcement three times, and he confessed in
18 the third interview. He implicated himself and
19 all of the others except for Isbell.

20 All of his interviews are in your brief.
21 His plea and sentencing history are also in the
22 brief.

23 (THEREUPON, MR. MILLS' RECORD IS
24 DISPLAYED ON THE SCREEN.)

1 MS. MONTGOMERY-BLINN: This is Mr. Mills'
2 record, and it includes this conviction as well.
3 Mr. Mills has served his sentence, is no longer
4 in custody, and he was interviewed twice by
5 Commission staff attorneys Jamie Lau and Lindsay
6 Guice Smith. And I'll ask Mr. Lau to testify
7 about those interviews.

8
9 EXAMINATION BY MS. MONTGOMERY-BLINN:

10 Q. Mr. Lau you are still under oath.

11 okay, tell me how you located Mr. Mills.

12 A. I contacted his probation officer who arranged
13 an interview at the probation and parole office
14 in Buncombe County, and at that interview was
15 Ms. Smith and I, and it was ten days following
16 his release on this charge.

17 Q. And what date was it that you met with him?

18 A. That was November 10, 2010.

19 Q. And what did Mr. Mills tell you?

20 A. Mr. Mills said that he rode along while
21 Mr. Kagonyera, Mr. Williams, Mr. Wilcoxson, and
22 Mr. Isbell had done some breaking and enterings.
23 He said he doesn't remember the specific dates,
24 locations of those break and entry, those B&Es

1 or break and enterings, but that he or they were
2 in Mr. Kagonyera's box blue Chevy Impala. He
3 said that the group, this group of individuals
4 had done two or three breaking and enterings.
5 He said he always stayed in the car. He said
6 that he had just begun hanging out with
7 Mr. Kagonyera, Mr. Wilcoxson, Mr. Isbell, and
8 Mr. Williams, and that he had been hanging out
9 with the group for about a week, and that they
10 had did these breaking and enterings and took
11 some merchandise.

12 He said that the ones that they were
13 involved in were when no one was home, and he
14 never saw guns. I asked him if they were
15 wearing bandanas or gloves while they were
16 breaking into homes. He said, no. He said he
17 pled guilty to the Bowman homicide because it
18 was in his best interest and he didn't want to
19 be made the triggerman. And he said that he
20 felt that law enforcement was trying to make him
21 the triggerman with regard to this matter.

22 I asked --

23 Q. Go ahead.

24 A. I asked Mr. Mills if they had done two or three

1 of these breaking and enterings, were any of
2 them committed in the Fairview, North Carolina
3 area? He said that he could not say if they
4 ever went to Fairview because he just rode
5 along. He did recall one time when they did a
6 breaking and entering and everyone ran back to
7 the car, and someone said, what did you do that
8 for? And another responded, he just had to do
9 what he had to do. He said that he doesn't
10 recall during this breaking and entering that
11 they were wearing gloves or bandanas at the
12 time.

13 I asked him if he remembered anything about
14 the location where that had occurred. He said
15 he remembers that it was dark. He could see
16 some trees, but no homes. He said he never was
17 promised money for being the lookout for this
18 group of individuals as they pulled these
19 breaking and enterings.

20 Q. Did you ask him about the statements that he
21 gave during the sheriff's department
22 investigation?

23 A. I did ask him about the statements that he gave
24 to sheriff deputies. He said that he only ever

1 told them about the breaking and enterings. He
2 said that the statement wasn't made in his
3 handwriting, he never wrote anything down.

4 Q. Did you show him his handwritten statement?

5 A. (Witness does not respond.)

6 Q. I'm sorry, did you show him his statement to --

7 A. I showed him the summary report of the statement
8 that he had made to law enforcement. He denied
9 things in that statement and said all he ever
10 told them about was the B&Es or the breaking and
11 enterings. I asked him whether or not it was
12 possible that one of those breaking and
13 enterings was the Bowman residence. He said,
14 no, and his reasoning was that they only used
15 one vehicle, and the discovery he saw said that
16 whoever did the Bowman homicide was in two
17 vehicles. He said that.- he also said that
18 something like that would have been traumatic,
19 and he would remember had he been involved in
20 the Bowman homicide or if the Bowman homicide
21 was one of the breaking and enterings that he
22 says that this group had been doing.

23 Q. Did you speak to him again after that time?

24 A. I did. I spoke with him on my phone, and I

1 should note that our general policy is we
2 generally would record a conversation on the
3 phone such as this, but I had spoken with his
4 sister, and Mr. Mills' sister said he wouldn't
5 be home from work until after 5:30. So I had
6 given him my cell phone number, which I can't
7 record from. So he returned my call on my cell
8 phone. So we do not have a recording of the
9 second conversation.

10 But during that second conversation I asked
11 him about the pretrial meeting, which you have
12 heard about with regards to him, his attorney,
13 Mr. Kagonyera, and Mr. Kagonyera's attorneys.
14 Mills said that what he said at that meeting was
15 that he wasn't going down for whatever
16 Mr. Kagonyera may have done. He said that he
17 told the individuals involved in that meeting
18 that he had been doing the breaking and
19 enterings, but denied saying that he would
20 testify in the murder case. He said he kept
21 being pulled out of his cell and asked to
22 implicate his cousin.

23 Q. Did he say who was pulling him out of his cell?

24 A. He did not. Mr. Mills, I asked Mr. Mills

1 whether or not he recalled his attorney stating
2 in court, which is in the transcript, that
3 Mr. Mills was the lookout for this group. He
4 said that because -- and I asked him that
5 question because he had indicated to us that he
6 rode along and never agreed to be their lookout.
7 So I said, do you recall your attorney saying
8 you were the lookout in court, and he said he
9 just went with what was said in court because it
10 was already agreed to, and it was -- he was just
11 going along with what was being said.

12 He said he never signed any statement. He
13 said he was being railroad, he had been
14 railroaded. He said he tried to withdraw his
15 plea. He said that they tried to get a
16 Mr. Roy Gilliland to get him to confess and that
17 they set up a phone call between him and
18 Mr. Gilliland. And when he received that phone
19 call he wasn't in custody. And he says he knew
20 that they set up that phone call because when he
21 received the call the number came back to a
22 Buncombe County Sheriff's Office phone number.
23 So he knew it was a call from a law enforcement
24 agency, and he said they were trying to get him

1 to confess.

2 Q. And just to clarify, Roy Gilliland is a
3 civilian?

4 A. Yes, he is a civilian. He was someone else who
5 was, at the time, Mr. Mills said at the time
6 Mr. Gilliland was currently in custody at the
7 Buncombe County detention facility.
8 Mr. Gilliland had a relationship with Mr. Mills
9 so they had Mr. Gilliland call Mr. Mills and try
10 to get Mr. Mills to implicate himself during the
11 course of that phone call.

12 Q. According to Mr. Mills?

13 A. According to Mr. Mills. We did ask law
14 enforcement about that phone call, and there was
15 -- it was conveyed to us that it was possible
16 that somebody remembered -- I believe it was
17 Lieutenant Elkins said that he remembered
18 something like that occurring, but he couldn't
19 specifically recall.

20 Mr. Mills, during this phone conversation,
21 said the group never went to Fairview when they
22 were pulling the breaking and enterings, which
23 was inconsistent with his prior statement. He
24 said that the evidence in the Bowman homicide

1 didn't match the breaking and enterings that he
2 was participating in. Mr. Mills said he did get
3 DNA evidence, and it didn't match. It was
4 unclear when he received this, but he said he
5 did get DNA evidence and knew that it didn't
6 match.

7 He said that the district attorney tried to
8 get him to confess, and he was put in
9 segregation for ten months to break him, which
10 is inconsistent with him having given the
11 statement a month following the crime or just
12 over a month following the crime he had given
13 the statement. So being in segregation for ten
14 months to break him -- he also said that during
15 this conversation that he believed Lacy, J.J.,
16 and Rob committed this crime. It was unclear
17 where he got the information, and I guess I
18 would note that Lacy and J.J. -- J.J. is what
19 Lacy Pickens or Jay, Jay or J.J. is what
20 Lacy Pickens went by.

21 Q. So during his interview he told you Lacy and
22 J.J. --

23 A. Yes.

24 Q. -- as though they were two different people, and

1 Rob?

2 A. As though they were two different people, and
3 Rob did the crime.

4 MR. JENKINS: So he denied anything --
5 all the detail that he went into in his
6 first statement with law enforcement where
7 he talks about exactly where they pulled
8 off in the grassy area, about the detail
9 about the guns and what they looked like?

10 A. He denied it all. He said he had not seen that
11 statement in that form, and he denied -- he
12 admitted to providing information on the
13 breaking and enterings that this group had
14 pulled, but denied the details that are in that
15 statement.

16 MR. VICKORY: And he denies what Sean
17 told us happened in their meeting, the
18 meeting with the DA?

19 A. He did give a different account of the meeting
20 with Mr. Kagonyera and Mr. Devereux.

21 JUDGE SUMNER: Did he indicate if he
22 was Engine or he knew who Engine was?

23 A. He did not. I don't know if he was asked. I
24 don't believe he was asked who Engine was.

1 Q. Did he tell you how long he had been interviewed
2 or how long his interview lasted?

3 A. He said that he was never interviewed during the
4 morning hours. He said that he doesn't recall
5 ever being interviewed where they took a break
6 during the middle period of the interview. He
7 said all his interviews took place in the
8 evening.

9 Q. And is that consistent or inconsistent with the
10 reports from the Buncombe County Sheriff's
11 Department?

12 A. It's inconsistent with the report from the
13 Buncombe County Sheriff's Office from, I
14 believe, it's October 25th.

15 MR. JENKINS: 26th.

16 A. 26th, October 26th.

17 MR. JENKINS: And it's indicated it
18 started at 8:45 a.m. and ended at 1:35 p.m.
19 That's a long interview. You'd think he
20 would remember that.

21 MR. VICKORY: Did he ever indicate
22 whether or not he knew these, what we're
23 calling group A, any of those guys? I
24 mean, he referred to them by first name.

1 Did he ever say he knew those people or
2 give you the impression that he knew who
3 they were?

4 A. I don't believe he did.

5 MR. VICKORY: So when he used those
6 names --

7 A. I'm trying, I'm trying to review my notes to see
8 if he --

9 MR. VICKORY: Oh, okay.

10 A. -- he knew, if he indicated to me that he knew
11 those individuals. (witness reviews document.)
12 My notes do not indicate that he expressed any
13 relationship, and they also do not indicate that
14 I asked him about those individuals
15 specifically, that I can see.

16 MS. MONTGOMERY-BLINN: Any more
17 questions about the Commission's
18 investigation directly relating to Damian
19 Mills?

20 (No audible response.)

21 MS. MONTGOMERY-BLINN: All right,
22 Aaron Brewton. Aaron Brewton was
23 interviewed three times by the sheriff's
24 department, and you hear him referred to as

1 Man. That was his street name, was Man.
2 He never confessed during any of those
3 sheriff's department interviews, and his
4 charges were ultimately dismissed. It is a
5 little bit unclear to the Commission based
6 on the court file why the charges were
7 dismissed. There was no reason given on
8 the dismissal form, and we've got a handout
9 of that that we'll send around. It's got a
10 check for other, but there's nothing
11 written in underneath other. And also
12 there's a transcript of the dismissal, the
13 actual dismissal and when he pleads to
14 other charges in the brief. It's on page
15 108 of your brief, and I'll just read you
16 the quick quote from there. From the
17 district attorney, Mr. Moore, he says, "I'm
18 not taking these pleas I'm about to take in
19 exchange for the dismissing the murder. I
20 do have the son of the victim who says this
21 defendant was there. The reason the guys
22 went over to rob him is because he was an
23 alleged drug dealer, and they went to rob
24 him. I have other codefendants who have

1 incriminated this defendant. At this point
2 I don't think I have evidence to proceed in
3 a first degree murder case, that's why I'm
4 filing a dismissal."

5 So he indicates that it's not -- it's
6 because he doesn't have significant
7 evidence, but there's not any more detail
8 provided that we could find.

9 I will tell you that Mr. Brewton is
10 now in prison for a murder, a different
11 murder and an unrelated murder, and the
12 Commission staff was able to interview
13 Mr. Brewton twice. And I think, is that
14 going around now, the dismissal? Okay.

15 A. Can I just --

16 MS. MONTGOMERY-BLINN: I'm sorry.
17 Here's Mr. Brewton's record.

18 (THEREUPON, MR. BREWTON'S RECORD IS
19 DISPLAYED ON THE SCREEN.)

20 A. Can I just add one more thing about Mr. Mills
21 that I think is relevant?

22 (No audible response.)

23 A. Mr. Mills told me that he believed he became a
24 suspect in the Bowman homicide. He said that

1 ATF had raided his apartment looking for a
2 shotgun about a month prior to the Bowman
3 homicide. He said that ATF thought he had a
4 shotgun because someone who robbed one from a
5 pawnshop had indicated that they sold it to
6 Mills. Mr. Mills believed he became a suspect
7 in the Bowman homicide because the ATF had said
8 that he had a shotgun matching the description.

9 MS. MONTGOMERY-BLINN: Okay. And the
10 document that's coming around right now is
11 the dismissal from the court file for the
12 murder and also the release order, and
13 you'll see in the release order it says to
14 participate in Life on Life's Terms for
15 both of them.

16 MR. JENKINS: So there's no record
17 anywhere in the court system explaining why
18 his murder charges were dismissed?

19 MS. MONTGOMERY-BLINN: Well, just what
20 I read to you from the transcript that the
21 district attorney put on the record when he
22 made the dismissal about stating that he
23 does have the victim's son, and he does
24 have the codefendants, but does not believe

1 he has enough evidence to continue.

2 MR. JENKINS: I'm reading it now,
3 thank you.

4 MS. MONTGOMERY-BLINN: And that's what
5 I just read out loud, but that is all that
6 we've been able to locate.

7 MR. VICKORY: Well, Mr. Moore leaves
8 open the possibility of pursuing murder
9 charges on him. He makes it clear -- he
10 makes his client, he makes Brewton
11 acknowledge and his lawyer acknowledge on
12 the record that this is not a deal that I'm
13 dismissing the murder charges in return for
14 these pleas, I can come back later and
15 pursue these charges if I get any more
16 evidence.

17 MS. MONTGOMERY-BLINN: Yes. That is
18 also my understanding. Thank you. Okay,
19 I'm sorry. I think I skipped over his
20 record. So, and as I said, he is currently
21 in custody for murder, but it's an
22 unrelated different murder.

23 Okay. Mr. Lau, the Commission calls
24 Mr. Lau who is still under oath.

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EXAMINATION BY MS. MONTGOMERY-BLINN:

Q. Were you able to interview Mr. Brewton?

A. I was able to interview Mr. Brewton.

Q. And where was he during your interview?

A. He was at Maury Correctional. I interviewed him on November 23, 2010.

Q. And who was present during your interview?

A. Ms. Smith from the Commission was also present.

Q. And was Mr. Brewton willing to speak with you?

A. He initially said he did not want to speak with the Commission because he had previously applied to the Commission for the murder case he was currently serving time on, and he was upset that the Commission had not investigated the case.

Q. Okay. And did you fact check that?

A. Yes. I later determined that he had not applied to the North Carolina Innocence Inquiry Commission, but that was after I had met with him. Although he initially said that, I asked him if he would, if he would be willing to answer a few questions, and he did end up answering a few questions of mine while I was with him at the November, on the

1 November 23, 2010 date.

2 Q. What questions did he answer?

3 A. I initially asked him about the Bowman homicide,
4 and he said that he had not been involved in the
5 Bowman homicide. And I asked him about while he
6 was in custody, what happened while he was in
7 custody charged with the Bowman homicide? He
8 said that he was made plea offers, that he had
9 been threatened by the district attorney. He
10 said that he had been brought to the district
11 attorney's Office with his attorney, Mr. Belzer,
12 Mr. David Belzer, and with Mr. Bacoate present.
13 He said he didn't know why Mr. Bacoate was
14 there. He said that Mr. Moore was sitting at
15 his desk and that he had a gun on each hip, and
16 he initially said, why does this man have guns?
17 And he was told by his lawyer that it was okay
18 for him to have guns, he had permits for them.
19 He said that Mr. Moore sat at his desk and told
20 him that he could put 12 jurors in a box at any
21 time and take his life, and then was told that
22 he needed to accept a plea and not go to trial.

23 He said that he didn't commit the crime,
24 and that could be substantiated if the Bojangles

1 video had been reviewed. He said on the night
2 in question that he was at Bojangles with his
3 stepson. He said -- we asked him about the
4 dismissal, and he said that he was dismissed
5 because his cousin gave Mr. Bacoate \$2,000. He
6 said Mr. Bacoate had approached his cousin and
7 told him that he could, that he could prove his
8 innocence if he received these fund, and that
9 his cousin, Neko Hyatt, gave Mr. Bacoate \$2,000
10 after he was approached by him.

11 He said he was released on the condition
12 that he participate in the Life on Life's Terms
13 program, and the release order shows that to be
14 the case, although the statement is inconsistent
15 with regards -- well, I'm sorry. Although the
16 release order on the breaking and entering
17 charge that was the subject of the transcript
18 that was read to you indicates that it was for
19 the breaking and entering on Lewis' apartment.

20 He said after he was released he had to pay
21 Bacoate another \$8,000. He told us that he
22 believed that Bacoate and Ron Moore were
23 splitting the money, but he had no direct
24 evidence of this. He said he had to sign a form

1 that he would not sue based on his
2 incarceration.

3 Q. Were you able to locate that form anywhere in
4 the file?

5 A. No, I was not.

6 He told me that Mr. Isbell was an informant
7 that had been working for Mr. Bacoate. I would
8 also point out on that transcript that
9 Ms. Montgomery-Blinn had read, that in addition
10 to that transcript it states that Mr. Brewton is
11 going to be a resident at the Life on Life's
12 Terms program when he's released in August.

13 Q. Were you able to speak to Mr. Brewton another
14 time?

15 A. Well, after this interview I came back to the
16 office and I confirmed that we had never
17 received a claim from him on the first degree
18 murder charge. And I had told him that I would
19 write him a letter to confirm whether or not we
20 had received a claim from him, and I wrote him a
21 letter saying we had never received a claim. At
22 that point in time he applied with regards to
23 his unrelated first degree murder charge.

24 Q. Okay. And just to confirm, Mr. Lau, you have

1 not reviewed his application for the unrelated
2 first degree murder charge?

3 A. We have not reviewed his first degree murder
4 charge that he's currently incarcerated for, no.
5 But I did go back to interview him on March 23,
6 2011, after we received his application on that
7 unrelated murder charge.

8 Q. And did you talk to him at all about the
9 unrelated murder charge in his application or
10 just the Bowman homicide?

11 A. We spoke about the Bowman homicide only, and
12 then at the end I told him that we hadn't looked
13 at or I hadn't looked at and I didn't know the
14 status of his first degree murder charge.

15 Q. Okay. Was he more cooperative or cooperative or
16 agreeing to be interviewed the second time?

17 A. Yes. This time he agreed to talk to me as long
18 as -- the first time he agreed to answer a few
19 questions, and then wanted to get out of there.
20 The second time he agreed to speak with me, and
21 we actually sat down and were able to speak. It
22 should also be noted, the first time he was
23 behind glass, and it was a circumstance where we
24 weren't able to record his first conversation

1 either. So this one we were able to record, and
2 he consented to that.

3 Q. All right. And what did he tell you during the
4 second interview?

5 A. He said he never hung out with the codefendants.
6 He said that he did gamble with them from time
7 to time in Pisgah View. He denied being
8 involved in the Lewis Bethea breaking and
9 entering that occurred earlier in the day that
10 Mr. Kagonyera and Mr. Mills were also involved
11 with. Mr. Kagonyera has told the Commission
12 that he was involved in that breaking and
13 entering and that he was involved with that with
14 Mr. Brewton and Mr. Mills.

15 He once again said he was at Bojangles the
16 night of the murder and was home with his
17 stepson the rest of the time. He said that he
18 believed the police had reviewed the videotape
19 from Bojangles. He said he had a friend who
20 worked at Bojangles who said the police came and
21 viewed the tape.

22 Q. And is there any record in the sheriff's
23 department file of them reviewing a Bojangles
24 tape?

1 A. No, there is not. He said he was not present at
2 the Bowman homicide and does not know whether
3 the codefendants were. He said he did not know
4 whether he knew of their involvement or he did
5 not know whether they were involved. He said he
6 was friends with Mr. Bowman, Mr. Shawn Bowman,
7 and he said he spoke with him on the phone that
8 night. He said Leon Bowman, another brother,
9 son of the deceased, had come by his apartment
10 earlier in the evening.

11 He said he had been out to the Bowman
12 residence years earlier to do drugs. He said he
13 remembers submitting to a polygraph while in
14 jail and passing that polygraph.

15 Q. were you able to locate this polygraph?

16 A. We have not seen the polygraph that he has
17 indicated that he passed. He said that he
18 remembered giving DNA, and he thinks he knew the
19 results after taking the polygraph.

20 I asked him once again about his
21 participation in Mr. Bacoate's program, and he
22 said to me -- (Witness reviews document.) He
23 said to me, "when I went in there he had two guns
24 on him, two guns, one right here, one right

1 there. I stopped when I went in the door. I
2 say, why he got guns? I asked David Belzer
3 that. It's me, my lawyer, Ron Moore, and
4 Matt Bacoate.

5 Okay. All right.

6 I say, why he got guns? He say, he
7 licensed to have them. So I'm thinking I didn't
8 know you can do that, you know, in the
9 courthouse anyway. So I sit down at the table.
10 He say something in reference to it's your lucky
11 day. If I really wanted to convict you, I could
12 put 12 of my jurors in there and convict you,
13 but the reason I'm not is because we got new
14 evidence that says you was not involved. But
15 really, the truth was they never had new
16 evidence. It was the same evidence, and I had
17 prior knowledge to them coming to see me because
18 Matt Bacoate had went to my cousin because
19 everybody know we are very close, Neko Hyatt,
20 he's dead now, and told Neko, look, I got
21 evidence to get Man out, but when -- in order
22 for me to do this we going to have to set it up
23 to where he enters the program and pays a
24 restitution fee.

1 what was your cousin's name?

2 Neko Hyatt.

3 N-I-k-o?

4 N-e-k-o, N-e-k-o, and his last name, Hyatt.

5 So Bacoate went to your cousin, Neko Hyatt,
6 and he says that he has evidence of your
7 innocence, but he would only show that evidence
8 -- was he basically saying like I have this
9 evidence of your cousin's innocence, but I'm not
10 going to --

11 It was basically -- that's exactly right.
12 I got something to help him out, and you want to
13 get him out, Man, it's going to cost him
14 basically.

15 Okay.

16 There's no way around it, and he charged us
17 \$10,000. He gave him \$2,000 there, and I gave
18 him \$8,000 when I got out.

19 So you were talking, talking -- go back to
20 Ron Moore meeting. Go back to the Ron Moore
21 meeting because you were talking about they
22 wanted you to plead guilty to breaking and
23 entering. What happened?

24 Yeah. Because I was charged with breaking

1 and entering, too, because it happened so close
2 together.

3 So what happened at that, the rest of that
4 meeting? So we sort of got sidetracked on
5 Bacoate going to your cousin. What happened at
6 the rest of the meeting? So where we're at is
7 he said that, he says you have -- we have new
8 evidence, it's your lucky day. Go from there.

9 If I wanted to convict you, if I want to
10 convict you, I would put 12 of my jurors in
11 there and I can convict, but I'm not in the mood
12 for it. He got new evidence. Now, this is how
13 it's going to work. You will plead to this
14 breaking and entering, and we will release you
15 to the Life on Life's Terms program. And we
16 will drop the murder charge, and you have to
17 sign this paper saying that you will not sue for
18 being incarcerated for the time that I was
19 incarcerated for the murder. So me weighing out
20 my options like, what am I losing, you know?
21 I'm paying \$2,000 -- \$10,000 for my innocence,
22 and I mean, I've been sitting here two years for
23 nothing wasting away. So I, you know, I knew it
24 was to the point like where they had me coming

1 so much I had actually talked to somebody from
2 Raleigh with my mother on the phone, and they
3 was like, well, we can probably discuss a plea
4 of five years if you would plead guilty. So I'm
5 like five years for a murder charge? You got to
6 know that I'm innocent. So it's like my mom is
7 like, it ain't nothing but five years, just put
8 it behind you, five years. Just do five years
9 even if you had nothing to do with it. Just do
10 five years. So I'm like, mama, I didn't do it.
11 I didn't do it. That's admitting I killed
12 somebody or had something to do with killing
13 somebody, and I didn't. So if I take this plea,
14 you know, just to say put it behind me, guess
15 what, everybody around me, my kids, everybody is
16 going to think who would plead guilty to
17 something they didn't do. So they're going to
18 look at me as a murderer, and I can't live with
19 nothing like that, and I can't live with nothing
20 like that. I don't want to. I shouldn't have
21 to if I didn't do it. So I wouldn't do it, and
22 so as time went on that's when everything came
23 together and we got to the meeting, and that's
24 when they said, you know, they ran down the

1 program to me and the restitution, which I had
2 already knew because Neko told me over the
3 phone. So I agreed."

4 Q. Did Mr. Brewton tell you he knew who did the
5 Bowman homicide?

6 A. No, he did not know who committed the Bowman
7 homicide. I did speak with Mr. Bacoate with
8 regard to that meeting and his account of that
9 meeting. Mr. Bacoate confirmed to the
10 Commission that he was at that meeting.
11 Mr. Bacoate said Ron Moore and David Belzer
12 seemed to be in accord that Brewton may have not
13 committed whatever crime was being discussed,
14 and you'll -- I'll testify more with regards to
15 this, and then that was the crime that was being
16 discussed that was dismissed is what he was
17 talking about, and that was the murder charge.

18 Q. And you're going to testify more about your
19 deposition of Matt Bacoate tomorrow?

20 A. That's correct.

21 Q. And you said that Mr. Brewton --

22 MS. MONTGOMERY-BLINN: I'm sorry?

23 MR. JENKINS: No, you go ahead. I had
24 a question.

1 MS. MONTGOMERY-BLINN: This is my last
2 one.

3 Q. You said that Mr. Brewton said he didn't know
4 who committed the Bowman homicide. Did he tell
5 you what he would do if he had known?

6 A. Mr. Brewton said to me if he knew who committed
7 the Bowman homicide, he would be using it as
8 leverage to get himself out of prison.

9 Q. That is my last question.

10 MR. JENKINS: You said that
11 Mr. Bacoate said that he acknowledged or
12 remembered a meeting with Ron Moore and,
13 who was the other person?

14 A. Mr. David Belzer.

15 MR. JENKINS: The attorney for him?

16 A. Yes.

17 MR. JENKINS: And he acknowledged that
18 meeting. Did he acknowledge that there was
19 an agreement to pay \$10,000 for --

20 A. He did not acknowledge an agreement to pay
21 \$10,000.

22 MR. JENKINS: Did you ask him that
23 question?

24 A. I asked him what fees he received from

1 Mr. Brewton. I asked him if that -- I asked him
2 if he ever implied to Mr. Brewton that if he
3 received a sum of money, that he would be able
4 to help him with regard to his murder charge,
5 and he said no. He said that the only fees he
6 received from Mr. Brewton were the regular fees
7 associated with the program. He said that
8 Mr. Brewton was never a resident in his program,
9 where at the hearing Mr. Brewton was supposed to
10 be a resident in his program upon his release,
11 according to that transcript.

12 MR. BECTON: Did he get fees for him
13 being a resident even though he wasn't a
14 resident?

15 A. Mr. Bacoate was unable to provide any
16 documentation of Mr. Brewton's participation in
17 the Life on Life program. We subpoenaed records
18 from Mr. Bacoate asking for any record related
19 to Mr. Brewton's participation, and he said he
20 did not have any of those records available.

21 Q. What did Mr. Brewton tell you about his
22 participation?

23 A. Mr. Brewton said that he went to one meeting,
24 gave Mr. Bacoate \$8,000, and never participated

1 in the Life on Life's Terms program again.

2 MS. SURGEON: Was that given in cash?

3 A. He said it was cash.

4 MR. SMITH: Did he say why he called
5 the Bowman residence over and over on the
6 night of the murder?

7 A. He said that he was meeting Mr. Bowman in town,
8 I believe, and he was -- I don't specifically
9 recall exactly what he said, but it was
10 something to the extent that they were meeting,
11 that they knew each other.

12 MR. BECTON: Is that in the notes? I
13 thought you said he only is acknowledging
14 one phone call there.

15 A. He said he made a phone call. He spoke with
16 Mr. Shawn Bowman on the phone that night.

17 MR. JENKINS: Were there any phone
18 records available showing -- verifying
19 those telephone calls to the sheriff's
20 department? Do we know that? During the
21 murder investigation, was there -- did they
22 obtain any cell phone records to verify his
23 story that he was calling over and over
24 again?

1 A. They did not obtain cell phone records from
2 Mr. Shawn Bowman or Mr. Aaron Brewton that we
3 saw or that were provided.

4 MR. SMITH: But he denies making more
5 than one call, I take it?

6 A. I didn't ask him specifically whether he made
7 more than one call. He acknowledged making
8 calls, a call to Mr. Bowman that night.

9 MS. MONTGOMERY-BLINN: May I approach
10 the witness, Your Honor?

11 JUDGE SUMNER: Yes, ma'am.

12 Q. Mr. Lau, I'm handing you your summary report --

13 A. Sure.

14 Q. -- to refresh your recollection.

15 A. (Witness reviews document.) According to my
16 notes from my discussion with Mr. Brewton,
17 Mr. Brewton stated that he was friends with
18 Shawn Bowman. He further stated that he spoke
19 on the phone with Mr. Bowman on the night of
20 9/18/2000. He said that it was sometime before
21 Brewton went to Bojangles. Brewton stated that
22 he beeped Bowman and that Bowman called him
23 back. He stated that it was a quick
24 conversation about stuff that they had coming up

1 that weekend. Brewton stated that he was unsure
2 whether there was more than one call or beep to
3 Bowman.

4 MR. VICKORY: Did he say where he got
5 that \$10,000 or \$8,000?

6 A. No.

7 MS. MONTGOMERY-BLINN: Any more
8 questions about the Aaron Brewton
9 investigation? Last one.

10 MR. BECTON: It will take me two
11 minutes.

12 MS. MONTGOMERY-BLINN: Okay.

13 MR. BECTON: Why don't you pass around
14 whatever you need to pass around?

15 (THEREUPON, A DISCUSSION WAS HAD OFF
16 THE RECORD WHICH WAS NOT REPORTED BY THE
17 COURT REPORTER.)

18 MS. MONTGOMERY-BLINN: Okay, Larry Williams
19 is the last of group B. He made -- he was
20 interviewed, Mr. Williams was interviewed by law
21 enforcement eight times. He made inconsistent
22 confessions implicating himself and others and
23 then recanted them. His confessions and
24 statements are in the briefs. Mr. Williams

1 ultimately pled. His plea information -- to
2 second degree murder.

3 (THEREUPON, MR. WILLIAMS' RECORD IS
4 DISPLAYED ON THE SCREEN.)

5 MS. MONTGOMERY-BLINN: His plea information
6 and sentence are also in the brief. He has now
7 been released and he was interviewed by -- he
8 was interviewed one time by the Commission after
9 multiple attempts to locate him. And this is
10 Mr. Williams only conviction since he's been
11 released, and since -- he was 16 at the time.
12 So this is an only conviction before the
13 homicide incident. He has no other record.

14

15 EXAMINATION BY MS. MONTGOMERY-BLINN:

16 Q. All right, Mr. Lau, I'll remind you that you're
17 still under oath.

18 A. Sure.

19 Q. Were you able to locate Larry Williams?

20 A. Yes, I was.

21 Q. Okay. I'm sorry, he was interviewed more than
22 one time. I apologize. That was incorrect.

23 All right. Tell me about trying to locate
24 Mr. Williams.

1 A. I attempted to locate Mr. Williams and had very
2 little success, and it was actually a bit of
3 luck when I finally was able to get information
4 and get in contact with Mr. Williams. We had
5 been going to some apartment complexes in
6 Asheville seeking to find Mr. Williams, and I
7 went into an apartment complex, a low income
8 housing facility, and I asked the individual in
9 the office if they happened to know who this
10 individual was and where he may be living. It
11 happened to be -- he happened to be the
12 boyfriend of this individual's daughter. So she
13 was able to put us in touch with her daughter,
14 who then put us in touch with Mr. Williams.

15 Q. Okay. And what day was that that you spoke with
16 Mr. Williams first?

17 A. That was on November 11, 2010. I spoke with
18 Mr. Williams' girlfriend first, and she then
19 conveyed to Mr. Williams I would like to speak
20 with him, and then he called me back. When he
21 called me back he indicated to me he didn't want
22 to talk about it. He said he was not interested
23 in speaking about the past. He said if we
24 looked at everything, we would see it right

1 there. I explained to him the Commission, and
2 asked if he would willing to look at his
3 statements and just tell me whether or not those
4 statements, which were attributed to him --
5 because again, we only had the law enforcement
6 summary reports -- to tell me if those
7 statements were accurate reflections of what he
8 had said during the course of this
9 investigation.

10 He indicated to me that he would be willing
11 and that he would call me back.

12 Q. And did he?

13 A. He never called me back. I tried to contact him
14 on other occasions. One thing I did have was
15 his girlfriend's phone number and the location
16 where he was living. So I tried to call him and
17 we didn't have success speaking with him. He
18 indicated that he did not want to talk.

19 Q. So what did you do?

20 A. I ended up having to subpoena him to appear at a
21 deposition, and I subpoenaed him and then we
22 deposed him on March 10, 2011.

23 Q. Okay. And tell us about, was he cooperative
24 during that deposition?

1 A. when he came into the deposition he was
2 uncooperative. He was -- I'm sorry,
3 uncooperative is not the term. He was
4 cooperative to the extent that he felt he had to
5 comply with the subpoena. He came in, sat in
6 the chair, answered questions, and indicated by
7 refusing to acknowledge or shake my hand when he
8 walked in that he wanted nothing to do with me.

9 I proceeded with the deposition and began
10 asking him questions. While I was asking him
11 questions he indicated to me that he was upset
12 because he had applied to our agency while he
13 was in jail and nobody ever responded to him.
14 At that point in time I told him that we had not
15 been established during the period of time he
16 was describing having applied to the agency. He
17 told me he couldn't believe he had a grudge
18 against an agency that didn't exist and then
19 became cooperative and began speaking with me.
20 I would say at that point in time sort of the
21 hostility that was being exhibited ceased, and
22 he started answering questions very fully.

23 Q. And what did he tell you?

24 A. He told me that he felt that he was being

1 sabotaged through the course of the sheriff's
2 department's investigation. We went through his
3 statement. I asked him about what happened
4 while he was left alone with Sheriff Medford in
5 that first statement that he gave. He said that
6 it wasn't just Sheriff Medford. He said
7 DA Moore was also there while he was left alone
8 with the sheriff. He said that during that
9 period of time he believed that Mr. Moore was
10 recording portions of the interview because he
11 said he kept hitting something in his pocket.

12 He said that -- I asked him whether or not
13 the sheriff had made any threats or what the
14 sheriff had told him during the course of that
15 period, and he said that the sheriff was just
16 telling him details in his questions. I believe
17 an example he gave was, you were with so and so
18 when you drove out to Fairview to kill that guy.

19 So he said that based on what the sheriff
20 was telling him during that period of time,
21 having been scared, that when the detectives re-
22 entered the interrogation, that he had told them
23 what the sheriff had told him during his
24 questioning.

1 He told me that his lawyer wanted him to
2 plea and didn't try to prepare a defense. He
3 said that after two years in jail he finally
4 gave up and pled. He said he was young, just a
5 teenager, and didn't understand the way the
6 system worked. He said that his mother was used
7 to try and induce him to take a plea. He said he
8 -- in response to my question, why do you think
9 your codefendants made these statements, he said
10 he believed his codefendants were implicating
11 each other to seek favors.

12 He said that he believed Matt Bacoate was
13 helping people to become informants. He said
14 that during the night in question him and
15 Mr. Wilcoxson had watched a movie in the van,
16 and at some point he fell asleep in that van and
17 slept in the van during the night of the Bowman
18 homicide.

19 He explained his confession, and I believe
20 that portion of the deposition --

21 (THEREUPON, A PORTION OF MR. WILLIAMS'

22 DEPOSITION WAS PLAYED FOR THE COMMISSION.)

23 Q. Now, Mr. Lau, were you present when this video
24 was made?

1 A. I was.

2 Q. And is it a fair and accurate representation of
3 a --

4 A. It is.

5 Q. -- portion of your deposition of Mr. Williams?

6 A. It is.

7 Q. Okay. So you went through all of the statements
8 that Mr. Williams made with him?

9 A. We went through all the statements, yes.

10 Q. Okay. And what did he tell you?

11 A. He said that he was telling them what they
12 wanted to hear because he was hoping that he
13 could get out.

14 Q. Okay. And where did he get the information that
15 was in these statements?

16 A. Well, with regards to that initial statement, he
17 said he got the information from Sheriff
18 Medford. With regards to the later statements
19 he gave in October, he was not held in custody
20 from the time he gave his initial statement on
21 September 26th until the period when he gave his
22 statement in October, he was not in custody for
23 that whole period of time. He said he had
24 information that he learned that was on the

1 street. He said that he had heard stuff from
2 jail talk once he finally was incarcerated and
3 he said he had all that information and that's
4 where his statements came from.

5 I also showed him a photo from the security
6 video. I showed him the pictures from the
7 security video of the --

8 Q. The gas station security --

9 A. At the gas station, that's correct, of the
10 vehicle, and he said that it was not
11 Mr. Kagonyera's vehicle, and he explained that
12 Mr. Kagonyera's was a box shape, the wheels were
13 different, and he said that Mr. Kagonyera's car
14 was a single color whereas the vehicle in the
15 security video was, appeared to have a different
16 colored top.

17 Q. When you showed that to him, did you tell him
18 what that photo was from?

19 A. I did not tell him what that photo was from when
20 I showed it to him, I just asked him if it was
21 Mr. Kagonyera's vehicle.

22 Q. Now, he read a statement at sentencing. Did you
23 ask him about that?

24 A. I did ask him about that.

1 Q. Or he gave a statement at sentencing.

2 A. He gave a statement at sentencing, and I asked
3 him about that. (Witness reviews document.) He
4 told me -- I said, "at the sentencing hearing you
5 stood up and you read a statement.

6 Uh-huh (yes), somebody helped me write it.
7 It sounded good, didn't it?

8 well, tell me about that.

9 well, I was told to believe that if you
10 represented yourself like in an appropriate way,
11 like a decent haircut, write a letter for the
12 judge and stuff, it all looked good for you in
13 court, uh-huh (yes), you know, what I'm saying?
14 well, that's what that was, uh-huh (yes), you
15 know what I'm saying? And it was kind of hard
16 reading that letter, you know, what I'm saying?

17 Yeah.

18 Because it never existed to me. So you
19 know, I was kind of choking up reading the
20 letter a little bit because I didn't feel
21 comfortable. You know what I'm saying? But I
22 couldn't tell them that at -- you know what I'm
23 saying? It was already done. I was already
24 going to prison, and what was said was said."

1 Q. All right. Were you able to review any other
2 agency files for Mr. Williams?

3 A. I reviewed his Prisoners Legal Service, his
4 file.

5 Q. And did he sign a waiver so that you could
6 review that file?

7 A. He did sign a waiver allowing us to review that
8 file.

9 Q. Was there anything inconsistent with the
10 statements that he's making to you today in his
11 file?

12 A. No, there was not.

13 Q. And what was his asking Prisoner Legal Services
14 to do?

15 A. He wanted them to review his case.

16 MS. MONTGOMERY-BLINN: Commissioner
17 questions?

18 (No audible response.)

19 MS. MONTGOMERY-BLINN: All right, I'll
20 ask that Mr. Lau step down.

21 JUDGE SUMNER: Thank you, sir.

22 (THEREUPON, MR. LAU STEPS DOWN FROM
23 THE WITNESS STAND.)

24 MS. MONTGOMERY-BLINN: And I'll ask that we

1 recess for the evening.

2 JUDGE SUMNER: All right. We'll conclude
3 today's session. We will resume tomorrow
4 morning at 9:00 a.m.

5 (THEREUPON, THE HEARING WAS ADJOURNED AT
6 7:48 P.M.)

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NORTH CAROLINA

CABARRUS COUNTY

C E R T I F I C A T E

I, Ira Anderson, Court Reporter and Notary Public, the officer before whom the foregoing proceeding was conducted, do hereby certify that the proceeding was taken by me to the best of my ability and thereafter transcribed under my supervision; and that the foregoing pages, inclusive, constitute a true and accurate transcription of the proceeding.

I do further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in which this proceeding was conducted, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereof, nor financially or otherwise interested in the outcome of the action.

This the 12th day of May 2011.



Ira Anderson, Notary Public
Notary Public No. 20022840073

**CERTIFICATION
NULL AND VOID IF
ENVELOPE SEAL IS BROKEN**