

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.

NORTH CAROLINA INNOCENCE INQUIRY COMMISSION
HEARING
(DAY TWO)

At Raleigh, North Carolina

April 29, 2011

9:13 a.m.

Reported by: Ira Anderson

ORIGINAL



A P P E A R A N C E S

Commission Staff: Kendra Montgomery-Blinn, Esq.
Jamie Lau, Esq.
Lindsey Guice Smith, Esq.
Stormy Ellis, Esq.
Sharon Stellato
Adam Wrenn
Aschante Pretty
Administrative Office of the
Courts
NORTH CAROLINA INNOCENCE
INQUIRY COMMISSION
P.O. Box 2448
Raleigh, NC 27602
Commission Members: Quentin T. Sumner
Senior Resident Superior Court
Judge
7th Judicial District
Nashville, NC
C. Branson Vickory, III
District Attorney
8th Judicial District
Goldsboro, NC

A P P E A R A N C E S (Continued)

Ms. Mel Laura Chilton

Clayton, NC 27527

Wade M. Smith, Esq.

THARRINGTON SMITH, LLP

Raleigh, NC

Dr. Jacqueline Greenlee

Jamestown, NC

Ms. Linda Ashendorf

Charlotte, NC

Sheriff Susan Johnson

Currituck County

Sheriff's Office

Maple, NC

Hon. Charles L. Becton

Durham, NC

A P P E A R A N C E S (Continued)

Ms. T. Diane Surgeon

The Elder Law Center

Suite B

2003 N. Pine Street

Lumberton, NC 28358

Chief Heath Jenkins

Stanley Police Department

P.O. Box 279

Stanley, NC 28164

1	T A B L E O F C O N T E N T S	
2	E X A M I N A T I O N S	
3		
4	WITNESS - Jamie Lau	
5	Examination by Ms. Montgomery-Blinn	6
6	Mr. Lau returns to the stand for examination	54
7	Mr. Lau returns to the stand for examination	99
8	Mr. Lau returns to the stand for examination	163
9		
10	WITNESS Lindsey Guice Smith	
11	Examination by Ms. Montgomery-Blinn	104
12		
13	WITNESS Stormy Ellis	
14	Examination by Ms. Montgomery-Blinn	160
15		
16	EVITA BOWMAN	
17	Victim impact statement	261
18		
19	JUDGE SUMNER	
20	Decision after Deliberation	264
21		
22		
23		
24		

1 JUDGE SUMNER: Good morning. It looks like
2 we've got everybody back this morning, and we
3 will resume where we stopped off yesterday.
4 Ms. Montgomery-Blinn.

5 MS. MONTGOMERY-BLINN: Thank you, Your
6 Honor. Good morning, Commissioners, thank you
7 for coming back. All right, we're just going to
8 jump right into it, pick up where we left off.

9 Matt Bacoate, you heard some information
10 about him yesterday. He's the director or was
11 the director of Life on Life's Terms. That
12 program has been renamed New Life Options, he is
13 the director of New Life Options. His name was
14 coming up in interviews with claimants, co-
15 defendants, and attorneys, often without us
16 asking about him, so we felt like we needed to
17 sit down with him and give him a chance to
18 explain his involvement in the case and ask him
19 some questions. He was cooperative with the
20 Commission's interview and cooperative with the
21 deposition.

22 The Commission calls Mr. Lau to testify.
23 Oh, wait. Let me show, as he's coming up I'll
24 let you look at Mr. Bacoate's record.

1 (THEREUPON, MR. BACOATE'S RECORD IS
2 DISPLAYED.)

3 MS. MONTGOMERY-BLINN: Part two, part
4 three. Let me go back. Okay, did you have
5 enough time with those? All you needed?

6 (No audible response.)

7 MS. MONTGOMERY-BLINN: All right. Mr. Lau,
8 I believe you are still under oath from
9 yesterday. Is that correct, Your Honor?

10 JUDGE SUMNER: Yes, he is.

11

12 THEREUPON,

13 Jamie Lau,

14 Having first been reminded that he is
15 still under oath, was examined and
16 Testified as follows:

17 EXAMINATION BY MS. MONTGOMERY-BLINN:

18 Q. All right. Tell us about your ability or
19 attempts to interview Mr. Bacoate.

20 A. I think the first thing I should say is an
21 attempt wasn't necessarily made the first time
22 we spoke with him. We spoke with him on
23 December 7, 2010 when we went to locate
24 Mr. Isbell at the 60 Flint Street address, which

1 is the home of New Life Options. Mr. Bacoate
2 was present at that time and he provided us with
3 some of the statements you guys heard yesterday
4 during the Teddy Isbell testimony.

5 Q. So you already testified about that conversation
6 with Mr. Bacoate?

7 A. Yes, that's correct.

8 Q. All right. Now, will you tell us a little bit
9 about were you able to research anything about
10 Life on Life's Terms now known as New Life
11 Options?

12 A. Yes, I was.

13 Q. Can you tell us what you found out?

14 A. I was interested in the Life on Life's Terms
15 program after meeting with Mr. Isbell and after,
16 as you said, Mr. Bacoate's name was coming up
17 from many of the individuals we interviewed
18 without us having asked about him. So I began
19 doing some research about the Life on Life's
20 Terms program just trying to pull up what
21 publicly available information was available. I
22 found out that Life on Life's Terms was
23 incorporated in April of 1994, but it received a
24 revenue suspension in 1995 from the Secretary of

1 State. A revenue suspension means they did not
2 file a report or return, pay any taxes as
3 required by tax laws in '94. When you obtain a
4 revenue suspension, all the powers and
5 privileges that you had as a registered
6 nonprofit corporation cease until your taxes are
7 brought current. And there's no indication that
8 that revenue suspension was ever lifted or that
9 anything had been done subsequent to the 1994
10 incorporation.

11 I did also look for publicly available IRS
12 990 forms, which are tax forms that nonprofits
13 have to complete for the IRS each year. There
14 were IRS 990 forms available for 1997 through
15 2000. They were submitted to the IRS, each of
16 those tax years were submitted to the IRS in
17 2002. In January of 2007 -- and based on our
18 interviews, Life on Life's Terms seemed to be in
19 operation continuously between 1994 and it still
20 operates as New Life Options today.

21 In January of 2007 Life on Life's Terms
22 became New Life Options and new articles of
23 incorporation were filed with the North Carolina
24 Secretary of State. The incorporator listed on

1 that form is Michael Wofford. I looked at what
2 I could find with regards to Mr. Wofford.
3 Wofford is a physician in Georgia, his license
4 lapsed to practice medicine in Georgia in 2005.
5 Wofford is not listed on the North Carolina
6 Medical Board's website as ever having a license
7 to practice in North Carolina. Mr. Wofford has
8 drug-related arrests on his record including a
9 possession with intent to manufacture and sell a
10 schedule II in April of 2005. Mr. Wofford pled
11 in 2006, he received a six- to eight-month
12 inactive sentence, and as part of the plea deal
13 he was required to complete Life on Life's Terms
14 program.

15 Mr. Bacoate is the executive director of
16 both the Life -- was the executive director of
17 both the Life on Life's Terms program, and is
18 now the executive director of the New Life
19 Options program.

20 Q. And when you interviewed Attorney Jack Stewart,
21 who was Mr. Robert Wilcoxson's attorney, he also
22 talked to you a little bit about that, some
23 things. What did he tell you?

24 A. Yes. First, Mr. Stewart confirmed to me that

1 he was representing Mr. Bacoate in the federal
2 investigation that is currently ongoing. I
3 referenced some of these things that I had
4 learned about the program in that meeting and he
5 told me that he wasn't surprised to learn that
6 as a corporation, Life on Life's Terms had been
7 suspended by the Secretary of State in 1995. He
8 said it was always his understanding or it was
9 his understanding that the program operated with
10 a wink and a nod from the DA's office.

11 Q. And did he talk to you about not his
12 representation of Mr. Bacoate, but as a criminal
13 defense attorney how he worked with Mr. Bacoate
14 before he came to represent Mr. Bacoate, just
15 how, you know, in 2000 he worked with
16 Mr. Bacoate?

17 A. He said that if someone came to him with a drug-
18 related offense, that he would go to Mr. Bacoate
19 if he didn't have an extensive record, speak
20 with Mr. Bacoate about getting that individual
21 in the program, and use that participation in
22 the program to seek an -- to reach an agreement
23 with the district attorney's office for some
24 sort of relief, some mitigation based on the

1 fact that the individual was participating in
2 the Life on Life's Terms program. He also said
3 that there were times when Mr. Bacoate would
4 approach him with information from the district
5 attorney about how the DA would dispose of a
6 case.

7 Q. And did you take a look at Mr. Stewart's time
8 sheets for when he represented Mr. Wilcoxson?

9 A. I did. As I testified, Mr. Bacoate's name kept
10 coming up with regards to our investigation, and
11 one of the places where it came up was on
12 Mr. Stewart's time sheet from his representation
13 of Mr. Wilcoxson. When I met with Mr. Stewart,
14 he no longer has a file in this matter, but I
15 showed him his time sheet. He reviewed that
16 time sheet and he saw that he met with
17 Mr. Bacoate on June 25, 2002. He found it odd
18 that he would be meeting with Mr. Bacoate this
19 late because generally the practice was to meet
20 with Mr. Bacoate early on once you had a client
21 who had a charge against him. And he couldn't
22 remember or explain the substance of that
23 meeting. He just found it odd that he would be
24 meeting with Mr. Bacoate in June of 2002.

1 Q. So just to confirm, that was on his time sheets
2 for his representation of Robert Wilcoxson that
3 he had a meeting with Mr. Matt Bacoate in the
4 Robert Wilcoxson case?

5 A. That is correct.

6 Q. Go ahead.

7 A. Well, I think another thing with regards to
8 Mr. Bacoate, in Mr. Wilcoxson's deposition
9 Mr. Wilcoxson states that Mr. Bacoate was
10 reaching out to individuals that he knew,
11 specifically his girlfriend, Ms. Dea Johnson,
12 and asking them to speak with Mr. Wilcoxson in
13 attempting to set up some sort of meeting with
14 Mr. Wilcoxson between Mr. Bacoate and
15 Mr. Wilcoxson.

16 Q. You mentioned a federal investigation. Did you
17 follow up with the district attorney's office to
18 see if they would tell you anything about that
19 investigation?

20 A. I spoke with the U.S. Attorney's office, and at
21 this point in time, they said they couldn't
22 confirm or deny whether or not that
23 investigation was ongoing.

24 Q. All right. Now, did you speak with Mr. Bacoate

1 again after that interview with Teddy Isbell?

2 A. Yes, I did. I subpoenaed Mr. Bacoate and
3 deposed him on April 14.

4 Q. And did he comply with your deposition request?

5 A. He complied with my deposition request. Along
6 with that subpoena I also subpoenaed his records
7 for participation in the Life on Life's Terms
8 program for all of the members of group A as
9 well as all of the members of group B.

10 Mr. Bacoate appeared at his deposition on the
11 14th of April and he indicated to me that he had
12 no records of any participation for any of the
13 members of group B, any of the members of
14 group A. He said that he recalled Teddy Isbell
15 and Mr. Aaron Brewton being a part of his
16 program, but that he had no records of their
17 participation, no records of any fees they paid,
18 no records whatsoever related to those two
19 individuals.

20 Q. Did he explain why he didn't have any records?

21 A. He gave two reasons why he did not have those
22 records. The first was that his -- the office
23 had moved and some files were discarded or lost
24 when the office had moved. The second was that

1 one of his partners had destroyed records prior
2 to the April 14th date sometime after those
3 individuals participated in the program.

4 Q. Now, without those records do you still have
5 other evidence that Mr. Isbell and Mr. Brewton
6 were involved in the program?

7 A. Well, Mr. Bacoate himself doesn't deny that
8 those individuals were involved in the program.
9 He confirmed that they did participate in the
10 program.

11 Q. And are there also court documents for
12 Mr. Brewton?

13 A. There are court documents for Mr. Brewton
14 indicating that he was released to the Life on
15 Life's Terms program.

16 Q. What did Mr. Bacoate tell you during the
17 deposition?

18 A. Well, I spoke with Mr. Bacoate about the first
19 interview that Lieutenant Constance had with
20 Mr. Isbell at the location or in Mr. Bacoate's
21 office at the Life on Life's Terms program. He
22 said that, Mr. Bacoate told me that he had a
23 relationship with Lieutenant Constance and that
24 he called Lieutenant Constance because he felt

1 that Mr. Isbell should speak with him regarding
2 the information Mr. Isbell had in the Bowman
3 homicide. I asked him specifically if he
4 remembered Mr. Isbell while he was present with
5 Mr. Bacoate, if he recalled a statement that --
6 from the interview at the sheriff's office on
7 that evening Mr. Bacoate is said to have told
8 Lieutenant Constance that Mr. Isbell, in his
9 office, told Mr. Bacoate that he was present
10 during the Bowman homicide. I asked Mr. Bacoate
11 if he recalled Mr. Isbell saying that he was
12 present during the Bowman homicide to
13 Mr. Bacoate before Mr. Bacoate called
14 Lieutenant Constance. Mr. Bacoate said that he
15 thinks Mr. Isbell rambled something about being
16 present in his office.

17 Q. This was before he called, Mr. Bacoate called,
18 Lieutenant Constance?

19 A. This is before Mr. Bacoate called Lieutenant
20 Constance. Mr. Bacoate said he thinks that
21 Mr. Isbell rambled something about being present
22 in his office.

23 I also asked Mr. Bacoate about giving
24 Mr. Isbell money for the motel that night that

1 Mr. Isbell went to subsequent to that interview
2 in Matt Bacoate's office with Lieutenant
3 Constance. Mr. Bacoate said that he did not
4 give Mr. Isbell money for a hotel that night, he
5 said that Lieutenant Constance had provided
6 money to Mr. Isbell for a hotel that night.
7 This was inconsistent with what Mr. Isbell said,
8 that it was Mr. Bacoate who provided that money.

9 I also asked Mr. Bacoate if he provided
10 information to Lieutenant Constance with regard
11 to where Mr. Isbell was staying that night. He
12 said that he did not, Lieutenant Constance knew
13 where the hotel was because Mr. Constance had
14 provided the money to Mr. Isbell. This was
15 inconsistent with the statement Mr. Bacoate had
16 provided us at the earlier interview on
17 December 7 where he said that Lieutenant
18 Constance asked him where Mr. Isbell was staying
19 because he had additional questions for
20 Mr. Isbell.

21 Q. Did he talk to you about that interrogation
22 anymore?

23 A. I did speak with him about that interrogation.
24 He said that Mr. Isbell was under the influence

1 during that interrogation. He said he knew this
2 because he knew Mr. Isbell, but he said he
3 doesn't know if just anyone would have noticed
4 that Mr. Isbell was under the influence of drugs
5 during the course of that interview.

6 I asked him where Ms. Annette Hines,
7 Mr. Isbell's girlfriend, was at while Mr. Isbell
8 was being interrogated. He said that they had
9 brought her into another room down the hall and
10 individuals were also questioning Ms. Hines.

11 Q. Did you ask him about that -- when Mr. Isbell
12 withdrew his plea or was permitted to withdraw
13 his plea and the court was going to continue the
14 case for him to come and testify, did you ask
15 him more about that?

16 A. Yes, I did. I asked him whether or not he ever
17 testified in a hearing regarding Mr. Isbell's
18 motion to withdraw his plea, and he said that he
19 did not testify in any hearing with regards to
20 Mr. Isbell's motion.

21 Q. And you said that he didn't have any records of
22 Aaron Brewton, but he did confirm that
23 Mr. Brewton did participate in the program?

24 A. That's correct.

1 Q. And you said that there are court documents that
2 also confirm that?

3 A. That's correct.

4 Q. Can you tell the Commission a little bit more
5 about those court documents?

6 A. In August of 2002 Mr. Isbell - I'm sorry,
7 Mr. Brewton entered a plea to a breaking and
8 entering. In that plea -- it's the transcript
9 that we were speaking of yesterday where the
10 district attorney says he's not dismissing the
11 murder charge in exchange for the plea here. In
12 that plea, at the end of that plea as terms of
13 it, Mr. Brewton is supposed to be a resident at
14 the Life on Life's Terms program. The district
15 attorney states that Mr. Brewton will enter the
16 Life on Life's Terms program as a resident and a
17 judgment would be continued until December 2,
18 2002.

19 Q. So as a resident do you understand that to mean
20 to live in the apartments that the program
21 maintained?

22 A. Yes. It says that Mr. Brewton will be living at
23 the Life on Life's, living with Mr. Bacoate at
24 the Life on Life's Terms program.

1 Q. And Mr. Bacoate remembered Mr. Brewton's
2 participation?

3 A. He did.

4 Q. Did he remember Mr. Brewton living in the
5 apartments as a resident?

6 A. He said Mr. Brewton was never a resident of his
7 program.

8 Q. Did you talk to Mr. Brewton about the meeting
9 that he may have been in with Aaron Brewton's
10 attorney and the district attorney about Aaron
11 Brewton's case and whether or not it should be
12 dismissed?

13 A. I'm sorry. Do you mean did I speak with
14 Mr. Bacoate -

15 Q. Yes.

16 A. -- regarding that meeting?

17 Q. Yes.

18 A. Yes, I did. Mr. Bacoate recalled being at the
19 meeting with Mr. Belser, with District Attorney
20 Moore, and with Aaron Brewton. He told me that
21 he recalled Belser and Moore being in accord
22 that Mr. Brewton may not have committed whatever
23 offense was being dismissed. I asked him what
24 offense that was, and he told me that he

1 believed it was a minor drug offense.

2 Q. And that deposition was recorded, is that
3 correct?

4 A. Yes, that deposition was recorded.

5 Q. I would like to show the Commissioners that clip
6 of the deposition, and I'll ask you, Mr. Lau, to
7 watch it, if it's fair and accurate.

8 (THEREUPON, A PORTION OF THE
9 DEPOSITION OF MR. BACOATE WAS PLAYED.)

10 Q. Mr. Lau, were you present when this video was
11 made?

12 A. I was.

13 Q. And is it a fair and accurate representation of
14 what you witnessed in the deposition?

15 A. Yes, it is.

16 Q. Just for a second just to backtrack, you have
17 read previously yesterday or I had read and we
18 discussed the dismissal of the murder charges
19 and why that was being done. And I think -- I'm
20 not sure if we covered this yesterday, but do
21 you know whether or not Aaron Brewton submitted
22 to a polygraph exam?

23 A. Aaron Brewton did, it's my understanding,
24 according to him, submit to a polygraph exam.

1 Q. And you don't have the report of that polygraph
2 test?

3 A. No, I do not.

4 Q. So he has told you that he did?

5 A. He did.

6 Q. Did his attorney mention that?

7 A. We did not speak with Mr. Belser.

8 Q. Okay. And did Mr. Brewton indicate to you what
9 his results were from the polygraph exam?

10 A. He indicated that he had passed the polygraph
11 exam.

12 Q. But you have no independent confirmation, just
13 what Mr. Brewton told you?

14 A. Correct.

15 Q. Now, did you talk with Mr. Bacoate about whether
16 or not he ever spoke to Dea Johnson,
17 Mr. Wilcoxson's girlfriend?

18 A. I did.

19 Q. And what did he say?

20 A. He said, no, he never spoke with Ms. Johnson
21 with regards to the Bowman homicide.

22 Q. Did he say that he knew who Ms. Johnson was?

23 A. He did know Ms. Johnson.

24 Q. Did you ask him if he ever stated or implied

1 that he could assist Mr. Wilcoxson?

2 A. I did ask him that and he said no.

3 Q. Did you ask him if he ever spoke with
4 Mr. Wilcoxson's attorney, Jack Stewart?

5 A. I did, and he said no.

6 Q. He said he did not?

7 A. He said he did not speak with Jack Stewart with
8 regards to the Bowman homicide.

9 Q. Did you have Mr. Stewart's time sheet with you
10 during this deposition?

11 A. I did.

12 Q. Did you show it to Mr. Bacoate?

13 A. Yes.

14 Q. And what did he say when you showed that to him?

15 A. I showed it to him and he said that the meeting
16 couldn't have been or wasn't regarding the
17 murder charge.

18 Q. Did he remember what the meeting was about?

19 A. No, he did not.

20 Q. Did you ask him about whether or not he received
21 a reward for bringing Teddy Isbell forward?

22 A. Yes, I did.

23 Q. And what did he say?

24 A. He said, yes, that he had received an award, a

1 reward. He said it was a small amount, between
2 \$200 and \$300.

3 Q. Did you ask him about any other compensation
4 that he may have received?

5 A. I asked him if in this matter he received any
6 other compensation besides program fees or this
7 reward, and he said no.

8 Q. And did you talk to him about the other people
9 from group A and ask him whether or not any of
10 them had ever been involved in the program?

11 A. I did.

12 Q. And what did he say?

13 A. He told they had not.

14 Q. Did he have any records?

15 A. No, he had no records for any of the
16 individuals.

17 Q. Did you ask him whether he ever approached any
18 of the other people in group B?

19 A. Yes, I did.

20 Q. And what did he say?

21 A. He said, no, he had not approached them. I
22 think it's also important to note I spoke with
23 Dea Johnson. Ms. Johnson has told me that
24 herself and Mr. Wilcoxson's mother met with

1 Matt, Mr. Bacoate, with regards to Wilcoxson's
2 murder charge. Her recollection was that this
3 was early after Mr. Wilcoxson had been arrested.
4 She said that during that meeting Mr. Bacoate
5 indicated to Ms. Johnson and Mr. Wilcoxson's
6 mother that a plea would be in Mr. Wilcoxson's
7 best interest.

8 Q. And Mr. Bacoate did not confirm that?

9 A. Mr. Bacoate said he did not meet with any
10 members of Mr. Wilcoxson's family regarding the
11 homicide charge.

12 Q. Now, you previously testified that Teddy Isbell
13 told you that Matt Bacoate had negotiated his
14 first plea. Did you talk to Mr. Bacoate about
15 that?

16 A. Yes, I did.

17 Q. And what did he tell you?

18 A. Mr. Bacoate said he was not negotiating
19 Mr. Isbell's plea.

20 Q. Now, do you have any other independent
21 documentation that would indicate whether or not
22 Mr. Bacoate was actively involved in
23 Mr. Isbell's case?

24 A. I was trying to verify that, and I reviewed the

1 file and what I found was a handwritten note in
2 the district attorney's file. That handwritten
3 note is following Mr. Reed Brown's motion to
4 suppress Mr. Isbell's statement and motion to
5 remove the district attorney from the case.
6 There's a handwritten note on there saying, call
7 Matt, reference plea, meet with Matt and Teddy.

8 MS. MONTGOMERY-BLINN: May I approach
9 the witness, Your Honor?

10 JUDGE SUMNER: Yes.

11 Q. Mr. Lau, I'm handing you some documents. Can
12 you tell me what those are?

13 A. This is the handwritten notes that are in the
14 district attorney's file.

15 Q. And can you just please direct our attention to
16 what part of this note you were talking about?

17 A. Well, at the top half of the sheet of paper in a
18 circle is, motion to recuse, motion to suppress.
19 Below that it says, call Matt, TH plea. And it
20 also says, Monday p.m. talk to Isbell with Matt.

21 Q. Mr. Lau, just to verify, these were in the
22 district attorney's file, but you don't know who
23 made them or under what context or what the
24 meaning of these notes are?

1 A. That is correct.

2 Q. Thank you.

3 MS. MONTGOMERY-BLINN: Commissioners,
4 do you have questions for Mr. Lau in
5 regards to this portion of the
6 investigation?

7 JUDGE SUMNER: Whose phone number is
8 that that appears on this?

9 A. I don't know. I should also indicate that on
10 the second page of this sheet it appears to be
11 notes about Matt's recollection or Mr. Bacoate's
12 recollection of the meeting or the interrogation
13 of Mr. Isbell. Again, that's based on looking
14 at these notes.

15 Q. Mr. Lau, are you talking about the portion where
16 it says, Matt, and I see it says, got sick?

17 A. Yes.

18 MS. ASHENDORF: Did the reward that
19 Mr. Bacoate got come from Crime Stoppers,
20 or where did it come from?

21 A. I'm not sure.

22 JUDGE SUMNER: Yes, Mr. Smith.

23 MR. SMITH: Did Mr. Bacoate, did you
24 get the sense that he is being actively

1 encouraged by the district attorney's
2 office to get people to plead guilty?

3 A. I don't think I would be the appropriate one to
4 answer that question. The information I've
5 conveyed to you is the information I have.

6 MR. SMITH: There was at least a
7 fairly close association with the district
8 attorney's office, wasn't it, with the
9 program Mr. Bacoate was running?

10 A. Again, the information I'm conveying is the
11 information I have.

12 MS. ASHENDORF: Do you know if there
13 is an investigation going on concerning a
14 relationship between Mr. Bacoate and
15 Mr. Moore?

16 A. I do not know the current federal investigation
17 and how it -- what it relates to.

18 MR. VICKORY: Have you spoken to
19 Mr. Moore about these notes or about any of
20 these things we're talking about?

21 A. We have not. And Ms. Blinn summarized it at the
22 beginning, we didn't want to speak with them in
23 a fashion about these allegations, that would
24 make him a witness and require him to be

1 automatically recused from this matter.

2 MR. VICKORY: I'll probably want to
3 ask you some more questions later on about
4 that. Let me just ask you, maybe this is
5 the wrong time, but has Mr. Moore been
6 given an opportunity to provide any
7 response to some of these allegations, or
8 do you know?

9 A. With regards to Mr. Moore, as I said, we did not
10 seek to interview him or ask to depose him in
11 this case. We had made numerous -- we've asked
12 him at numerous times if he would like to sit
13 down and speak with us about our investigation,
14 we've said that we are willing to speak with him
15 about our investigation and what was being
16 uncovered during our investigation, but we
17 didn't want to specifically ask him to be
18 interviewed with regards to these allegations
19 because we felt that since he was still
20 representing the State in this matter, we didn't
21 want to make him a witness. That was our
22 internal discussion.

23 MR. VICKORY: These overtures to
24 Mr. Moore, have they been by letter or by

1 telephone?

2 A. By letter and by phone.

3 JUDGE SUMNER: So the shorthand answer
4 is, yes, the opportunity was given to him;
5 no, he has not taken advantage of that?
6 All right.

7 A. The opportunity was given to speak with us with
8 regards to our investigation.

9 MR. BECTON: As I understand it, based
10 on what you told Mr. Vickory, he doesn't --
11 you did not tell him about what people have
12 been saying?

13 A. No.

14 MR. BECTON: Did you question anybody
15 about the over 200 times someone called
16 Matt on the phone at the bottom of page 2?

17 A. I'm sorry?

18 MR. BECTON: At the bottom of page 2
19 there's an entry, over 200, it looks like
20 XB, called on phone to Matt. Has anyone
21 been questioned about that?

22 A. No.

23 MR. BECTON: This over 200 times Dea
24 called on phone or Defendant, I'm not sure.

1 MR. JENKINS: The two pages we have,
2 one is 633 and one is 631. Am I reading
3 that correctly?

4 A. Correct.

5 MR. JENKINS: Where's 632? Is there
6 something else?

7 A. We have it in the file. We can --

8 MR. JENKINS: It's just not available
9 then?

10 A. We can provide it to you. It doesn't speak of
11 Mr. Bacoate.

12 MR. JENKINS: Okay. That's all.

13 MR. BECTON: As I understand it, you
14 have heard testimony that Hite paid Bacoate
15 \$2,000, and Bacoate denied knowing Hite?

16 A. No, he knew Mr. Hite.

17 MR. BECTON: Or denied receiving money
18 from Hite?

19 A. Correct.

20 MR. BECTON: We've heard evidence that
21 Dea Johnson and Wilcoxson's mother talked
22 to Bacoate and they said they talked to him
23 about a second-degree plea, and it's my
24 understanding that Bacoate denies that?

1 A. Ms. Johnson did not say with regards if it was a
2 second-degree plea. She said they spoke with
3 him regarding a plea, and Mr. Bacoate denies
4 that.

5 MR. BECTON: Mr. Bacoate denies saying
6 he could help Wilcoxson? Is that my
7 understanding of what you said earlier?

8 A. Yes.

9 MR. BECTON: Mr. Bacoate denies
10 speaking to Attorney Stewart?

11 A. Yes, regarding this matter.

12 MR. BECTON: Although Stewart had it
13 on his time sheet that he did talk to
14 Bacoate?

15 A. Correct.

16 MR. BECTON: Mr. Bacoate said the only
17 money he received was a \$200 to \$300
18 reward? I'm just trying to make sure I
19 understand.

20 A. Yes, as well as program fees from Mr. Brewton.

21 MR. BECTON: And Mr. Bacoate said he
22 was not negotiating Mr. Isbell's plea, is
23 that what I understand you to say?

24 A. Correct.

1 MR. BECTON: Is there anything else
2 that the people you have interviewed said
3 Bacoate said that Bacoate denied?

4 A. Off the top of my head, I don't recall.

5 MR. JENKINS: Did he deny accepting
6 the \$8,000 and the \$2,000 from --

7 A. He said the only money he received from
8 Mr. Brewton was the program fees and that it was
9 a small amount.

10 JUDGE SUMNER: Ms. Surgeon?

11 MS. SURGEON: What do the program fees
12 consist of?

13 A. He spoke to us about that. And I may be getting
14 the numbers slightly off, but I believe these
15 were what they were. There was an initial fee
16 that you paid to enter the program, and then
17 there was a monthly fee after that of a small
18 amount. I believe he said at one point in time
19 that initial fee was \$500, and then I can't
20 remember the subsequent amount, and then at some
21 point in time that initial fee, I believe, went
22 up to \$1500. Again I'm trying my best to
23 recall. I'm not sure if those were entirely
24 correct, but it's an initial fee and then an

1 ongoing fee.

2 MS. MONTGOMERY-BLINN: Your Honor, may
3 I approach the witness?

4 JUDGE SUMNER: Yes, ma'am.

5 A. I have a feeling I might have your numbers.

6 Q. Mr. Lau, if it will help refresh your
7 recollection.

8 MS. MONTGOMERY-BLINN: I'm handing
9 Mr. Lau a transcript of his deposition with
10 Mr. Bacoate.

11 A. Initially it was \$500, which would cover being
12 taken into the program and the first month of
13 the program, after that it was \$100 a week.

14 MS. MONTGOMERY-BLINN: May I approach
15 the witness again, Judge?

16 JUDGE SUMNER: Yes.

17 A. At some point in time it went up. And when that
18 went up, it was structured in the same way
19 except there was a \$1500 fee initially for the
20 first 30 days and \$125 a week thereafter.

21 MS. ASHENDORF: A week?

22 A. A week.

23 JUDGE SUMNER: Did he indicate that he
24 had trained professionals on staff,

1 psychologists, folks that gave counseling
2 for substance abuse, those kinds of things?
3 Is that the reason the fees were so modest?

4 A. If I recall, I believe he actually said the
5 opposite, that they weren't a clinical program
6 in that sense. It was more of a counseling
7 program in that he would talk to people, run
8 meetings, and stuff of that nature. That's the
9 best of my recollection. I don't remember him
10 saying more.

11 MS. ASHENDORF: Does that program get
12 public funds or is it only the participants
13 who pay the program fees? How is that
14 program funded totally?

15 A. My understanding is that these are the funds it
16 receives and then there is also some -- and
17 based on the 990 tax form, there was some grant
18 funds that the program received as well as the
19 programming fees.

20 MS. ASHENDORF: Were these state grant
21 funds or county?

22 A. I believe they were public grant funds. I can
23 check on those forms and answer that question.
24 Those forms are in my binder, if you don't mind.

1 MR. JENKINS: In regards to those
2 public funds, on the 990, has any of those
3 funds been expended since it was no longer
4 licensed by the Secretary of State's office
5 to receive those funds?

6 A. Well, those funds are on those 990, reported on
7 those 990 forms from -- if you don't mind, I'll
8 go to my notes and get those 990 forms.

9 MR. JENKINS: Yes, sir.

10 A. (Witness examines document.) To address your
11 question, Judge Sumner --

12 JUDGE SUMNER: Yes, sir.

13 A. In response to the type of center it was and
14 what they provided, Mr. Bacoate told me, I
15 develop programs, work with people with
16 substance abuse problems to get them sufficient
17 counseling. I hold a twelve-step group meeting
18 in the facility that I operate for the people
19 that I work with to come to meetings for their
20 sobriety. I help with some job placement.
21 Those are the main, just the main things that go
22 on.

23 when you say organized counseling, who
24 provides those counseling sessions or does

1 those, that counseling?

2 I primarily use the relationship center.
3 Bryce Ohlman is the director there. Because we
4 are not a clinical division, we're not clinical
5 at all, we're just community-based options for
6 those who can't afford clinical. But in times
7 when clinical is necessary based on court
8 directives or probation or something like that,
9 I use the relationship center, but we will know,
10 we will know whoever they choose, we just try to
11 help facilitate it.

12 JUDGE SUMNER: Is his salary indicated
13 on the 990?

14 A. I'm sorry?

15 JUDGE SUMNER: Bacoate's salary.

16 A. The 990 indicates -- this is the 990 for 1997.
17 It indicates that the total amount of gift
18 grants and contributions received was \$45,291 in
19 1996, \$66,504 in 1995. I'm looking for his
20 salary, Your Honor. He has additional figures
21 attached to the back, but there's no indication
22 of where those figures are derived from. And I
23 can pass these forms around if anybody would be
24 interested in looking through them themselves.

1 JUDGE SUMNER: I'd like to see them.

2 MR. JENKINS: You said those -- 1996,
3 \$45,291; 1995 is \$66,000. But his status,
4 tax status was suspended in 1995. Did I
5 understand that correctly?

6 A. By the North Carolina Secretary of State his
7 nonprofit received a revenue suspension in 1995,
8 and the revenue suspension is based on not being
9 current with your tax reporting obligations.

10 MR. BECTON: And did I understand you
11 to say that these forms were not reported
12 until 2002?

13 A. That's correct.

14 MR. BECTON: And we have nothing that
15 indicates that anything from 2002 to 2011
16 has been filed?

17 A. There is no -- nothing that I could find
18 publicly available. And when I say that, I mean
19 doing searches for on sites that list the
20 filings of nonprofit organizations.

21 In 1997 he received \$21,300 in client fees.
22 Those were fees from individuals who used drug
23 rehab services through the organization. In
24 1997, according to his 1998 tax filing, which

1 requires you to go back through the years, he
2 received \$94,500 in gift grants and
3 contributions received, and \$15,400 in client
4 fees on the 1998 form.

5 MS. ASHENDORF: Does it indicate where
6 the \$94,000 came from?

7 A. It doesn't single out where it's coming from.
8 It says gift grants.

9 MR. BECTON: Is that cumulative for
10 the three years prior to that, the \$94,000,
11 or is that for that one year, one year
12 prior to that?

13 A. That was my understanding. You can review the
14 form. My understanding is that is just the year
15 1997 they received \$94,500 in gift grants and
16 contributions.

17 Q. Does he indicate that he had received the
18 Governor's Crime Commission grant?

19 A. He did mention some of the grants he received.
20 I can review my notes on the deposition. I
21 believe Z. Smith Reynolds was one of the
22 foundations he referred to.

23 MS. ASHENDORF: Is there no indication
24 of a --

1 A. He also received the Governor's Crime Commission
2 grant, yes, that's correct. Z. Smith Reynolds,
3 the ABC Commission, and he also lists the
4 Governor's Crime Commission as individuals who
5 he received grants from.

6 MS. ASHENDORF: I've been parts of
7 agencies that have received funds from Z.
8 Smith Reynolds and there's a report that
9 they expect. Did we check with Z. Smith
10 Reynolds or any --

11 A. What I have provided are the records that I have
12 found publicly available through my research on
13 the Life on Life's Terms program.

14 Your Honor, in response to your question
15 about how much the executive director is paid --

16 JUDGE SUMNER: Yes, sir.

17 A. -- according to the 990 from tax year 1998,
18 Mr. Bacoate's compensation was \$17,500.

19 MS. MONTGOMERY-BLINN: May I approach the
20 witness, Your Honor?

21 JUDGE SUMNER: Yes.

22 MS. MONTGOMERY-BLINN: Your Honor,
23 would you like for me just to just
24 circulate this through or --

1 JUDGE SUMNER: Heath may want to see
2 it also.

3 MR. JENKINS: I would like to ask
4 another question. Do we have any -- and
5 I'm going to look at this report, but did
6 you see anything -- you say that the report
7 is showing his salary at \$17,500, but did
8 you see any other reports that showed where
9 any of the rest of this money would have
10 been spent if he is the only person
11 operating this organization and he's not
12 paying --

13 A. He lists some additional employees on the 990
14 form. We did not see any records from the Life
15 on Life's Terms program. As I said, the records
16 we had subpoenaed, he provided no records in
17 response to our subpoena, said they were not
18 available. That included any records of
19 receiving funds from Mr. Brewton or Mr. Isbell
20 and what those funds he received were.

21 MS. GREENLEE: Are you aware of any
22 credentials that Mr. Bacoate had that would
23 make him representative of being a director
24 of this program?

1 A. No, ma'am, and I didn't ask that question during
2 the deposition so I can't say that he does not
3 have -- I can't say that.

4 MR. BECTON: Since we're investigating
5 Bacoate, can you tell me again from your
6 investigations how many meetings did he
7 have with the district attorney regarding
8 people in either group A or group B?

9 A. well --

10 MR. BECTON: Either that people in
11 group A or group B told you about or from
12 some other source.

13 A. Mr. Isbell said that Mr. Bacoate had been
14 meeting with the district attorney on his
15 behalf. I can't tell you how many meetings were
16 had. And we know that he was in the meeting
17 with Mr. Moore, David Belser, and Mr. Aaron
18 Brewton. That's been confirmed by different
19 individuals as well.

20 MR. BECTON: Well, I thought we talked
21 earlier about Wilcoxson, Brewton, and
22 Isbell.

23 A. I said Isbell and Brewton. With regards to
24 Wilcoxson?

1 MR. BECTON: Yes.

2 A. There's no confirmation whether or not he spoke
3 with the district attorney. Ms. Johnson and
4 Ms. Finch, who is Mr. Wilcoxson's mother,
5 according to Ms. Johnson they met with
6 Mr. Bacoate. She didn't know if he had met with
7 the district attorney regarding Mr. Wilcoxson's
8 charge.

9 MS. MONTGOMERY-BLINN: Any more
10 questions in regards to this portion of the
11 Commission's investigation?

12 Q. Mr. Lau, if you would like to step down.

13 (THEREUPON, MR. LAU STEPS DOWN FROM
14 THE WITNESS STAND.)

15 * * * * *

16 MS. MONTGOMERY-BLINN: We will let that
17 report continue to circulate and, of course, if
18 anybody does have any questions, we can always
19 come back to it, but I'll keep moving on if
20 that's all right, Your Honor.

21 JUDGE SUMNER: That's fine.

22 MS. MONTGOMERY-BLINN: We're going to turn
23 our focus of the presentation now to group A.
24 Just to refresh, this is the group that was not

1 investigated by the sheriff's department and was
2 not charged, but they were named in the first
3 Crime Stoppers tip a day-and-a-half after the
4 murder.

5 Robert Rutherford, as you know, made a
6 confession to a federal agent. You've already
7 heard that his DNA could not be excluded from
8 items located near the crime scene. You've
9 already heard that the sheriff's department
10 thought Lacy Pickens was in custody during the
11 time of the murder and that his DNA could not be
12 excluded from gloves located near the crime
13 scene, and that he had a rare allele. And
14 Bradford Summey you've already heard was
15 mentioned in the Rutherford confession, as was
16 Mr. Pickens, and that he had a complete DNA
17 match profile that had a CODIS hit on a bandana
18 that was located near the crime scene.

19 So Lacy Pickens, he is now deceased. I
20 just said that he was believed to be in custody
21 and that his DNA could not be excluded. We're
22 going to show you his record.

23 (THEREUPON, MR. PICKENS' RECORD IS
24 DISPLAYED.)

1 MS. MONTGOMERY-BLINN: Part I, part II,
2 part III. Am I moving too fast?

3 (No audible response.)

4 MS. MONTGOMERY-BLINN: Part IV. I believe
5 you've already heard that Mr. Pickens was shot
6 in an altercation with the Asheville Police
7 Department in July of 2006. By working with the
8 Buncombe County Sheriff's Department, we were
9 able to determine that Lacy Pickens was actually
10 not in custody on September 18, 2000. He was
11 indeed serving an active sentence at that time,
12 but he was on work release and was only serving
13 weekends. The jail logs indicated that he
14 checked in at 8:00 p.m. on Friday and checked
15 out at 8:00 p.m. on Sunday; the murder was on a
16 Monday night. Just reviewing the Buncombe
17 County Detention Center computer system does not
18 show that particular weekend status. The
19 Commission looked at inmate logs to see this and
20 to get the check-in and check-out dates.

21 We're handing out right now an affidavit
22 from Major Matayabas of the Buncombe County
23 Detention Facility that explains this and
24 confirms that Mr. Pickens was not in custody on

1 September 18, 2000. Attached to this affidavit
2 are also court records that show that on
3 September 21, a couple of days after the murder,
4 Mr. Pickens went to court and was sentenced to
5 weekends on a different charge, and it does
6 appear from those court documents that he was
7 also not in custody when he arrived in court on
8 September 21, 2000. And the jail records are
9 attached to that handout, so both of those
10 things are coming around right now.

11 All right. And as you've already seen in
12 the brief, the district attorney, in his
13 response to Mr. Kagonyera's motion for
14 appropriate relief, referenced Mr. Pickens'
15 custody status. We did ask Mr. Moore, the
16 district attorney, where he got that
17 information, and he said it was in his file. He
18 did provide us a copy of his file. And the only
19 location in the file that we could find was a
20 handwritten note without reference to the source
21 of that information, but we also know that it
22 was written directly on the Crime Stoppers tip
23 in handwriting. And we asked Detective George
24 Sprinkle during his deposition and he indicated

1 that it was his handwriting on the Crime
2 stoppers tip and either he would have gotten
3 that information himself from the jail records
4 or asked somebody else to do it on his behalf.
5 We also asked Detective Mike Murphy, he was the
6 other lead on the case, and he did not recall.

7 Yes, sir.

8 MR. VICKORY: What sentence was he serving
9 in the jail on weekends on the day of the
10 offense on September 18?

11 MS. MONTGOMERY-BLINN: It was a
12 misdemeanor, and that court file has now been
13 destroyed so we couldn't get the blue sheet for
14 it from the court.

15 MR. VICKORY: And do you have a CR number?

16 MS. MONTGOMERY-BLINN: I believe that we
17 do. Do we have a CR?

18 MR. LAU: We had one, but --

19 MS. MONTGOMERY-BLINN: We will locate that
20 for you, but we did -- somebody went to the
21 clerk's office on our behalf and indicated that
22 that file had now been destroyed, and we were
23 looking for the sheet that would show the
24 sentence for that.

1 MR. VICKORY: What does the computer, what
2 does the AOC computer in Buncombe County show?

3 MS. MONTGOMERY-BLINN: It doesn't show
4 weekend status.

5 MR. VICKORY: It doesn't?

6 MS. MONTGOMERY-BLINN: It just shows --

7 MR. VICKORY: Just shows an active
8 sentence?

9 MS. MONTGOMERY-BLINN: Yeah, it just shows
10 active. So it's the jail, the jail logs are
11 where we see that weekend status. And in the
12 next case he was sentenced to, that, that file
13 still exists and that shows that he was
14 sentenced to weekends.

15 MR. VICKORY: Did he have a lawyer in that
16 case?

17 MR. LAU: I don't have a CR written on the
18 computer.

19 MS. MONTGOMERY-BLINN: Okay. We can find
20 that CR number for you, Mr. Vickory. We might
21 be able to determine the lawyer -- we can check
22 on that, Mr. Vickory.

23 MR. VICKORY: Yeah, I'm just wondering if
24 there's a CR -- you're saying right now that you

1 think the only public document in existence
2 right now concerning that offense will show that
3 he was in jail or was supposed to be in jail on
4 September 18?

5 MS. MONTGOMERY-BLINN: Yes. I mean, the
6 initial, I think the initial places that would
7 have been looked at -- if you just go to the
8 jail computer, it says he's in custody. You
9 have --

10 MR. VICKORY: I'm talking about the court
11 computer, I'm sorry.

12 MS. MONTGOMERY-BLINN: The court, the
13 clerk's computer?

14 MR. VICKORY: Right.

15 MS. MONTGOMERY-BLINN: I know that we went
16 through it extensively trying to understand it,
17 and I cannot recall. And we'll be happy to
18 check for you during the next break.

19 MR. LAU: I do have notes on that.

20 MS. MONTGOMERY-BLINN: We can pull it up --

21 MR. VICKORY: We can pull it up right here,
22 I'm sure.

23 MS. MONTGOMERY-BLINN: Yeah. I don't have
24 Internet access in here, but I can -- when we

1 get back to our offices, we'll be happy to -- we
2 have Internet access in there and we can pull it
3 up. But also the Buncombe County jail computer
4 itself shows active status. It's only when you
5 get to the inmate logs that you see that check
6 in and check out.

7 MR. BECTON: What was provided to the
8 district attorney in order for him to write in
9 his response that --

10 MS. MONTGOMERY-BLINN: Judge Becton, I
11 don't know. We did ask Mr. Moore how he got
12 that information, and he said it was in his file
13 and we had -- in his file is a handwritten note
14 that said, Lacy Pickens in custody. And the
15 only reference that I -- it doesn't say where
16 that information came from, but we do know the
17 Crime Stoppers log, which Mr. Moore received
18 from the sheriff's department, has -- at the
19 time the Crime Stoppers call came in, someone
20 wrote the Crime Stoppers call down -- and this
21 is in your brief -- and somebody else, who now
22 we understand to be Detective Sprinkle, wrote
23 directly on that Crime Stoppers log, J.J.
24 Pickens in custody, and wrote the dates. And I

1 can tell you what page that is in your brief,
2 and that would have been sent to Mr. Moore, but
3 I don't know if he did further -- beyond the
4 information he got from the sheriff's
5 department, I don't know.

6 MR. LAU: I can speak. There's also a
7 handwritten notation in the district attorney's
8 file that just says, Lacy Pickens in custody,
9 and it has the dates underneath it. That's
10 what's in the file.

11 MS. MONTGOMERY-BLINN: That's in the
12 district attorney's file, and then there's that
13 notation from the sheriff's file. That's on
14 page 19 of your brief, the Crime Stoppers.

15 MR. VICKORY: The inmate log that you just
16 passed around was attached to the affidavit of
17 Major Blinn --

18 MS. MONTGOMERY-BLINN: Matayabas?

19 MR. VICKORY: Yes; yes. It shows at the
20 bottom of page 2 of that log, entry number 17,
21 that indicates he was in jail on September 17.
22 It says he was moved from the old cell location
23 to a new cell.

24 MS. MONTGOMERY-BLINN: Yes, I see where you

1 are, Mr. Vickory.

2 MR. LAU: According to Mr. Matayabas,
3 that's when he was checked out on Sunday night.
4 There's an entry for each entry into the jail
5 and each exit from the jail. According to
6 Mr. Matayabas, he was checked out on the 17th at
7 8:00 p.m., that's how he read these records,
8 checked back in on the 22nd, which was the
9 Friday at 8:00 p.m., checked out again on the
10 24th, which was the Sunday evening, and that's
11 entry 15 at 8:00 p.m. Once again, he checked in
12 on the 29th, which was Friday, and then checked
13 out on the 1st of October at 8:00 p.m. That's
14 how Mr. Matayabas explained this to me.

15 MS. MONTGOMERY-BLINN: And that's in his
16 affidavit, item number 4, he explains the check
17 in and check out and says, this log did not show
18 Pickens in custody on September 18, 2000.

19 MR. VICKORY: Do you see where I'm talking
20 about though where it says, moved from old cell
21 to new cell?

22 MS. MONTGOMERY-BLINN: Uh-huh (yes).

23 MR. LAU: He basically said that those
24 locations, annex, annex, weekend, and new cell

1 mate, that was just the entry that they put
2 whenever they checked in and out when they were
3 on weekend status.

4 MS. ASHENDORF: I have a question.

5 MS. MONTGOMERY-BLINN: Yes, ma'am.

6 MS. ASHENDORF: I heard what you just said
7 that it shows that he was not in custody during
8 -- is it a law enforcement term to consider that
9 someone is in custody even when they're on work
10 release, they just refer that they're in
11 custody?

12 MS. MONTGOMERY-BLINN: I understand that
13 the logs indicate serving time, but he was on
14 work release. So he was serving time, but he
15 wasn't physically present in the jail.

16 MS. ASHENDORF: Could someone have written
17 in custody on -- because he was serving time and
18 they didn't know that --

19 MR. LAU: Well, what you're talking about,
20 and this is what Major Matayabas explained to
21 us. If you just pull up the jail record itself,
22 the period of custody indicates the initial
23 booking in date and when their charge is
24 complete, the book-out date at the end of

1 they're serving their time on that charge. You
2 have to go the inmate logs to see if they are a
3 weekend inmate because you book in the initial
4 date when you begin serving, and you book out
5 after the completion of that sentence. And if
6 it's a weekend status, it doesn't show the
7 movements that occurred in between on their jail
8 records unless you go into the inmate log.

9 MS. ASHENDORF: So if someone did not go to
10 the inmate log and just was kind of casually
11 looking, he could write in custody?

12 MR. LAU: That is correct.

13 MR. VICKORY: This is the inmate log, isn't
14 it? Are you talking about something else?

15 MR. LAU: No. This is the inmate log.

16 MR. VICKORY: Okay.

17 MR. LAU: This is -- so we met with them,
18 myself --

19 MS. MONTGOMERY-BLINN: Should I call
20 Mr. Lau? would that be better if I call Mr. Lau
21 to come up and --

22 MR. VICKORY: He's okay where he is.

23 MS. MONTGOMERY-BLINN: Okay. Wherever
24 you're happy. You're still under oath.

1 MR. LAU: I understand. I met with
2 Mr. Matayabas -- and let me explain a bit about
3 the progression of what happened, and I think
4 that would explain why we met and we had to have
5 this --

6 (THEREUPON, A DISCUSSION WAS HAD OFF
7 THE RECORD WHICH WAS NOT REPORTED BY THE
8 COURT REPORTER.)

9 (THEREUPON, JAMIE LAU RETURNS TO THE
10 WITNESS STAND.)

11 EXAMINATION BY MS. MONTGOMERY-BLINN:

12 A. We initially contacted the Buncombe County
13 Detention Facility and we asked for all periods
14 of incarceration for Mr. Pickens. When we made
15 that contact, we received in response the
16 records of his periods of incarceration. Those
17 records did not show Mr. Pickens in jail during
18 this period of time.

19 We made a second inquiry when we realized
20 that the report we had been given did not
21 include any periods of incarceration which
22 Mr. Pickens was held on federal charges, it was
23 only state-related charges. At that point in
24 time they said they never had held him on

1 federal charges and he was only in custody for
2 the periods that was provided on the initial
3 report that they provided to us, which did not
4 show him in custody on September 18.

5 After that we requested booking photos, and
6 we have booking photos for all the booking
7 photos that they had for group B and the ones
8 they had for group A. When we requested those
9 booking photos, we received a booking photo for
10 Mr. Pickens where he was booked into the
11 Buncombe County jail on September 1, 2000, and
12 that's the booking photo that appears on this
13 sheet, which is page 3 of this affidavit. When
14 I received that, that period of incarceration
15 was not on the initial records that I had
16 received, which indicated that he was not in
17 custody between this period of time. At that
18 point in time I contacted the Buncombe County
19 Detention Facility and I asked to meet with
20 somebody there to straighten out whether or not
21 Mr. Pickens was incarcerated on September 18,
22 2000.

23 We met with Mr. Matayabas, we spoke
24 extensively about what records the jail keeps

1 and what records they may have regarding this
2 period of custody. Mr. Matayabas indicated that
3 they had very little records, but that the
4 inmate log may be able to clarify. He pulled up
5 the inmate log, and when he pulled up the inmate
6 log he began looking at it, and at that point in
7 time he told us he was a weekend inmate. The
8 way weekend inmates work is weekend inmates were
9 booked into the jail at 8:00 p.m. on Friday,
10 every Friday -- I guess I wouldn't say booked
11 in, checked into the jail because you're only
12 booked in when you begin serving your sentence
13 -- at 8:00 p.m. on Friday and checked out of the
14 jail at 8:00 p.m. on Sunday. He said in
15 reviewing these logs that he, Mr. Pickens, was a
16 weekend inmate based on his review of the logs
17 and not in custody on September 18. He said
18 what each of these entries show is Mr. Pickens
19 checking into the jail at 8:00 p.m. on the given
20 Friday and checking out of the jail at 8:00 p.m.
21 on the given Sunday.

22 MR. VICKORY: Doesn't it show him
23 being in jail during the week between the
24 10th and the 17th? On September 15 and

1 September 16 it says he would be moved
2 within the jail from one cell to another --

3 A. Well, the 15th --

4 MR. VICKORY: -- medical service on
5 the 16th.

6 A. The 15th was the Friday, the 16th is the
7 Saturday, and then the 17th is the Sunday.

8 MR. BECTON: Am I to read entries,
9 every entry on pages 1, 2, and 3 it shows
10 -- I'm sorry, beginning with the second
11 entry, move from old cell and then to new
12 cell. If that's a statement for every
13 entry on those three pages, does that mean
14 that when they say new cell, they mean he's
15 released outside? Because when he comes
16 back, it says -- every time they say new
17 cell, that's something meaning he's not
18 from cell A to B inside of the jail, it
19 means he is released?

20 A. If you look at the entry number 17, 9/17, and
21 this is what Mr. Matayabas was explaining to us,
22 he was moved from the old cell location, Main,
23 Book, B5 to new cell, and then the location he
24 was moved to was Annex, Anxa, for weekend, which

1 is the entry below.

2 MR. VICKORY: I guess weekend, that
3 represents -- weekend is not just a section
4 of the jail? Some jails have that -- they
5 call that area the weekend section. That
6 doesn't mean everybody in there is doing
7 weekend time, it just means that's the
8 weekend section.

9 A. He explained to us that this was showing him
10 being released from the jail on that Sunday
11 evening.

12 Q. Mr. Lau, do you think that you can reach
13 Major Matayabas by telephone if the Commission
14 has questions for him beyond the affidavit?

15 A. I think it can certainly be possible.

16 MS. JOHNSON: I think the question
17 that I would have is how their software
18 system is set up and what they actually
19 built into that system to show a weekender,
20 and how that shows somebody being released.

21 A. I can tell you, and if we want to put him on the
22 phone, he may be able to explain in greater
23 detail, at this period of time they were in the
24 process of transferring to a new computer system

1 and the -- some things got converted over, some
2 things did not get converted over. And I just
3 say that because that may impact on what you're
4 asking. But I would be happy to ask
5 Mr. Matayabas to join us.

6 JUDGE SUMNER: would you like that?

7 MS. JOHNSON: I'm okay because I think
8 I understand it a little bit better because
9 I have a jail, and I think that what they
10 did is they built their data system just to
11 state the location was an annex or a
12 weekend location just to save them time
13 when they were booking in and releasing.
14 I'm not saying that that was the way it
15 should be done, but that might be what
16 happened, was the shortcut was taken
17 instead of having to completely do the
18 book-in at the time they came in on the
19 weekend and then completely release them.
20 And which it is a lot of work to book them
21 in and release them from Friday night until
22 Sunday. They may have built the system up
23 to where it showed them coming in and just
24 serving the weekend. It might be the way

1 they entered their -- set their software
2 system up or entered their data.

3 A. He told me that the only extensive book-in
4 process where they booked them, take the photo,
5 is at the beginning of the period in which they
6 start serving their time.

7 JUDGE SUMNER: Heath?

8 MR. JENKINS: I'm comfortable with
9 this because if you look at the dates,
10 they're all consistent with him being
11 booked out on a Friday and returning on a
12 Sunday.

13 A. Being booked in on a Friday.

14 MR. JENKINS: Well, I say booked in,
15 but being checked into this log. The dates
16 are consistent with, on all pages with him
17 being out of on the weekend.

18 MS. JOHNSON: It appears that what
19 they did was they started the booking
20 process, and then they did their medical,
21 and they only did the release at the very
22 end of his sentence. It showed him
23 completing his time.

24 A. That's how it was explained to me.

1 MR. BECTON: I, too, am satisfied.

2 MR. VICKORY: The only thing I'd like,
3 I'd just like whatever kind of document we
4 can get from the AOC or -- I'm sure he was
5 on probation. If he had weekend time, he
6 was on supervised probation. The probation
7 officer would have a copy of the judgement.

8 A. Ms. Montgomery-Blinn has something in response
9 to that question.

10 Q. (Ms. Montgomery-Blinn confers with Mr. Lau.)

11 A. Is it the date from that correspondence?

12 MS. MONTGOMERY-BLINN: I will hand it
13 to Mr. Lau. Give me a minute. (Counsel
14 examines documents.) Mr. Vickory, it
15 helps, I think, to explain is, it was not
16 an easy process for us to figure out that
17 he was weekend either. I don't think that
18 it was something that I would say was
19 readily available to the public.

20 A. We needed the District Court records. Those
21 were the ones that -- we have copies of these
22 records. The District Court records were the
23 ones that were said to be -- I'm sorry. I have
24 those file numbers here now for you,

1 Mr. Vickory, and --

2 MR. VICKORY: What are they?

3 A. It's 99 -- these are the file numbers we were
4 checking to try and -- and like I said, we
5 looked on the court system's website and we were
6 trying to piece together when he began or what
7 he was serving this sentence for on 9/1. And
8 those are 99-CR-10675.

9 Q. 10675.

10 A. 99-CR-7590, 99-CR-7787, and -- I'm sorry, and
11 2000-CR-57269. These cases were all
12 consolidated for sentencing. We asked that we
13 get copies of those court records, and it was
14 said to us that those are no longer available
15 because they're misdemeanor files. All of those
16 were consolidated.

17 JUDGE SUMNER: Any other questions?

18 MR. BECTON: You found all this out on
19 April 11, at least that's the date, that
20 date was signed, this year?

21 A. No. That's the date -- we met with
22 Mr. Matayabas on February 14, 2011, that was
23 after we had received those booking photos that
24 contradicted the earlier report that we had

1 received. That earlier report I believe we
2 received in July of 2010, which showed that he
3 was not in custody. We didn't get the booking
4 photos until February. Immediately after we
5 received those booking photos we set up this
6 meeting to try and get to the bottom of whether
7 or not Mr. Pickens was actually incarcerated on
8 that day.

9 MR. BECTON: And when did Mr. Moore
10 file his response to the --

11 A. That was July of 2008.

12 MR. BECTON: But we have no way of
13 knowing he had whatever you -- you
14 ultimately come up with it?

15 A. We have -- we only have what's in his file. And
16 there's a note in his file, it's a handwritten
17 note that shows Lacy Pickens' name and it says,
18 in custody, with the dates below it.

19 Q. And the jail logs were not in the file that
20 Mr. Moore provided to us?

21 A. These logs were not.

22 MS. MONTGOMERY-BLINN: Mr. Lau can
23 just remain.

24 Commissioners, as you open the brief,

1 Robert Rutherford made a confession to a
2 federal agent, as a reminder this is on
3 pages 152 and 156 in your brief. I'm going
4 to show you Mr. Rutherford's record. He's
5 currently incarcerated in federal custody.

6 (THEREUPON, MR. RUTHERFORD'S RECORD IS
7 DISPLAYED.)

8 MS. MONTGOMERY-BLINN: This is part
9 one of his record, this is part two.

10 okay. We did what we could to fact
11 check and verify this confession. I'm
12 going to ask Mr. Lau to testify about that
13 portion of the investigation.

14 Q. Mr. Lau, did you have a chance to speak with
15 Mr. Rutherford?

16 A. Yes, I spoke with Mr. Rutherford on two
17 occasions, the first being July 14 in federal
18 prison in Talladega.

19 Q. July 14, 2010?

20 A. Yes, that's correct. I'm sorry.

21 Q. And who else was present during that interview?

22 A. Ms. Smith was present.

23 Q. Okay. And what was Mr. Rutherford incarcerated
24 for?

1 A. He's currently incarcerated for conspiracy to
2 commit drug trafficking.

3 Q. Did you ask Mr. Rutherford about the Bowman
4 homicide?

5 A. I did, and Mr. Rutherford indicated to me that
6 he didn't know anything about the Bowman
7 homicide.

8 Q. Did you ask him about being brought back to
9 North Carolina in 2008 presumably for a DNA
10 sample?

11 A. Yes, I asked him about being brought back in
12 2008. He said that he was brought back in 2008
13 for almost a year, he didn't know why. He said
14 he told a DEA agent and a detective who came to
15 see him that he knew nothing about the Bowman
16 homicide.

17 Q. Is that reflected in the file that we obtained
18 from the district attorney's office?

19 A. well, in your brief there is a report from
20 Mr. Roney Hilliard. That report from Mr. Roney
21 Hilliard is on page 174. Mr. Hilliard's report
22 contradicts what Mr. Rutherford told me that he
23 informed the detective that he knew nothing
24 about the Bowman homicide. In the report that

1 Mr. Hilliard wrote it says that Mr. Pickens --
2 I'm sorry, Mr. Rutherford indicated that he did
3 have information on the Bowman homicide, but
4 would only provide that information directly to
5 the district attorney, Mr. Moore.

6 Q. And does the report indicate whether or not he
7 had the opportunity to speak with Mr. Moore?

8 A. According to the report, Mr. Moore did not meet
9 with him, but I can't say whether or not a
10 meeting had occurred at a later date.
11 Mr. Rutherford didn't indicate that was the
12 case.

13 Q. Is there any documentation in the file you
14 received from the district attorney or the
15 sheriff's department that there were any other
16 meetings or a meeting with Mr. Moore?

17 A. No, there is not.

18 Q. Now, did you speak to Mr. Rutherford directly
19 about the confession report that Agent Whiteis
20 wrote?

21 A. I did. Mr. Whiteis is a DEA agent who took the
22 confession of Mr. Rutherford on March 28 and
23 March 29, 2003. I showed that confession to
24 Mr. Rutherford. He denied giving the

1 confession. He didn't -- he said he did not
2 know Mr. -- or DEA Agent Whiteis.

3 Q. Did he say anything else about the confession?

4 A. He did. He said if he were the one who gave
5 this confession in 2003, why did it take until
6 2008 before anybody began looking into the
7 confession? He couldn't understand that. And I
8 relayed to him that I couldn't speak to what
9 happened in 2008, but I had only received this
10 case on my desk in January 2010 and had been
11 looking at it since that time.

12 Q. Did you ask him if he knew the other people that
13 he implicated in his confession?

14 A. Yes, I did. He said he grew up with Mr. Summey
15 and that he has two children with Mr. Pickens'
16 daughter -- sister, I'm sorry.

17 Q. Did you ask him if he knew the Bowman family?

18 A. I did. He said he was unsure if he knew the
19 Bowman family, and he said that he did not know
20 where they lived.

21 Q. Now, at the end did you ask him again or explain
22 to him what you understood him to be saying to
23 you?

24 A. I was trying to ascertain what information he

1 had about -- if he had any information about the
2 Bowman homicide. He had said he did not, but at
3 the end of our conversation he said he had no
4 knowledge of the confession. And I asked him to
5 explain to me whether or not he was saying he
6 had no knowledge of having given the confession
7 or no knowledge of the contents that are in the
8 confession, and he wouldn't answer that
9 question. He kept repeating to me, I have no
10 knowledge of the confession.

11 Q. And he wouldn't clarify that further?

12 A. He would not explain that further. I asked him
13 specifically, are you saying that you have no
14 knowledge of having given this confession or are
15 you saying you have no knowledge of the contents
16 of the confession? And he just continued to say
17 the exact line, that was what he continued
18 saying to me, and he said that's all he had to
19 say.

20 Q. And you previously testified, Mr. Lau, that you
21 went to see Mr. Rutherford again in a different
22 federal prison to obtain his DNA, is that
23 correct?

24 A. Yes, that's correct.

1 Q. Okay. And can you tell me a little bit about
2 that?

3 A. Well, as I stated in testimony yesterday, we
4 were attempting to obtain the DNA sample. In
5 that first interview I asked him to voluntarily
6 provide that sample. He indicated that he
7 would. But when I began to open up the
8 collection kit to take that sample from him, he
9 backtracked and said he would not provide a
10 sample unless he had something requiring him to
11 provide it. We extensively in our office had
12 discussions about what the best way would be to
13 obtain that sample, given he was in federal
14 custody and that he was in Texarkana, Texas. We
15 thought the way we could go about it was having
16 him brought back to North Carolina and then
17 getting a nontestimonial order, ID order, to
18 then acquire that sample when he was in North
19 Carolina.

20 I began that process and sent him a copy of
21 the writ that we had intended to submit to ask
22 that he be brought back to the State of North
23 Carolina. He called me and he informed me in
24 the phone conversation that he did not want to

1 be brought back to North Carolina and that I had
2 his full cooperation with regards to providing
3 the DNA standard if I would come see him in
4 Texas.

5 Q. And is that what you did?

6 A. That's what I did, yes.

7 Q. And did he indeed provide you with a DNA sample
8 at that time or allow you to take one?

9 A. He did. He had no issues with providing the
10 sample. He provided it immediately upon our
11 meeting at the prison.

12 Q. Did you have any opportunity to ask him any
13 questions again during that time?

14 A. I did. I spoke with him during that period in
15 time. I once again asked him if he knew
16 anything about the Bowman homicide. He again
17 denied knowing anything about the Bowman
18 homicide. I asked him about the statements in
19 Mr. Hilliard's report about him having
20 information about the Bowman homicide and being
21 willing to share everything to the district
22 attorney, Mr. Moore. He said he did not make
23 those statements. He again told me he never
24 spoke with Agent Whiteis and did not know him.

1 I asked him about some of the other
2 individuals in the statement, Ms. Dawana Bowens
3 and Ms. Jen Regan. He said that he knew
4 Ms. Bowens, he said he also knew Ms. Regan. He
5 said -- I asked him, if you know those
6 individuals, how then did this DEA agent get the
7 names of individuals that you're telling me that
8 you knew? He said he didn't know how those
9 names made it into the confession that
10 Mr. Whiteis wrote, as a summary report of the
11 words of Mr. Rutherford. He told me that there
12 were other people in Manchester Correctional
13 Institute, which is where Mr. Rutherford was
14 said to be incarcerated when that confession was
15 taken, from Buncombe County and he thought maybe
16 it came from one of them and not himself.

17 I asked him whether or not he knew any of
18 the individuals in group B. He said that
19 Mr. Isbell is the only individual in group B
20 that he knew. I asked him about Sheriff Medford
21 and he said that -- well, I correct that. He
22 asked me about Mr. Medford, Sheriff Medford, and
23 he said that he had had dealings with
24 Mr. Medford. I asked him what those were and he

1 did not elaborate and said, I shouldn't go into
2 that.

3 Q. That he shouldn't go into it or you shouldn't go
4 into it?

5 A. He said he didn't -- I'm sorry. He didn't want
6 to speak with me further. I can't remember
7 exactly the words that he said.

8 Q. Now, we have that report from Agent Whiteis.
9 Were you able to speak with Agent Whiteis or
10 able to follow up with him?

11 A. Well, I wasn't able to speak with Mr. Whiteis.
12 I actually did have one phone conversation with
13 Mr. Whiteis and I -- when I had that
14 conversation with Mr. Whiteis, he appeared
15 surprised that I was asking about this case and
16 that Mr. Rutherford had not been confessed, he
17 said -- or, I'm sorry, had not been convicted.
18 He said, he's not been -- he said something to
19 the effect of, he's not serving time for this
20 murder already? And I said, no, we were looking
21 at it because other individuals happen to be
22 serving time for this murder. At that point in
23 time he was in an airport and we couldn't talk
24 further, so he told me to call him back in a few

1 weeks and we would have the opportunity to
2 speak. I tried to contact him according to that
3 timeline. When I tried to contact him according
4 to that timeline, DEA counsel called me back and
5 DEA counsel would not permit me to speak with
6 Mr. Whiteis further.

7 DEA counsel -- eventually we worked it out
8 where Mr. Whiteis -- I submitted a few questions
9 to the counsel, they reviewed those questions,
10 submitted some of them or submitted them to
11 Mr. Whiteis, and Mr. Whiteis responded with this
12 affidavit.

13 MS. MONTGOMERY-BLINN: May I
14 approached the witness, Your Honor?

15 JUDGE SUMNER: Yes, ma'am.

16 Q. Mr. Lau, I'm handing you some documentation, a
17 copy of which has been passed out to the
18 Commission. Can you tell me what that is?

19 A. This is the affidavit of DEA Agent Barnabas
20 Whiteis.

21 MS. MONTGOMERY-BLINN: While you are
22 reviewing that, may I approach the witness?

23 JUDGE SUMNER: Yes.

24 MS. MONTGOMERY-BLINN: Are you ready?

1 MR. JENKINS: I have a quick question,
2 I understand your conversation was very
3 brief with Agent Whiteis. Do we know if he
4 ever attempted to make any type of
5 verification through the prison system of
6 who he was talking to or whether there was
7 a recorded line available to verify?

8 A. We do not know the answer to that, but we spoke
9 with the Bureau of Prisons ourselves. The
10 Bureau of Prisons checked the phone records for
11 this inmate and had transaction records for
12 these calls, but did not have recordings for
13 these calls.

14 MR. JENKINS: Did they coincide with
15 the times and dates on the --

16 A. They had transaction records for these calls,
17 these dates, is my understanding.

18 MR. JENKINS: Thank you. That's all I
19 have.

20 MR. VICKORY: What does that mean?
21 Does it mean he made phone calls during
22 that period of time?

23 A. I'm sorry. Ms. Ellis actually -- for the
24 Commission made that --

1 MS. MONTGOMERY-BLINN: I can call --
2 A. -- made that verification.

3 MS. MONTGOMERY-BLINN: I'll be happy
4 to call her or have her come up here and
5 explain.

6 MR. JENKINS: I think it would be
7 appropriate to have that on record to
8 verify that this is who he was talking to.

9 MS. MONTGOMERY-BLINN: Sure.

10 MR. JENKINS: At the time he says that
11 -- he made this detailed statement.

12 MS. MONTGOMERY-BLINN: Okay.
13 Ms. Ellis, will you come up? For the
14 record, Mr. Lau is stepping down.

15 (THEREUPON, MR. LAU STEPS DOWN FROM
16 THE WITNESS STAND.)

17 * * * * *

18 MS. MONTGOMERY-BLINN: We're going to
19 take a minute and let Ms. Ellis refresh her
20 recollection before she begins her
21 testimony for efficiency's sake, if that's
22 all right?

23 MR. SUMNER: We'll take a break for a
24 couple of minutes.

1 MS. MONTGOMERY-BLINN: Okay. Thank
2 you, Your Honor.

3 (THEREUPON, A SHORT RECESS WAS TAKEN.)

4 MS. MONTGOMERY-BLINN: Commissioners, I
5 will just let you know, Ms. Ellis is attempting
6 to verify one more thing about the question you
7 had for her, and just for efficiency's sake,
8 we'll see if she can verify that and I'll try to
9 call her this afternoon so she can cover it all
10 at once, if that's all right with you.

11 JUDGE SUMNER: That will be fine.

12 (THEREUPON, MR. LAU RETURNS TO THE
13 WITNESS STAND.)

14 MS. MONTGOMERY-BLINN: Thank you. And
15 I believe just --

16 Q. I just wanted to correct --

17 MS. MONTGOMERY-BLINN: I'd like to
18 hand or cover this right now before we get
19 started. The other question that we had
20 before the break from Mr. Vickory was,
21 could we pull the clerk screen records, and
22 we do have those. I'll let Mr. Lau explain
23 them and then I'll hand them around.

24 A. Mr. Vickory, first I have to correct what I had

1 told you before, I had misstated those file
2 numbers. I had told you that it was file number
3 99-10675. The following two numbers are the
4 ones that I incorrectly stated, I said 99-7590,
5 that was actually 2000-7590. The 99-7787 file
6 number I read is also a 2000 file number. So
7 there should be one 99 file number and one --
8 and three 2000 file numbers.

9 Q. Mr. Lau, do you have a copy up there now of the
10 printout from what we commonly refer to as IRMA
11 or the clerk's screen or --

12 A. We do. We have printed out those file numbers
13 and we'll pass them around for the Commissioners
14 to review.

15 MS. MONTGOMERY-BLINN: We just have
16 one copy right now so I'll just send them
17 around of the different file numbers.
18 These are, Commissioners, the different
19 file numbers that Mr. Pickens was in
20 custody on during the time of the murder
21 for which he was serving weekend release.
22 And you'll be able to see what was publicly
23 available from the clerk's screen.

24 Q. All right. Mr. Lau, we were talking --

1 A. I guess I should specify, because we didn't
2 review the court files, these are the files we
3 believed he was in custody on based on the
4 offense dates and disposition dates, what was
5 available on the IRMA printouts.

6 Q. We were talking about Agent Whiteis and your
7 conversation with Agent Whiteis and we passed
8 around this affidavit. And just to confirm, did
9 Agent Whiteis confirm to you in an affidavit
10 that he recognized Mr. Rutherford's voice
11 because he had spoken to him before?

12 A. He did. And in our phone conversation, the
13 brief one we had, he had informed me that
14 Mr. Rutherford had been an informant while he
15 was an agent for the DEA that he worked with.

16 Q. And I'd like to turn to whether or not you
17 interviewed Ms. Dawana Bowens.

18 MS. MONTGOMERY-BLINN: But let me
19 first ask the Commission if they have more
20 questions about -- we're still on
21 Robert Rutherford and that investigation,
22 but about this Agent Whiteis report or the
23 affidavit from Agent Whiteis?

24 MR. VICTORY: Was he an informant for

1 whiteis or for the DEA?

2 A. I can't specifically say. He had mentioned that
3 he had been an informant, and as I said, that
4 was a brief conversation.

5 MR. VICKORY: Well, was it your
6 impression that whiteis only viewed him --
7 the only connection he had with this
8 particular individual was from one previous
9 telephone conversation?

10 A. I don't know. I would ask that the affidavit
11 saying that he had dealt with him several times
12 prior to his incarceration, I would ask that
13 that stand as his statement on his relationship
14 with Mr. Rutherford.

15 MR. BECTON: Do you know if any those
16 conversations were face-to-face or whether
17 all were on the telephone?

18 A. I'm sorry, I don't know conversations he had
19 prior to these March 28th and March 29th
20 conversations. I know the March 28th and
21 March 29th conversations were telephonic.

22 Q. Mr. Lau, during your investigation did you have
23 an opportunity to speak to Dawana Bowens? She
24 was one of the people that was named in the

1 confession that was given by Robert Rutherford
2 that we just discussed.

3 A. I did.

4 Q. And what did -- well, tell us first about is
5 Ms. Bowens' role according to that confession?

6 A. According to Mr. Rutherford's confession,
7 Ms. Bowens was a source of information about
8 drugs and drug money which may be in the Bowman
9 household as well as where with the group A
10 individuals when they disposed of the shotgun.

11 Q. And when did you give an opportunity or when
12 were you able to speak to Ms. Bowens?

13 A. I spoke with Ms. Bowens on February 8, 2011.

14 Q. And who else was present during that interview?

15 A. Ms. Smith was present.

16 Q. And where did you speak to Ms. Bowens at?

17 A. I spoke with her at her home in Arden, North
18 Carolina.

19 Q. And what did she tell you?

20 A. She said that she remembered the Bowman
21 homicide. She said that she was best friends --
22 she is best friends with Mr. Bowman's daughter.
23 She said that Seray Bowman was brought to her
24 house or came over to her house on the evening

1 that the homicide occurred.

2 Q. Did she tell you about her relationship with
3 Brad Summey?

4 A. She said she dated Brad Summey, she said it was
5 more than eight years ago. She said he never
6 told her anything about the homicide and she
7 doesn't know where he was during the period when
8 the homicide occurred.

9 Q. Did she indicate whether she knew Robert
10 Rutherford?

11 A. She indicated that she knew Mr. Rutherford. She
12 said that he may be her cousin. She said that
13 she was told that he was her cousin, but she
14 wasn't sure if it was biological.

15 Q. And did she indicate whether or not
16 Mr. Rutherford, Mr. Summey, and Mr. Pickens all
17 knew each other?

18 A. She did say that Mr. Rutherford, Mr. Summey, and
19 Mr. Pickens hung out together.

20 Q. And did she know the types of things that they
21 would do when they hung out together?

22 A. She told me she was naive and oblivious to the
23 things that Rutherford, Summey, and Pickens may
24 have been doing. She said she knew that

1 Mr. Rutherford was involved with drugs.

2 Q. And did you give her the statement made by
3 Robert Rutherford to look at?

4 A. I did give her a copy of the statements that
5 Rutherford gave to DEA Agent Whiteis.

6 Q. And did she take a look at that and read it?

7 A. She did take a look at it. She said it was a
8 lie, that she did not know that Shawn Bowman had
9 any amount of money or drugs in his home.

10 Q. What else did she say?

11 A. She said that she never would do that to a
12 Bowman homicide -- I'm sorry, to the Bowman
13 family. She said she never needed money that
14 badly and she worked for everything she had.
15 She said she doesn't think Pickens would have
16 done it. She said Rutherford was into other
17 things, and would hope that some -- that
18 Mr. Summey wouldn't do it, but was unsure. She
19 said that it is possible that she was used by
20 them unknowingly, but she was never knowingly
21 involved with the Bowman homicide.

22 Q. Another person named in that account is a woman
23 named Jennifer Regan.

24 A. Yes.

1 Q. Were you able to locate and speak with
2 Ms. Regan?

3 A. I did locate Ms. Regan.

4 Q. Can you tell us how you located her?

5 A. We located Ms. Regan through a LEXIS search, and
6 then we found she had moved from that address.
7 We learned that she was living in Charlotte.
8 And then through the Mecklenburg County public
9 records we were able to find her property
10 records in there and we then tracked her to that
11 home.

12 Q. And were you able to speak to her?

13 A. When I went to the home, we were unable to make
14 contact directly with Ms. Regan. We met with
15 her boyfriend, or her boyfriend, Mr. Paul Evans,
16 answered the door at that time. We told
17 Mr. Evans that we were seeking to speak with
18 Ms. Regan. He said that he would have her call
19 us. And she called me on my cell phone that
20 evening.

21 Q. And were you able to talk to her about the
22 Bowman homicide?

23 A. I spoke with her that evening. She said that
24 she knew Robert Rutherford, he was an ex-

1 boyfriend. She knew Brad Summey. She said she
2 did not know Lacy Pickens. I read her a copy of
3 the confession. She was asking me questions
4 about what our investigation was, what we knew,
5 and I read her the portions of Mr. Rutherford's
6 confession that implicated her. At that point
7 in time she said that she would meet with me the
8 following day. We stayed in Charlotte that
9 evening to meet with her the following day.
10 Prior to that meeting she called me and said she
11 couldn't get off of work and that she would be
12 unable to meet with me, so I was unable to meet
13 with her at that time.

14 Q. All right. Did you ever meet with her again?

15 A. I sent her a subpoena to be deposed after we did
16 not make contact with her at that time. Part of
17 the reason I did that was because I asked her
18 when she would be available to meet, and she did
19 not indicate that she would be available to meet
20 anytime soon. In fact, she said she was leaving
21 on a vacation or she was leaving the country, I
22 don't know what the purpose was for, shortly and
23 that she would be out of the country for awhile.
24 At that point in time I felt I should subpoena

1 her to depose her.

2 Q. And were you able to depose her?

3 A. When I sent the subpoena, after she received the
4 subpoena she called me and asked me a few
5 questions, essentially what does this mean, do I
6 have to appear? I told her, you know, we
7 subpoenaed her to appear at a deposition. She
8 gave me some conflicts with her schedule, why
9 she would be unable to appear. I told her she
10 could speak with counsel if she wanted to. She
11 then said that we would have to move the date of
12 the deposition because she would not be around
13 on the date that was on the subpoena. I told
14 her that would be fine, she could call me back
15 and let me know if a few dates we had mentioned
16 on the phone worked for her. She did not call
17 me back. The next morning I got a call from her
18 counsel.

19 Q. She retained an attorney?

20 A. She retained an attorney, yes.

21 Q. And who was that attorney?

22 A. Mr. Carl Horn from Charlotte.

23 Q. And did you speak with Mr. Horn?

24 A. I did speak with Mr. Horn.

1 MS. MONTGOMERY-BLINN: May I approach
2 the witness, Your Honor?

3 JUDGE SUMNER: Sure.

4 Q. Mr. Lau, I'm handing you a document. Can you
5 tell me if you recognize it?

6 A. Yes, I do.

7 Q. And what is it?

8 A. This is a letter I actually received by hand
9 delivery from Mr. Horn the morning of or the day
10 of the deposition of Ms. Regan. Ms. Regan,
11 during the deposition, asserted her Fifth
12 Amendment privilege to any questions related to
13 the suspects and the Bowman homicide.

14 MS. MONTGOMERY-BLINN: Commissioners,
15 if you have any questions for Mr. Lau in
16 regards to his investigation about Robert
17 Rutherford, please ask.

18 MR. SMITH: I have a summary question,
19 if I may. So what we have is the
20 confession of Mr. Rutherford, but that was
21 on the tape, that's a telephonic
22 communication?

23 A. That is correct.

24 MR. SMITH: And we agreed it was his

1 voice, but we don't have a guarantee?

2 A. What we have is what Mr. Whiteis has given to us
3 in the form of his affidavit.

4 MR. SMITH: We do know that since that
5 time he has said, no, he didn't do this?

6 A. We know that according to Mr. Hilliard's report
7 from his visit with Mr. Rutherford in 2008 that
8 Mr. Rutherford, according to Mr. Hilliard,
9 stated to Mr. Rutherford -- stated to
10 Mr. Hilliard that he had information about the
11 Bowman homicide and would tell Mr. Moore
12 everything, but would only tell that if
13 Mr. Moore met with him face-to-face.

14 MR. SMITH: So he has not formally to
15 anyone recanted that confession he made to
16 Mr. Whiteis; that is, he has not said, that
17 was not true?

18 A. He has said that to us.

19 MR. SMITH: He said it to us?

20 A. During our interviews with him.

21 MR. SMITH: All right. That's what I
22 wanted to hear.

23 A. Yes.

24 MR. SMITH: So we have a confession on

1 the telephone, and then we had him saying
2 to us, no, I didn't do it?

3 A. We have him saying to us, no, he didn't.

4 MR. SMITH: So, really, he is on the
5 record at this point as denying that he did
6 it, on our record?

7 A. On our records through our interviews he has
8 denied knowing anything about the Bowman
9 homicide.

10 MR. BECTON: And he has also denied
11 making that statement?

12 A. And he's denied giving that statement to Agent
13 Whiteis.

14 MR. VICKORY: The characterization of
15 the interview that Roney Hilliard had with
16 him, he never -- all he said to Roney
17 basically was he wanted to tell it,
18 whatever it is, face to face to Moore, Ron
19 Moore, is that right?

20 A. Correct. He never said he was involved in that
21 statement to Mr. Hilliard.

22 MR. VICKORY: Right. Were there ever
23 any follow-ups with the feds by us or
24 anybody else to see if he ever got any

1 sentence concessions?

2 A. The only follow-up was what's in that affidavit,
3 and we didn't follow up to see if any sentencing
4 concessions were ever made at any time.

5 MR. VICKORY: Specifically with AUSA,
6 Jill Rose, did anybody ever talk to Jill
7 about that?

8 A. We did not speak with Jill Rose about whether or
9 not, based on Mr. Rutherford's confession, he
10 received any concessions. What we know about
11 concessions is only in Mr. Rutherford's first
12 confession to Mr. White is where he states at the
13 top of this statement that he informed
14 Mr. Rutherford that he could make any
15 concessions to him, and that's all we have. We
16 have not -- we have spoken with the U.S.
17 Attorney's office, Mr. Cory Ellis there, but it
18 was unrelated to this statement by
19 Mr. Rutherford.

20 MR. VICKORY: Has anybody looked into
21 the Department of Federal Prisons, I guess
22 the Federal Department of Prisons, to see
23 whether there have been any lessening of
24 his sentence since he went into prison? In

1 other words, my understanding is the
2 threshold is very low to get a sentence
3 reduction in the federal prison system. In
4 fact, it doesn't even have to be followed
5 up with the prosecution. If you can give
6 information, then that can be used. My
7 question is, has he ever applied for a
8 reduction or has he ever gotten a reduction
9 based on his statements?

10 A. I don't have that information. We did not look
11 at that information. It's something that the
12 PACER system may be able to help us locate.
13 They have records from 2002 -- I'm sorry, from
14 2004 and beyond available on-line and we can
15 certainly do that today for the Commission's
16 consideration to see if that took place and if
17 there is a record of that in the federal court
18 system.

19 MR. VICKORY: He was apparently
20 looking for, I guess looking to stake out
21 District Attorney Moore on the state
22 sentence by his request to see him face-to-
23 face. Was that your impression?

24 A. I can only say what's in Mr. Hilliard's

1 documentation.

2 MR. VICKORY: And that's what he --

3 A. Mr. Hilliard's documentation, I didn't speak
4 with Ron Moore about it.

5 JUDGE SUMNER: Any other questions?

6 (No audible response.)

7 MS. MONTGOMERY-BLINN: Commissioners,
8 if you'll just give me a second, I need to
9 check something in my Power Point. Will
10 you just close your eyes and let me skim
11 through it really quickly and not confuse
12 you or give you a headache?

13 MS. JOHNSON: Judge, I do have a
14 question, if I may ask that?

15 JUDGE SUMNER: Certainly.

16 MS. JOHNSON: When you said that you
17 talked to Rutherford, did you talk to him
18 about any of the discrepancies in his
19 confession, that they threw the bandana in
20 the trash at the gas station, they didn't
21 throw it on the side of the road, that they
22 actually chased him from one room to
23 another; did you speak with him about any
24 of that?

1 A. I didn't speak with him directly about the
2 contents of the confession because he denied
3 ever having said what's in the confession.

4 MS. JOHNSON: Okay.

5 JUDGE SUMNER: Any other questions?

6 MS. MONTGOMERY-BLINN: I will ask that
7 Mr. Lau be permitted to step down.

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

10 * * * * *

11 MS. MONTGOMERY-BLINN: Commissioners, part
12 of the materials that you were asked to review
13 prior to this hearing included a report from
14 Professor Stephen Drizin, he's a law professor
15 at Northwestern Law School. He is an expert in
16 the validity of confessions and has testified as
17 an expert on previous occasions, including
18 before the Commission. And I'll just ask, does
19 everybody have a copy of that with them and has
20 reviewed it?

21 (No audible response.)

22 MS. MONTGOMERY-BLINN: And we included Mr.
23 -- Professor Drizin's CV with that as well as an
24 affidavit. And if you all have had an

1 opportunity to review the CV, I'll ask Judge
2 Sumner to admit that before the Commission as an
3 expert, statement of an expert witness,
4 documentation and report of an expert witness in
5 the reliability of confessions.

6 JUDGE SUMNER: Any questions on that tender
7 at this time?

8 (No audible response.)

9 JUDGE SUMNER: If there are none, it can be
10 admitted and qualified.

11 MS. MONTGOMERY-BLINN: All right. And I'll
12 just tell the Commission that because this case
13 is based on confessions or was based on
14 confessions from group B, and then after the
15 conviction another person from group A
16 confessed, we felt it might be helpful for the
17 Commission just to get an expert to help give
18 some perspectives about all of these confessions
19 and understand what are the things that are
20 looked for in reliability or non-reliability.
21 But I also want to note for you, of course, that
22 Professor Drizin's review was a little bit
23 limited because we don't have these statements
24 that were given by anybody in a transcript or a

1 recording, all we have are the summaries that
2 the sheriff's department gave or any handwritten
3 statements that were available. So, of course,
4 we gave all of those to Professor Drizin to
5 review, but we would just like you to note that
6 this is all that we had available and all that
7 he had available. And Professor Drizin has made
8 himself available and is on telephone standby
9 today should any of the Commissioners like me to
10 contact him with any questions.

11 JUDGE SUMNER: Does anyone desire to do so?

12 MR. VICKORY: Let me just ask a question, I
13 didn't know if he was going to be here or not.
14 Was he involved in the Taylor case?

15 MS. MONTGOMERY-BLINN: Yes. He testified
16 before the Commission in the Taylor case. I
17 don't believe that he was a part of the
18 three-judge panel in the Taylor case.

19 MR. VICKORY: What was his testimony about?
20 Not the whole thing, but I wasn't on the main
21 committee at that time?

22 MS. MONTGOMERY-BLINN: I can find the
23 transcript of the Taylor case.

24 MR. VICKORY: Well, no, I just -- just

1 generally, what did he --

2 MS. MONTGOMERY-BLINN: We asked him in the
3 Taylor case to review the reliability of the
4 confession given by somebody by the name of
5 Craig Taylor, and he reviewed that. And, of
6 course, we had more in that, we had the audio of
7 that and the transcripts of that, and we asked
8 him to review that. I can't remember if we
9 asked him to review anything else, off the top
10 of my head. I believe --

11 MR. VICKORY: What did he say about the
12 reliability of Craig Taylor?

13 MS. MONTGOMERY-BLINN: Well, he gave a lot
14 of information to the Commission, none of it was
15 very short and concise, but I -- in my attempt
16 to shorten it, he said that he felt that that
17 was a reliable confession. He testified about
18 the things that made it reliable, the
19 information that was in it, the way that it was
20 conducted, the independent knowledge about it.
21 And I would have to pull his transcript to go
22 further, Mr. Vickory, and I would be happy to do
23 that.

24 MR. BECTON: And the fact that only could

1 have been known to Craig Taylor --

2 MS. MONTGOMERY-BLINN: Right.

3 MR. BECTON: -- as opposed to Greg Taylor.

4 MR. VICKORY: In 20/20 hindsight, am I not
5 correct, Craig Taylor was absolutely not
6 reliable? Is that correct?

7 MS. MONTGOMERY-BLINN: I don't think that
8 is correct. I think in 20/20 hindsight it
9 turned out there were some confessions,
10 additional confessions that Craig Taylor had
11 given that were not made available to the
12 Commission staff at the time that we had them,
13 or had Professor Drizin review them. I think
14 that they were a different type of confessions,
15 and afterwards we actually did talk to Professor
16 Drizin about them and he said his opinion did
17 not change because they were completely a
18 different type of confession made in a
19 completely different manner and did not contain
20 any of the details or information that was
21 contained in the confession that was done in the
22 Greg Taylor case. Again, I would have to pull
23 transcripts to give you, I think, the level of
24 detail you would like.

1 MR. VICKORY: I guess I'm just getting to
2 it's my understanding Craig Taylor was a serial
3 confessor. If that's wrong, just -- I'll
4 stop --

5 MS. MONTGOMERY-BLINN: No, I think that
6 Craig Taylor certainly gave multiple other
7 confessions. The Commission only knew about a
8 small handful of them and presented them during
9 the hearing. We didn't know about more until
10 afterwards. And they weren't available and we
11 didn't know about them until afterwards at the
12 three-judge, but I think there was quite a
13 number of other confessions and that information
14 surfaced and did become publicly available. And
15 also, Professor Drizin, I don't remember if he
16 looked at it through the attorneys at three-
17 judge panel or what it was exactly. I just
18 can't remember how he looked at those. But I
19 also understand that those were a different type
20 of confession than the one that was obtained in
21 the Greg Taylor case.

22 MR. VICKORY: So even after being aware of
23 the serial nature of these Craig Taylor
24 confessions, he still found validity in Craig

1 Taylor's confession -

2 MS. MONTGOMERY-BLINN: He didn't testify to
3 that before the Commission. That was just
4 conversations that I had with him afterwards and
5 he pointed out the differences between the
6 Craig Taylor confession to the Jacqueta Thomas
7 homicide and the Craig Taylor confessions to
8 random things that he had seen on the news and
9 written to 60 Minutes about, or a news program,
10 I can't say it was 60 Minutes.

11 MR. VICKORY: Okay. All right. Thank you.

12 MS. MONTGOMERY-BLINN: All right. Any
13 other questions about that?

14 (No audible response.)

15 MS. MONTGOMERY-BLINN: No? All right.
16 Mr. Summey, Bradford Summey, as you know, he's
17 one of the other people from group A, we've
18 talked about him quite a bit, he is now also in
19 custody. And I will show you his criminal
20 record and I'll be calling Mr. Lau to testify
21 about his investigation.

22 (THEREUPON, MR. SUMMEY'S RECORD IS
23 DISPLAYED.)

24 MS. MONTGOMERY-BLINN: This is part two.

1 All right, Mr. Lau --

2 MR. SMITH: Could you back up, please, just
3 one slide?

4 MS. MONTGOMERY-BLINN: Oh, I'm sorry. To
5 part two?

6 MR. SMITH: And I can see the last part of
7 part two.

8 MS. MONTGOMERY-BLINN: I'm sorry.

9 MR. SMITH: He has four felony common law
10 robberies. I'm trying to see if those are the
11 same event. No, I'm not talking about this
12 event. I'm talking about are those four
13 robberies, is that four separate robberies?

14 MS. MONTGOMERY-BLINN: I believe so. I
15 think they were all consolidated, but I can
16 check on that and verify it.

17 MR. SMITH: It's all right. I just --
18 that's enough. I just wanted to see that part.
19 Okay.

20 (THEREUPON, JAMIE LAU RETURNS TO THE
21 WITNESS STAND.)

22 EXAMINATION BY MS. MONTGOMERY-BLINN:

23 Q. All right, Mr. Lau. Mr. Lau, did you have an
24 opportunity to interview Mr. Summey?

1 A. I did.

2 Q. And can you tell us about that interview or if
3 there was more than one?

4 A. I interviewed Mr. Summey on two occasions while
5 he was in custody. He's currently serving his
6 state sentences for those common law robbery
7 charges.

8 Q. And were you able to obtain a DNA sample from
9 Mr. Summey?

10 A. I was. Mr. Summey voluntarily provided a DNA
11 sample to me during the course of our first
12 interview.

13 Q. And did you ask Mr. Summey about the Bowman
14 homicide?

15 A. I did ask Mr. Summey about the Bowman homicide.
16 It was during that first meeting he denied any
17 knowledge of the homicide. He said he did not
18 commit any robberies until the end of 2007,
19 beginning of 2008. He said he was dealing drugs
20 in 2000 and he was doing better off at that time
21 than he was in the period in which he started
22 committing robberies.

23 Q. Did you ask him if he knew the Bowman family?

24 A. I did ask him that. He said he did not know the

1 Bowman family.

2 Q. Did you ever talk with him -- well, tell us, was
3 there more than one interview conducted with
4 Mr. Summey?

5 A. There was more than one interview, yes.

6 Q. And what did you talk with him about during the
7 second interview?

8 A. During the second interview I had the
9 confirmation of the CODIS hit, I also had
10 Mr. Rutherford's confession with me, and at that
11 time I showed him both those documents in an
12 effort to see what he had to say with regards to
13 the allegations made in Mr. Rutherford's
14 confession and in response to the CODIS hit
15 showing a full match to him on one of the
16 bandanas collected in this case.

17 Q. And what did he say?

18 A. He said that he felt that he was being
19 railroaded and denied any involvement.

20 Q. Railroaded by you?

21 A. He just said he was being railroaded when he
22 viewed the documents.

23 Q. Did you ask him if he knew Pickens and
24 Rutherford?

1 A. I did ask him if he knew Pickens and Rutherford.
2 He told me -- I'm sorry, yes, Pickens and
3 Rutherford. He told me at this time he was not
4 hanging around with Mr. Pickens or
5 Mr. Rutherford, the period in time in 2000 when
6 the Bowman homicide was said to have occurred.

7 Q. Did you ask him about vehicles that were owned
8 by Mr. Pickens?

9 A. I did ask him about vehicles, in particular I
10 asked him about the vehicle that was stated in
11 that report, an older model '70s Olds Cutlass.
12 He said he did not recall Mr. Pickens having a
13 vehicle of that kind. He did say that he hung
14 out with Pickens more than he hung out with
15 Mr. Rutherford.

16 Q. And did you talk to Mr. Summey about the bandana
17 and the inability to exclude his DNA from it?

18 A. I did. I asked him how a DNA, a bandana with
19 his DNA was found at the area near the Bowman
20 household. He said he didn't know how his DNA
21 ended up on that bandana. And I should note, in
22 our earlier conversation, the first interview I
23 had with him, he had told me that he had never
24 been out towards the Fairview area since he was

1 in high school.

2 Q. Was there anything else that Mr. Summey told
3 you?

4 A. We spoke to Mr. Summey about some of his
5 relationships. Mr. Summey said one of the
6 individuals he was hanging out with during this
7 period of time in 2000 is an individual named
8 Kevin Polk. Kevin Polk is somebody that we will
9 hear testimony about a little bit later on in
10 this proceeding.

11 Q. All right. Is there anything that Mr. Summey
12 told you?

13 A. No, not notable.

14 MS. MONTGOMERY-BLINN: Commissioners,
15 do you have questions for Mr. Lau in
16 regards to this portion of his
17 investigation?

18 (No audible response.)

19 MS. MONTGOMERY-BLINN: I'll ask that
20 Mr. Lau be permitted to step down.

21 JUDGE SUMNER: Yes, thank you.

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

24 * * * * *

1 MS. MONTGOMERY-BLINN: Commissioners, if I may
2 just have a second to look at my --
3 Commissioners, you heard some information
4 yesterday about a surveillance video or a
5 security video that was at a gas station that
6 was collected by the sheriff's department and
7 mentioned in this case. And I'd like to call
8 Lindsey Guice Smith, the Commission staff
9 attorney, to testify about this video and the
10 Commission's investigation of this video.

11
12 THEREUPON,
13 Lindsey Guice Smith,
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. Lindsey Guice Smith.

20 Q. Where are you employed, Ms. Smith?

21 A. North Carolina Innocence Inquiry Commission.

22 Q. And were you involved in the investigation of
23 the Kagonyera-wilcoxson claims?

24 A. I was.

1 Q. And during your investigation did you research
2 or uncover information about a video that had
3 been mentioned in the sheriff's report?

4 A. We did.

5 Q. And can you tell us, first, what is that video
6 and how was it obtained, according to the
7 sheriff's file?

8 A. According to the sheriff's file there was a
9 video, a security or surveillance video from a
10 Kounty Line gas station, Amoco gas station on
11 Highway 74 in Fairview, North Carolina. Officer
12 John Elkins located that video and collected it
13 from that station.

14 Q. Were there any notations about what that video
15 contained or showed?

16 A. There were. On the Buncombe County Sheriff's
17 Department's property records it's noted that
18 it's a store surveillance tape, and then at the
19 bottom of that it says it's got -- the video has
20 "three black males coming into the station at
21 around 23:19 hours, 9/18/2000, night of
22 homicide. According to witnesses at same the
23 car came in from Fairview, North Carolina."

24 Q. And you're reading the notes directly off of

1 that log?

2 A. I am.

3 Q. And according to the sheriff's department
4 record, what did they do in their investigation
5 after they obtained that video in relation to
6 the video?

7 A. After they obtained the video they interviewed
8 those three witnesses, they did that on multiple
9 occasions. Some of them provided handwritten
10 statements, some of them we just have summary
11 reports for. And they also for, I believe, at
12 least one, if not two, of them did photo line-
13 ups.

14 Q. You said they interviewed three witnesses who
15 had been present at the gas station?

16 A. That's correct.

17 Q. Not the three men that were purportedly shown on
18 the video?

19 A. Correct.

20 Q. Three different people?

21 A. These are three different individuals who were
22 at the gas station at the time that the vehicle
23 and the possible suspects were there.

24 Q. And I know that the -- well, based on the

1 sheriff's department report, what kinds of
2 questions, if you can tell, were they asking the
3 witnesses?

4 A. They were asking them to identify the
5 individuals and to identify the car as
6 described, the individuals and/or the car.

7 Q. Are you able to tell if the deputies that
8 interviewed these witnesses were showing them
9 photographs of any cars that they knew, any
10 known cars?

11 A. They did. On at least one occasion they -- or
12 two occasions they showed witnesses the
13 photograph of Kenneth Kagonyera's car.

14 Q. And when they showed the witnesses the lineups,
15 do you know, were they containing the suspects
16 from group B?

17 A. They did.

18 Q. And the line-ups, did they contain anybody from
19 group A?

20 A. They did not.

21 Q. And do you know if the deputies, the sheriff's
22 department believed that the vehicle shown on
23 this video was Kenneth Kagonyera's car?

24 A. Only to the extent that they showed pictures of

1 Kenneth Kagonyera's car to the officer -- or to
2 the individuals.

3 Q. Did any witnesses that you interviewed during
4 the course of our, of the Commission's,
5 investigation indicate that they thought that
6 this video showed Kenneth Kagonyera's car?

7 A. When we spoke with Shawn Bowman, he indicated
8 that law enforcement had told him about the
9 video. He also said that he believed that the
10 video had the suspects who came to the home and
11 the car that was involved.

12 Q. And it's unclear where he got the information
13 that it contained the suspects in the car, is
14 that correct?

15 A. That is correct.

16 Q. And he did not view the video himself,
17 Mr. Bowman?

18 A. He did not.

19 Q. Or had not viewed him during the sheriff's
20 department investigation?

21 A. That's correct.

22 Q. You showed the video to him as part of your
23 investigation?

24 A. We did.

1 Q. Were you able to locate this video?

2 A. We were.

3 Q. And can you tell me where it was?

4 A. Yes. It was located at the Buncombe County
5 Sheriff's Office evidence room.

6 Q. And have you been able to view this video?

7 A. I have.

8 Q. And tell me, what did you see when you viewed
9 it?

10 A. The video is actually approximately a 24-hour
11 period, it goes from around 5:57 the morning of
12 September 18, 2000 to around 5:52 a.m., the
13 morning of September 19, 2000. It's a
14 continuous video except at 23:17 hours or
15 11:17 p.m. through 11:21 p.m., that video has
16 been recorded over.

17 Q. At what time did you say it had been recorded
18 over?

19 A. 11:17 p.m. until 11:21 p.m.

20 Q. And what's the time that was noted on the
21 evidence log where it showed three black males
22 coming into the store?

23 A. 11:19.

24 Q. So would that be during the time it was recorded

1 over?

2 A. That is correct.

3 Q. What can you tell me about what is recorded over
4 on that video?

5 A. It is The Guiding Light soap opera.

6 Q. Does the evidence control form indicate in any
7 way that this video was inadvertently taped over
8 or taped over or recorded over? Is any of that
9 on the evidence control form?

10 A. It does not. In fact, the evidence control form
11 shows only that it is a store surveillance tape,
12 it has the notation about the three black males
13 coming into the store at 23:19 hours, the
14 officer's name that submitted it, the date that
15 it was submitted was September 19, 2000. On the
16 back is their chain of custody form. That
17 actually shows that it was collected from David
18 Coffey, who I understand was an employee at the
19 gas station, by Lieutenant John Elkins on
20 September 19, 2000. The next notation on here
21 is that it was released by Detective George
22 Sprinkle to Philip McMahan, who was the evidence
23 custodian. So there's actually a missing link
24 in the chain of custody. It's unclear when

1 Mr. Elkins turned it over to George Sprinkle.
2 We do know, based on our deposition of George
3 Sprinkle, that he did receive it from Lieutenant
4 Elkins at some point, that it was in his custody
5 on October 23, 2000, which is the date that he
6 turned it over to Philip McMahan, the evidence
7 custodian at the time.

8 Q. So Detective Sprinkle has noted on that form
9 that on October 23, 2000 he turned it over to
10 the evidence custodian?

11 A. That is correct.

12 Q. And also in your deposition of Detective
13 Sprinkle he indicated that he did the same?

14 A. That is correct.

15 Q. And did Detective Sprinkle during your
16 deposition indicate whether or not that was his
17 handwriting on the form that says, three black
18 males at 11:19 p.m.?

19 A. He did. He confirmed that that was his
20 handwriting.

21 Q. Were you able to determine when The Guiding
22 Light soap opera episode that is on that video
23 now aired?

24 A. I was.

1 Q. And tell us how you were able to do that.

2 A. I searched online Guiding Light transcripts and
3 was able to use the clip from the video, the
4 words that are used in there, to locate that
5 episode, and it aired on October 23, 2000.

6 Q. Is that the same day that Detective Sprinkle
7 viewed -- or had that video in his possession?

8 A. It is.

9 Q. And turned it over to the evidence custodian?

10 A. Correct.

11 Q. And is there any notation that after it was
12 turned over to the evidence custodian it was
13 ever checked out or anything happened to the
14 video?

15 A. Not on the form that we have here.

16 Q. All right. Ms. Lau, I would like to play that
17 video for you. And I would just like to ask as
18 well the video, is it in real time, the gas
19 station video?

20 A. The original tape is actually in -- not in real
21 time. It moves faster.

22 Q. So is it such that the episode or the portion of
23 The Guiding Light episode may only be a few
24 seconds, but cover a couple of minutes in time?

1 A. Correct; correct. It covers approximately three
2 minutes in time, but it is probably less than
3 ten seconds of the clip.

4 Q. Ms. Lau, I'd like to play the video and just ask
5 you as the video is playing if you need to make
6 any narrations or notations, to please --

7 A. And as a point of correction, I'm not Ms. Lau.

8 Q. Oh, I'm so sorry. I apologize, Ms. Smith.

9 (THEREUPON, THE VIDEOTAPE IS PLAYED.)

10 A. This is the video, it is a four-quadrant video.
11 As I said, it is not in real time. As you can
12 see, it's moving quite quickly there. This
13 quadrant here in the upper lefthand is just an
14 outside view of the parking lot at the gas
15 station. In the upper right-hand corner, this
16 is the inside of the gas station, here is the
17 front door and this is the cash register. In
18 the lower lefthand quadrant, this is also an
19 inside view from the backside of the cash
20 register here. And then the lower right-hand
21 view is the gas pumps outside of the gas
22 station.

23 Q. And is the time, that right there was 23:16, is
24 that the time stamp?

1 A. Yes, it is.

2 Q. And remind me again, what time was it that the
3 video purports to show --

4 A. Now. And as you will note, it comes back on
5 around 23:21 hours.

6 Q. And Ms. Lau, have you -- is this video
7 unretouched by the Commission?

8 A. I'm sorry?

9 Q. This portion of the video right here, this has
10 not been touched or edited or altered by the
11 Commission?

12 A. It has not. This is a copy. Actually, our
13 staff attorney, Stormy Ellis, went to Buncombe
14 County Sheriff's Office, and with the evidence
15 custodian made a copy of this video and brought
16 it back to us here.

17 Q. And the video that we've just seen that you just
18 narrated for us, that is a fair and accurate
19 representation of the video as you understand it
20 from the Buncombe County Sheriff's Department?

21 A. That is correct.

22 Q. Did you attempt to determine how this video came
23 to be taped over?

24 A. We did. In speaking with several law

1 enforcement officers at the Buncombe County
2 Sheriff's Office who were formerly at the
3 Buncombe County Sheriff's Office, we attempted
4 to find out if anyone knew how or why or --
5 well, I guess we know when, but it was recorded
6 over. We specifically spoke with
7 Sheriff Duncan, in his office that day was also
8 Lieutenant John Elkins. Neither indicated that
9 they had any knowledge of the video being
10 recorded over and it was the first that they had
11 heard of it. They also indicated that perhaps
12 it could have been recorded over inadvertently.
13 They said the equipment they had in 2000 would
14 have allowed for such, and they indicated that
15 knowing both George Sprinkle and Philip McMahan,
16 it could have inadvertently been recorded over.

17 We also spoke with Detective Mike Murphy,
18 which was one of the co-leads on this case, he
19 could not recall anything about the video other
20 than that he believed he watched it with
21 Detective Sprinkle during their investigation.
22 And finally, during our deposition of George
23 Sprinkle, Detective Sprinkle, he indicated that
24 there was no way that he could have

1 inadvertently recorded over the video, and he
2 also said that he did not record over the video.

3 Q. And again, did you look at any notations or any
4 evidence in the file or the evidence control
5 file or any sheriff's department memos that the
6 file had been inadvertently recorded over, that
7 somebody actually pressed record, realized,
8 stopped it, and made some kind of notation or
9 report about that?

10 A. No, there was no indication on this evidence
11 control form or anywhere in the Buncombe County
12 Sheriff's Office file that was turned over to us
13 that this video had been recorded over
14 inadvertently or otherwise.

15 Q. Ms. Smith, what did you then do with this video?

16 A. We actually obtained an order to have the
17 Buncombe County Sheriff's Office transfer that
18 video directly to the SBI for enhancement. We
19 thought that the best thing to do would be to
20 keep ourselves out of their chain of custody on
21 this particular item of evidence and have them
22 do that, and so we did that. And the SBI had
23 indicated to us that they could enhance the
24 video. They and another independent expert

1 informed us that they would not be able to
2 recover the recorded-over portions of the video
3 and that there would be no way to date the time
4 that it was, the date that it was actually
5 recorded over other than content analysis, which
6 is what I described that we had already done at
7 that time.

8 Q. Okay. And was the State Bureau of Investigation
9 able to enhance that video for you?

10 A. They were. They were actually able to slow down
11 the video, enlarge it, and using their tracking
12 system they were able to get back a few extra
13 sections -- seconds of the part that was kind of
14 the blue where it was coming back and said play
15 and it was calibrated. And they were actually
16 able to go back and get a few seconds that we,
17 to the naked eye, were unable to see on this
18 video.

19 Q. So they weren't able to recover the portion that
20 was recorded over, but maybe a couple of seconds
21 additional?

22 A. Correct.

23 Q. So they slowed it down, they enlarged it, and
24 they tracked it, is that correct?

1 A. Yes.

2 Q. Okay. I'd like to play this video segment and
3 ask again, I'll give you the pointer, if you
4 could narrate as it plays. And if the
5 Commission needs for it to be played multiple
6 times, of course, we'll do that.

7 (THEREUPON, THE VIDEOTAPE IS PLAYED.)

8 A. This video, as I've said, they've taken the
9 quadrant that just had the gas pumps and they
10 have enlarged it. This is at 23:21 hours. You
11 can see here this is the car at the gas pump.
12 This is the car that we believe the witnesses
13 were describing. As you can see, there's
14 individuals getting in the car here and one
15 walking to the car here.

16 Q. Okay.

17 A. This is, again, the same view that you were
18 seeing before, we've just moved on. This is
19 23:30 hours now, so approximately six to seven
20 minutes later they're still at the gas pumps.
21 There is an individual at the back of the car,
22 another one walking back into the store, the car
23 door is still open. There's actually two
24 individuals that emerge from the back of the car

1 at this point getting into the driver's side.
2 If you notice these individuals here, based on
3 the descriptions and from the police report
4 speaking to the individuals who were at the gas
5 station and who were the witnesses that they
6 spoke to, it is believed that these are the
7 individuals here talking outside of the gas
8 station who they later spoke with.

9 Q. Is that the headlights on?

10 A. The headlights have come on here you can see and
11 the gentleman is walking back to the vehicle and
12 getting in the passenger's side. And now the
13 vehicle is leaving the station approximately at
14 23:32 and 17 seconds there. If you will recall
15 from earlier on the video, when it went to the
16 soap opera at 23:18, we did not see the vehicle
17 parked here at the gas station. When it came
18 back at 23:21 the vehicle was there, so they --
19 and according to George Sprinkle's notes they
20 were there at 23:19. Based on that, they were
21 at the gas station for approximately 13 minutes.

22 Q. One more video segment.

23 A. This is inside the gas station. As you can see,
24 this person here walking in is a person we

1 believe, and this individual, are the people
2 that we believe that George Sprinkle was
3 indicating he saw on the video walking into the
4 store.

5 Q. When you look at all four quadrants and line
6 them up by time, are those the people that just
7 came out of that vehicle?

8 A. Correct. Well, actually -- yes.

9 Q. And is that all there is to this --

10 A. That's all there is. You may want to replay
11 that one just because it's short.

12 Q. Okay. I'll be happy to.

13 A. This gentleman and this gentleman.

14 MS. MONTGOMERY-BLINN: Would you like
15 to see any portions of this video again?

16 (No audible response.)

17 MS. MONTGOMERY-BLINN: We can always
18 come back to it.

19 Q. And Ms. Smith, were you able to have anybody
20 make an identification from that video?

21 A. We attempted. We had Shawn Bowman as well as a
22 couple of other individuals look at the video to
23 see if they could, you know, make an
24 identification. They were unable to. Their

1 comments were that it was just too grainy, too
2 difficult to make any identification,
3 particularly of the people walking into the
4 store. We did ask people to look at the vehicle
5 and see if they could make any determination
6 based on the vehicle, and other than some
7 general descriptions about it, we weren't able
8 to get much from the video, so --

9 MS. MONTGOMERY-BLINN: May I approach
10 the witness, Your Honor?

11 JUDGE SUMNER: Yes, you may.

12 Q. Ms. Lau, I'm handing you a document. Will you
13 tell me if you recognize this?

14 A. I do.

15 Q. Is that a document that you made?

16 A. It is.

17 Q. And could you please tell us -- well, let's wait
18 until it gets around so that everybody can look
19 at it and I'll have you explain it.

20 A. Okay.

21 MR. BECTON: While it's coming around,
22 did I understand you to say that Sprinkle
23 said there was no way to record over or no
24 way to inadvertently record over it?

1 A. He said that it would not have been
2 inadvertently recorded over.

3 MS. ASHENDORF: What was the period
4 that was unaccounted for, not on the video,
5 but in the possession of that video?

6 A. It was collected on September 19, so the day
7 after the homicide, and it was turned into
8 evidence on the 23rd of October, so there's no
9 indication of when -- between that date when
10 Lieutenant Elkins turned that video over to
11 Detective Sprinkle.

12 MS. ASHENDORF: Did anybody that we
13 know of see that video before it had The
14 Guiding -- whatever?

15 A. Everyone that we've talked to -- no one that we
16 talked to said they had ever seen The Guiding
17 Light portion on there. Detective Sprinkle said
18 that he had watched the video and his notes
19 indicate that he had, and then Detective Mike
20 Murphy did not recall very much, but he said
21 that he probably watched the video with
22 Detective Sprinkle, but he could not recall
23 specifically. We also asked all of the defense
24 attorneys who we spoke to whether or not they

1 had seen the video, we asked, I believe, the co-
2 defendants whether they had been given the
3 opportunity to view the video through their
4 discovery or anything of that nature, and we
5 asked Shawn Bowman if he had ever seen the
6 video, and all responded that they have not seen
7 the video.

8 MR. SMITH: In other words, when
9 Mr. Sprinkle saw the video, it had not been
10 taped over?

11 A. Correct. He had never -- he did not know that
12 -- according to him, he did not know when we
13 asked him that question that the video had been
14 recorded over.

15 MS. ASHENDORF: Is there any evidence
16 that a store employee regularly watched
17 that soap opera during the day on a
18 television and a recording device at the
19 filling station?

20 A. We do not have that information.

21 MS. ASHENDORF: And that it could have
22 been done there?

23 A. We do not have that information, but based on
24 the notes -- I mean, Detective Sprinkle told

1 US --

2 MR. BECTON: Sprinkle saw it.

3 A. -- he saw the video in its entirety. Yes, Mr.
4 Vickory?

5 MR. VICKORY: Do you know if the
6 system itself is just like a normal home-
7 type video or system or is it one of those
8 -- you know, there's, especially these
9 convenience stores, that they, particularly
10 back then, that ran the gamut. Some of
11 them were pretty sophisticated, some of
12 them weren't.

13 A. Right. We don't know and there was nothing in
14 the file that would have indicated to us what
15 kind of system they had at that time.

16 MR. VICKORY: What I'm getting at. Do
17 you know that the video that the sheriff's
18 department has was the original device used
19 to record the images in the parking lot or
20 was that a copy of a stationary thing?

21 A. That I don't know. There's no indication on
22 their form that it's anything other than the
23 tape, so I do not know whether or not they made
24 a copy of it. All I know is it's a VHS tape.

1 MR. VICKORY: Okay. The old regular
2 VHS --

3 A. Regular VHS tape.

4 MR. VICKORY: My question then would
5 be, is the little tab that you pop out to
6 keep somebody from re-recording over it,
7 did you notice whether or not that had been
8 removed?

9 A. It was not -- and you may have to correct me.
10 It was not in a position such that it could not
11 be recorded over. So it was not turned so that
12 nothing could be recorded over it.

13 MR. VICKORY: You know what I'm
14 talking about, the little --

15 A. Yes. The little button.

16 MR. VICKORY: Well, I think they can
17 make it that way, right?

18 A. But it was not.

19 MR. VICKORY: I wonder -- if that's
20 been removed, you'll know that.

21 MR. SMITH: I think we are left to
22 wonder though how on earth it could
23 possibly be that someone could have
24 unintentionally taped over the exact three

1 seconds we're going to look at.

2 A. I cannot speculate to that.

3 MR. SMITH: All right.

4 JUDGE SUMNER: Yes, Ms. Johnson.

5 MS. JOHNSON: Do you know how far that
6 station is from the residence, the Bowman
7 residence?

8 A. I do. I believe the map that we gave out to you
9 all yesterday, I think it says 5.9 miles, that
10 is the station that we're referring to.

11 MS. JOHNSON: And the time that they
12 were at the station was after the home
13 invasion, correct?

14 A. We do not know that. There's some indications
15 that it was before.

16 MS. JOHNSON: That it was before,
17 okay.

18 A. We don't know. I think that, based on the
19 timeline of when 911 was called, that it would
20 have, they would have been at the gas station
21 before, but it's uncertain.

22 MR. BECTON: well, about in terms of
23 geography?

24 A. Yes.

1 MR. BECTON: If that car were coming
2 from Fairview, they would not have been
3 from the actual area, am I correct?

4 A. That is correct. It's -- that is correct.

5 Q. Ms. Lau, the portion of where the car enters the
6 gas station is the recorded over portion, is
7 that correct?

8 A. That is correct. So we cannot tell with our own
9 eyes which way the car is coming.

10 MR. BECTON: But there is testimony
11 from yesterday that the car came from the
12 Fairview area.

13 Q. And the witnesses, what did the witnesses tell
14 the sheriff's department?

15 A. The witnesses -- one witness told the sheriff's
16 department that the car came from the area, the
17 direction of Fairview and left towards
18 Asheville.

19 MS. GREENLEE: Is there a recording of
20 the whole 24-hour period?

21 A. There is.

22 MS. GREENLEE: And that three minutes
23 is the only portion that was recorded over?

24 A. That is correct. I've reviewed the entire 24-

1 hour period and it is only recorded over in that
2 one section.

3 JUDGE SUMNER: Yes, ma'am.

4 MS. ASHENDORF: Tagging on to what
5 Branson said, I don't know about back in
6 2000, I think now most convenience stores,
7 they wouldn't -- if you asked for the tape
8 or whatever, they have their own recording
9 device and you get a copy of it. You would
10 get something else. You would not -- I
11 don't know about in 2000. You wouldn't get
12 their original, that's theirs and they just
13 make you a copy.

14 A. And again, I wouldn't know based on what we were
15 provided from the sheriff's department. And my
16 recollection is that John Elkins' recollection,
17 he doesn't recall ever collecting this tape. He
18 says he must have because this is indeed his
19 handwriting at the top of the evidence control
20 form, it is his handwriting that says, store
21 surveillance tape, but he does not recall
22 collecting the tape. So there would be no way
23 for me to confirm whether or not he got a copy
24 or the actual tape.

1 MR. BECTON: Does it say what time he
2 collected the tape?

3 A. It does not.

4 MR. BECTON: Does it say what time the
5 tape runs from, what 24-hour period?

6 A. It runs -- based on my review of the tape, it
7 runs from 5:57 a.m. on September 18, 2000 to
8 5:52 a.m. on September 19, 2000.

9 JUDGE SUMNER: Chief, you have a
10 question?

11 MR. JENKINS: I did. In speaking with
12 Detective Sprinkle, I believe you testified
13 that he said there was no way he could have
14 inadvertently taped over the video.

15 A. That is what he said.

16 MR. JENKINS: Did you ask him where he
17 viewed video when he viewed it? Did he do
18 it in the sheriff's department?

19 A. I don't believe that question was asked.

20 MR. JENKINS: And where I'm going with
21 that is --

22 A. But I can pull the transcript.

23 MR. JENKINS: -- if they had a TV set
24 up in the sheriff's department and the VCR

1 was run through the cable, in through the
2 TV channels, then if you hit the record
3 button while that tape is running, it would
4 be possible to over -- if they were
5 reviewing that one section, it would seem
6 to me that it would be possible to
7 inadvertently record over it. I would be
8 curious to know if their video system at
9 the sheriff's department there is run -- or
10 cables are run through the TV, through the
11 VCR into a TV that has cable. Do you see
12 where I'm going with that? If all they
13 were doing was looking at the video
14 directly from the VCR to the TV, then
15 there's no way they could have done it.
16 But if the cables were run through the VCR
17 to the TV system, then it could have been
18 recorded over top of.

19 Q. And I think that we sought the answer to that
20 question, but were never able to get a clear
21 answer to that question.

22 MR. SMITH: And nobody has ever owned
23 up to even knowing about this until you all
24 brought it to their attention?

1 A. That's correct.

2 JUDGE SUMNER: Any other questions?

3 MR. BECTON: When was that Guiding
4 Light episode?

5 A. October 23, 2000. If I'm not mistaken, Guiding
6 Light aired between 3:00 and 4 o'clock on that
7 day as well. And it was on the transcript, it's
8 a 12-page transcript, it was on page 2 of that
9 transcript, which tells me it was in the earlier
10 portion of that episode.

11 MR. JENKINS: And was that not the
12 same date that -- excuse me, Mr. Becton.

13 MR. BECTON: All I want to know if
14 there is -- October 23 is a significant
15 date with regards to statements or anything
16 else in --

17 MR. JENKINS: Is that not the same
18 date that Mr. Sprinkle indicated he had --

19 MR. BECTON: Turned it over to the
20 evidence.

21 MR. JENKINS: -- turned it over or
22 they obtained possession of it?

23 A. It is the day that he turned it over to
24 Philip McMahan, uh-huh (yes), the evidence

1 custodian. That is also the date that Shawn
2 Bowman was interviewed and the -- well --

3 JUDGE SUMNER: Sure.

4 MS. JOHNSON: My question, was there a
5 chain of custody where it was signed out of
6 the evidence log or --

7 A. There is not. The only two notations are it was
8 collected -- it was released by Darrell Coffey,
9 who worked at the gas station, it was collected
10 that day, on the 19th of September, by John
11 Elkins, and then all -- the next entry is it was
12 released by George Sprinkle on the 23rd of
13 October to Philip McMahan, who was the evidence
14 custodian. There is no indication of where the
15 video was between September 19 and October 23 on
16 this form. Detective Sprinkle tells us that
17 John Elkins gave the video to him on -- but he
18 does not know what day.

19 MR. JENKINS: Do we have a copy of
20 that particular property sheet in our file?
21 I know we have a few of those state forms.
22 Those are state property --

23 A. Is this in a brief?

24 MS. MONTGOMERY-BLINN: We would be

1 happy to make a copy of it.

2 MR. JENKINS: I was just curious. I
3 mean, I think her testimony is fine with
4 me. I was just curious if we have --

5 MR. SMITH: May I ask one additional
6 question?

7 A. Okay.

8 MR. SMITH: How many seconds -- again,
9 I think you've already told us -- how many
10 seconds, again, was The Guiding Light
11 episode recorded on this tape?

12 A. It covered, in real time it covered a period of
13 approximately three minutes.

14 MR. SMITH: Three minutes, okay.

15 A. But in the time-elapsed version the actual
16 Guiding Light, that segment is only a few
17 seconds, maybe ten seconds.

18 MR. SMITH: But that would have been
19 the time, I take it, that the individuals
20 would have been most easily viewable in the
21 store, so far as we know, or do we know
22 that?

23 A. Based on what we see on the video, they're not
24 -- their car is -- that car is not parked at the

1 gas pump when it cuts to Guiding Light. When it
2 comes back from The Guiding Light, the car is at
3 the pumps and the -- or the very last clip we
4 showed were two men walking into the store. On
5 the unenhanced version you do not see those two
6 men walking into the store, but on the enhanced
7 version that the SBI was able to do, you can see
8 that.

9 MR. SMITH: What I'm getting at then
10 is, as best we can tell, what do we believe
11 we've missed by The Guiding Light coming
12 on?

13 A. On the original video we believe we've missed
14 the car pulling up to the gas station and them
15 walking into the store. On the enhanced
16 version, as best as we can tell, we've just
17 missed the car pulling up and them walking
18 across the parking lot.

19 MR. SMITH: So what we have missed is
20 not close-up pictures of the faces so far
21 as we know?

22 A. As far as we know.

23 MR. SMITH: We maybe have missed a car
24 pulling in, which would have given us a

1 better view of the vehicle, but we don't
2 believe this has eliminated really good
3 views of faces that would have helped us
4 identify people, so far as we know?

5 A. As far as we know.

6 MR. BECTON: well, we do know,
7 however, that on the video that we did see
8 one person who was interviewed as a witness
9 at the bottom lefthand side of the screen,
10 his face was clearly visible. The person
11 whose face was not visible was the person
12 who walked over to the counter. We don't
13 know during that three-minute period
14 whether anybody who came to that store
15 walked around that store or whether they
16 even faced the camera, do we?

17 A. That is correct.

18 MR. VICKORY: And one other thing that
19 we know is that if you attach a bad purpose
20 behind removing that video, the person who
21 did it, without the advanced enhancement
22 techniques, would have thought they got the
23 whole thing.

24 MR. BECTON: They would, yes.

1 MR. JENKINS: That's a good point.

2 MS. MONTGOMERY-BLINN: If I could just
3 interject, I just want to be clear, we're
4 not trying to attach, the Commission is not
5 trying to attach a bad purpose. The
6 Commission is just trying to note for you
7 it's been recorded over. There's no record
8 that it was recorded over by accident, we
9 just don't know. I just want to make that
10 clear, if I may. I apologize for the
11 interjection.

12 MR. VICKORY: But we don't know --
13 there's never any acknowledgment by anybody
14 that they made for the lawyers their own
15 copies of the video. See, I think we would
16 all understand something like that maybe
17 happening if they were in the process of
18 trying to make copies.

19 MS. MONTGOMERY-BLINN: If I can, I
20 know I'm not testifying, but one time I
21 recorded over a portion of a video that we
22 had done -- well, another staff person in
23 the office did it, but I was right there.
24 We were trying to transition the video

1 over, it turned out to be not a critical
2 portion at all, but there's a shot of my
3 foot. And so I did a summary report and
4 attached it to the video, we attached it to
5 the evidence log, and we documented exactly
6 what happened and why it happened and
7 where. But certainly, I accidentally
8 recorded over a portion of a video too, and
9 I've probably record over my wedding video
10 at home as well by now, or something.

11 MR. VICKORY: Well, I might also add.
12 We did the same thing during a jury view in
13 Goldsboro in one of those convenience
14 stores. This goes back further, early '80s
15 or mid-'80s. We actually had to go to --
16 the system was so antiquated, you could not
17 make a recording on something you could use
18 in a normal VCR. And the booth that the
19 manager sat in and viewed the thing was at
20 the store up in a crow's nest, you could
21 only get three or four people in at a time.
22 The court, all of us went down there and
23 three or four at a time went into the
24 crow's nest to look at the video. And when

1 the fourth group or something like that
2 went up to look at it and they turned it
3 on, there was a picture of the previous
4 group walking out of the store. Of course,
5 that would be the only part anybody would
6 be interested in looking at would be this
7 portion of it.

8 JUDGE SUMNER: That was not my case,
9 was it?

10 MR. VICKORY: No. I think you might
11 have -- but, anyway, I just -- I'm not
12 trying to attach a bad purpose either, but
13 wow.

14 MS. GREENLEE: Is there a time
15 associated with that chain of custody on
16 the 23rd?

17 A. They don't put times on this form.

18 MS. MONTGOMERY-BLINN: Commissioners,
19 would you like me to hand the chain of
20 custody form around?

21 JUDGE SUMNER: That would be great.

22 MS. MONTGOMERY-BLINN: May I approach
23 the witness, Your Honor?

24 JUDGE SUMNER: Yes.

1 MS. MONTGOMERY-BLINN: And the
2 highlighting is our highlighting in this
3 copy, that's not the original highlighting.

4 A. That is correct.

5 MS. MONTGOMERY-BLINN: As that sticker
6 is also our sticker on this copy because
7 the video we used -- or that log was used
8 in a deposition with Mr. Sprinkle, just to
9 note that's the Commission's edition. And
10 I can find the original if you would like.

11 Q. While this is going around, the other document
12 that just went around, this document, Ms. Lau,
13 would you please explain what this document is
14 and where you obtained the information that you
15 put into this document?

16 A. I will. If I may go back --

17 Q. Please do.

18 A. -- to there were some questions asked a minute
19 ago about the witness' statements that said that
20 the car came from the direction of Fairview and
21 left in the direction of Asheville. What I also
22 wanted to just point out about those statements,
23 and it's actually not related to that at all,
24 those individuals -- this was a question that

1 Ms. Montgomery had asked a minute ago about
2 whether or not they showed pictures of
3 Mr. Kagonyera's car to those witnesses. They
4 did. And the two individuals that they asked
5 both said that that car did not appear to be the
6 car that they saw. So I wanted to let you know
7 that.

8 I would also say that they did the photo
9 line-ups and they were never able to positively
10 identify any of the suspects in group B,
11 although they did, at least on one occasion one
12 of them said it might have been one of these
13 individuals, but I can't be sure.

14 MR. JENKINS: Did any of the law
15 enforcement officers that you all spoke
16 with during the investigation ever form an
17 opinion as to what kind of car it was that
18 came into the gas station?

19 A. Not that I recall, though we did have some of
20 them look at the still shots from this video.
21 We were able to take -- have still shots made of
22 the section where the car is pulling out of the
23 gas station, and we asked specifically
24 Detective Sprinkle to look at those as well as

1 some other individuals. Detective Sprinkle was
2 not able to say what kind of car that it was.
3 He, I believe, said that it could have -- it
4 didn't match -- I don't want to fumble through
5 this. Jamie, do you have that in the
6 transcript? I want to get his direct, exact
7 words.

8 MR. JENKINS: The reason I ask that,
9 when I was watching the video, as the car
10 was leaving I kind of formed my own opinion
11 of what the vehicle looked like, and I
12 don't want to say what I thought was. I
13 was curious if any of the officers that
14 looked at the video had formed any kind of
15 opinion as to --

16 MS. MONTGOMERY-BLINN: Mr. Jenkins, we
17 had an expert in vehicles look at this, and
18 we'll get there in just a second.

19 MR. JENKINS: Excuse me.

20 JUDGE SUMNER: In the interim, can I
21 see, I hate to trouble you, but can I see
22 enhanced video number two again?

23 MS. MONTGOMERY-BLINN: Enhanced video
24 two, Your Honor?

1 JUDGE SUMNER: Yes, ma'am.

2 MS. MONTGOMERY-BLINN: This one, two
3 right here?

4 JUDGE SUMNER: That one, correct.

5 (THEREUPON, THE VIDEOTAPE IS PLAYED.)

6 JUDGE SUMNER: Thank you.

7 MR. VICKORY: One other I would like
8 to see, could you show us the part where
9 the one person comes back into -- comes
10 into the store, when he gets to the
11 counter, can you stop it when he's at the
12 counter?

13 MS. MONTGOMERY-BLINN: Of course. We
14 also have a still photo of that, if you
15 would like, and we'll pass it around.

16 MR. VICKORY: Okay. That's good right
17 there. You can see --

18 MS. ASHENDORF: Is that the same shirt
19 as the guy that was standing in the corner
20 of the video?

21 MR. VICKORY: I'm not sure. That
22 person looks extraordinarily short, to me,
23 relative to that counter. Is there anybody
24 that can match up to that kind of height in

1 any of this?

2 MS. MONTGOMERY-BLINN: Down here at
3 this space right here. I don't know how
4 tall that man is.

5 MR. VICKORY: I don't know if there is
6 any way to extrapolate how tall that person
7 might be. He looks very short.

8 MS. MONTGOMERY-BLINN: I'll show it
9 again.

10 MR. VICKORY: Did you say you had
11 still shots of this particular --

12 MS. MONTGOMERY-BLINN: I have a still
13 shot of right here. I'll be happy to pass
14 it around if you would like to.

15 MR. VICKORY: I'd like to see that.

16 MS. MONTGOMERY-BLINN: This is the
17 person you're discussing, Mr. Vickory. I
18 don't know, I don't --

19 MS. ASHENDORF: Could we see the one
20 before that that we saw again with the guy
21 standing in the corner?

22 MS. MONTGOMERY-BLINN: Sure; of
23 course. This person here in the corner we
24 believe or Ms. Smith just testified that

1 this was, we believe, one of the witnesses
2 that the sheriff's department interviewed.

3 MS. ASHENDORF: The guy on the left?

4 MS. MONTGOMERY-BLINN: Yes, this
5 person right here. And then these are the
6 people walking in.

7 MS. ASHENDORF: Because that shirt
8 looks like a guy that was standing at the
9 counter and had the same glasses on in the
10 next one.

11 MR. BECTON: That one it appears to
12 have blocks or squares. We'll see what the
13 other one has, it may be more like stripes.

14 Q. Ms. Smith, do you know if this person right
15 here, does he remain here? He remains there
16 until after the car drives off, is that correct?

17 A. I believe that's correct.

18 Q. Yes, he remains outside the entire time of the
19 portion of the video that we have, is that
20 correct, Ms. Smith?

21 A. That is correct.

22 MR. JENKINS: I have another question.
23 Do we know, based on where he's walking
24 from, is he coming from a different area in

1 the store or a restroom, or do we know?

2 A. When they originally walk into the store on --
3 it's not on this clip, on the one we just
4 viewed, the one in your lower --

5 Q. Right here?

6 A. Can we go -- if we could go back when you're
7 done with this one, I can sort of answer your
8 question.

9 MR. JENKINS: Well, my question again,
10 is the guy at the front of the video who's
11 walking from the far lefthand part of the
12 screen, do we know where he's coming from?

13 A. I don't know where he is coming from, but
14 they're -- it appears in the other clip where
15 they both walk into the store, one turns left to
16 go to the cash register and the other one goes
17 off to the right, we believe that the bathroom
18 is that way, but there is still, as far as we
19 know, only one front door entrance.

20 MS. MONTGOMERY-BLINN: Now I'm going
21 to show the other video.

22 MR. JENKINS: That was my next
23 question. Based on the video that you all
24 reviewed I'm sure time and time again, were

1 you convinced there was three people in
2 that car or four people in that car, or do
3 you have an opinion as to --

4 A. Our opinion is there's three.

5 MR. JENKINS: Okay.

6 MS. MONTGOMERY-BLINN: Unless somebody
7 doesn't get out of the car the whole time.

8 MR. JENKINS: I understand.

9 MS. MONTGOMERY-BLINN: There's two
10 there --

11 Q. Am I correct, Ms. Smith, there's two that are
12 back here, and then one of them walks in and
13 another one walks in, and one remains in the
14 trunk area?

15 A. One remains at the car, two come in, both of
16 those individuals go back out, and one goes back
17 in potentially to pay, but we have really no
18 evidence of that.

19 MR. SMITH: They don't seem to be in
20 any hurry, those people. I mean, they --

21 Q. And this video, Ms. Smith, is slowed down to
22 real time as part of the enhancement?

23 A. That's correct. This enhanced video is slowed
24 down to real time.

1 MR. SMITH: It's slowed down to real
2 time.

3 A. Correct.

4 MR. SMITH: They're not hurrying,
5 they're not running.

6 MR. JENKINS: Being that close to the
7 scene of the crime, if you were leaving the
8 crime stopping there for that period of
9 time -- how long did you say the total
10 amount of time they were there?

11 A. Approximately 12 minutes.

12 MR. SMITH: They seem pretty casual.

13 MR. VICKORY: Well, the 911 tape came
14 in at 11:55, is that right? This would be
15 before the murder.

16 MS. MONTGOMERY-BLINN: You wanted to
17 see segment -- who -- did anybody want to
18 see an additional segment?

19 A. I think I answered the question.

20 Q. Okay.

21 MS. MONTGOMERY-BLINN: And I'll just
22 tell you, Commissioners, what we're going
23 to do just to give you a road map, if it
24 helps, I don't want anybody to be in the

1 dark, Ms. Smith is going to explain this
2 handout and where she got this information
3 from. And then we have an expert report
4 from an expert in vehicle make and models
5 who we asked to look at the video, and
6 maybe that will be helpful. So that's
7 coming soon as we explain this.

8 A. I wanted to read to you Detective Sprinkle's
9 response to Mr. Lau's question during his
10 deposition about the vehicle that he was looking
11 at on the still shots. Mr. Lau asked, based on
12 your recollection of Kenneth Kagonyera's
13 vehicle.

14 And Mr. Sprinkle responded, "I've seen this,
15 I've seen his vehicle, I towed it in, and I know
16 what it is, and from this picture, from this
17 picture you can't swear what it is."

18 Mr. Lau responded, "okay."

19 Mr. Sprinkle, "it looks like a white top,
20 but that could have been the lights under it or
21 it was faded out real bad."

22 Mr. Lau, "uh-huh (yes)."

23 Mr. Sprinkle, "hell, unless they go give
24 back to him, it's still down there on the lot."

1 Mr. Lau, "does that have a square back end?"

2 Mr. Sprinkle, "yeah."

3 Mr. Lau, "the vehicle you're looking at,
4 would you describe that back end as square?"

5 Mr. Sprinkle, "well, I don't know. It's --
6 if you can tell from half-ass end of it right
7 there."

8 Mr. Lau, "uh-huh (yes)."

9 Mr. Sprinkle, "I mean, they're not the best
10 photos in the world."

11 Mr. Lau, "okay."

12 Mr. Sprinkle, "I mean, you wouldn't be able
13 to get by with a wedding with photos like that.
14 well, those cameras ain't worth a shit in
15 stores."

16 Mr. Lau, "but you recall reviewing this
17 video?"

18 Mr. Sprinkle, "yeah."

19 Q. Okay. So, Ms. Smith --

20 A. Yes.

21 Q. -- what is this document?

22 A. This document is a motor vehicle reference guide
23 that I created.

24 Q. And can you tell us what it is explaining and

1 where the information came from?

2 A. Sure. This has the make and model and owner of
3 each of the vehicles that we determined some of
4 the major players had, and then notes about how
5 that vehicle may or may not have been involved
6 and where we got that information. The first is
7 a 1983 Chevrolet Impala, it was blue in color
8 and a four-door, that was Kenneth Kagonyera's
9 vehicle. We got that information from multiple
10 sources. At the time of the Bowman homicide
11 Mr. Kagonyera has told us that this car was
12 located at his grandmother's house and that it
13 was operable. This vehicle was found at
14 Mr. Kagonyera's grandmother's house by the
15 sheriff's department when they later went and
16 searched the vehicle. And according to the
17 sheriff's department, this car was suspected to
18 have been used in the Bowman homicide.

19 The next one you see is a 1971 Oldsmobile
20 Cutlass Supreme, blue in color, it's a two-door
21 vehicle, it belonged to Lacy Pickens. And we
22 got that information from DMV records and ACIS
23 records.

24 A 1999 Ford Econoline van, it was burgundy

1 and gray in color, the owner was Barron Shawn
2 Powell. At the time of the Bowman homicide
3 Robert Wilcoxson was driving this van. It's
4 unclear if he had borrowed the van, if he was in
5 the process of purchasing the van, but the van
6 was not reported stolen.

7 The next one you'll see is a 1979 Chevrolet
8 Impala, this vehicle was green with a white
9 vinyl top. This was owned by Robert Wilcoxson
10 as well. He has told us that he sold the
11 vehicle a couple of weeks before the Bowman
12 homicide. His girlfriend, Dea Johnson, seemed
13 to recall that this vehicle was wrecked a couple
14 of days before the Bowman homicide in West
15 Asheville.

16 Also there's a 1976 Oldsmobile Cutlass that
17 was yellow with a white top, vinyl top, it was
18 also a two-door vehicle, this was owned by
19 Kenneth Kagonyera. According to him it was
20 located at his grandmother's house at the time
21 of the homicide and was operable, but there was
22 no indication that this car in any of the
23 Buncombe County Sheriff's Office file that we
24 could find was suspected to have been involved.

1 There was also a 1993 Ford Mustang that was
2 green in color, also belonged to Mr. Kagonyera.
3 At the time of the homicide he indicated that it
4 was inoperable and that it was located at Rice's
5 Towing, and again, no indication that this car
6 was suspected to have been involved.

7 There was also a 1994 black Nissan Altima
8 that was owned by Kenneth Kagonyera. He also
9 indicated that this car was inoperable and was
10 at the Rice's Towing at the time of the Bowman
11 homicide, and again, no indication that this car
12 was used in that.

13 There is also a gray Chevrolet Corsica also
14 owned by Mr. Kenneth Kagonyera. At the time of
15 the Bowman homicide this was car was located at
16 Pisgah View Apartments where he was living. He
17 was trying to sell the vehicle and it was
18 operable, but there's no indication that this
19 vehicle was used in the Bowman homicide.

20 And finally there was another black Nissan
21 Altima, year unknown, this was owned by Richard
22 Montgomery, who is Dea Johnson's cousin. Dea
23 Johnson, again, is the girlfriend of Robert
24 Wilcoxson. Ms. Johnson was driving this Altima

1 on the day of the Bowman homicide, but there's
2 no indication that it was involved.

3 Q. Ms. Smith, let me, I'd like to draw your
4 attention to the second vehicle on this
5 reference guide, it's the 1971 Oldsmobile
6 Cutlass Supreme, two-door, belonging to Lacy
7 Pickens.

8 A. Yes, ma'am.

9 Q. Was this car referenced in the statement by
10 Mr. Rutherford, the confession by
11 Mr. Rutherford?

12 A. It was. Mr. Rutherford's statement says that
13 this was the vehicle that they were driving when
14 they committed the Bowman homicide.

15 Q. And were you able to gain any independent
16 information that Mr. Pickens did drive a vehicle
17 such as this?

18 A. I was.

19 Q. And tell us how you were aware of that.

20 A. We had a DCIN report showing that a '71
21 Oldsmobile with VIN number 342572M, as in Mike,
22 170724, license plate number M as in Mike, Z as
23 in zebra, M as in Mike, 4917 was registered to
24 Mr. Lacy Pickens. We were able to use a VIN

1 decoder on-line, and by plugging in that VIN
2 number learned that this vehicle is a 1971
3 Oldsmobile Cutlass Supreme, two-door Holiday
4 Hardtop. And then we also pulled criminal
5 records for Mr. Pickens and those show that on
6 June 25, 2000 and July 1, 2000 he was pulled
7 over while driving this vehicle.

8 Q. Mr. Pickens was?

9 A. That is correct.

10 Q. Okay. Did you make any attempt to identify the
11 make and model of the car that is shown in that
12 video?

13 A. We did.

14 Q. And what did you do? How did you do that?

15 A. We contacted a car expert who is, knows a lot
16 about American cars. His name is John Flory, he
17 lives in Kansas, and he has published several
18 reference books on American cars.

19 MS. MONTGOMERY-BLINN: May I approach
20 the witness, Your Honor?

21 JUDGE SUMNER: Yes, ma'am.

22 Q. Ms. Guice-Smith, I'm handing you some documents.
23 Will you take a look at those and tell me what
24 they are if you recognize them?

1 A. Yes. The first two pages are an affidavit of
2 John Flory, the next page is a statement of
3 Mr. Flory's background and qualifications, and
4 then the final three pages are his report, and
5 then -- I said final, the following three pages
6 are his report, and attached to that included
7 with his report are five pages of photographs.

8 Q. Did Mr. Flory agree to take a look at this video
9 and provide an opinion about the make and model
10 of the vehicle shown?

11 A. He did. Originally we contacted him via e-mail,
12 or via phone, but followed up with an e-mail and
13 asked him to look at the screen shots from the
14 video. He took a look at those and the
15 following day responded in an e-mail that he
16 believed that the car was either a 1970, '71, or
17 '72 Oldsmobile Cutlass, and after that he
18 requested more screen shots. He said if he were
19 able to see another angle, the front end of the
20 car, that he may be able to narrow that down
21 even more. At that time Mr. Lau indicated that
22 he could provide him not only more screen shots,
23 but also the actual video if that would be
24 helpful, and Mr. Flory indicated that that would

1 be helpful. So at that time he was sent a
2 letter with the video included and asked to
3 provide the opinion as to what make and model
4 the car was and year, and also asked at that
5 time whether or not the car could possibly be a
6 1983 Chevrolet Impala or a 1971 Oldsmobile
7 Cutlass Supreme.

8 Q. And was he able to provide an opinion?

9 A. He was.

10 MS. MONTGOMERY-BLINN: Commissioners,
11 you have a copy of the report and it has
12 the background and qualifications that
13 Mr. Flory provided as well as an affidavit
14 that he provided under oath. I would ask
15 Judge Sumner and the Commission to review
16 that background and qualifications, and
17 when you're ready, I would be asking that
18 the Commission submit or accept this report
19 as an expert witness report from an expert
20 in makes and models of American cars.

21 JUDGE SUMNER: Any questions on the
22 tender?

23 (No audible response.)

24 JUDGE SUMNER: It is submitted as

1 deemly qualified.

2 MS. MONTGOMERY-BLINN: Thank you, Your
3 Honor.

4 (The Commission reviews document.)

5 Q. And Ms. Lindsey Guice-Smith, just to make it
6 clear, did Mr. Flory provide an opinion about
7 what type of car it was on that video?

8 A. Yes.

9 Q. And what did he say?

10 A. He said 1971 or 1972 Oldsmobile Cutlass Supreme
11 two-door Hardtop.

12 Q. And who drove the 1971 or 1972 -- did anybody
13 from group A or group B that we know of drive a
14 1971 or a 1972 Oldsmobile Cutlass Supreme two-
15 door Hardtop?

16 A. Yes.

17 Q. And who was that?

18 A. Lacy Pickens.

19 Q. And do you understand if Mr. Flory is available
20 by telephone today if there are any questions
21 for him?

22 A. He is. I also wanted to say the remainder of
23 his opinion was that based on all of the
24 differences in the features, the car in the

1 still pictures and video are definitely not a
2 1983 Chevrolet Impala four-door sedan.

3 Q. And who drove that type of car?

4 A. That was one of Kenneth Kagonyera's vehicles,
5 the one that he was suspected to have been in.

6 Q. The one that was seized by the sheriff's
7 department?

8 A. That is correct. And Mr. Flory is available by
9 telephone if anyone has questions for him.

10 MS. MONTGOMERY-BLINN: Commissioners,
11 questions about this video, this report,
12 the still photo that's been passed around
13 for Ms. Smith?

14 MR. VICKORY: The Holiday Hardtop, was
15 that an official Oldsmobile?

16 A. The Hardtop is a hard top. Holiday, I believe,
17 does not have a significance, as far as we could
18 tell.

19 MS. ASHENDORF: Holiday was one of the
20 Oldsmobiles.

21 A. It was a name. It was an -- it was specific to
22 Oldsmobile.

23 JUDGE SUMNER: Ms. Ashendorf, say that
24 again. I missed what you said.

1 MS. ASHENDORF: Holiday was an
2 Oldsmobile name. It was like, you know,
3 like a Holiday so and so or a Ford
4 Victoria.

5 JUDGE SUMNER: Thank you.

6 MR. VICKORY: It didn't necessarily
7 mean it was a two-tone car?

8 MS. ASHENDORF: Could have. I don't
9 know.

10 MR. VICKORY: The top was a different
11 color than --

12 JUDGE SUMNER: Any other questions?

13 (No audible response.)

14 JUDGE SUMNER: Do you want the expert
15 available by phone conference for
16 questions?

17 (No audible response.)

18 MS. MONTGOMERY-BLINN: All right.
19 I'll ask that Ms. Smith be able to step
20 down.

21 (THEREUPON, MS. SMITH STEPS DOWN FROM
22 THE WITNESS STAND.)

23 * * * * *

24 MS. MONTGOMERY-BLINN: Commissioners,

1 if you're hungry, I believe that this would
2 be an appropriate time to take a lunch
3 break.

4 JUDGE SUMNER: You are clairvoyant.
5 We will be about 30 minutes or so, roughly,
6 approximately, thereabouts.

7 (THEREUPON, THE LUNCHEON RECESS WAS
8 TAKEN FROM 12:48 P.M. UNTIL 1:38 P.M.)

9 JUDGE SUMNER: We will resume.

10 MS. MONTGOMERY-BLINN: The Commission calls
11 staff attorney, Stormy Ellis. Your Honor,
12 Ms. Ellis has not yet been sworn, it's her first
13 time.

14 THEREUPON,

15 Stormy Ellis,
16 Having first been duly
17 Sworn, was examined and
18 Testified as follows:

19 EXAMINATION BY MS. MONTGOMERY-BLINN:

20 Q. What is your name?

21 A. Stormy Ellis.

22 Q. Where are you employed, Ms. Ellis?

23 A. North Carolina Innocence Inquiry Commission.

24 Q. Did you participate in the investigation of the

1 Kangoyera and wilcoxson case?

2 A. I did.

3 Q. And was one portion of your investigation
4 attempting to verify any electronic recordings
5 of the telephone conversation between Robert
6 Rutherford and Special Agent Whiteis?

7 A. Yes.

8 Q. And will you please tell us about your efforts?

9 A. On March 2 I contacted Christy Kelly, she is a
10 staff attorney with the Bureau of Prisons, and I
11 advised her that we were trying to locate a call
12 or two calls that happened on March 27 and 28 of
13 2003. She advised that the phone calls for the
14 Bureau of Prisons are only kept for about six
15 months unless they are flagged. They would be
16 flagged as part of an investigation or some
17 other reason. I asked her if the call was made
18 by DEA or to a DEA agent, would the call be
19 flagged. She said, it may. She then gave me a
20 number to a Joseph Tang, who is also a Bureau of
21 Prisons staff attorney, and he -- I called him
22 and left him a message, gave him
23 Robert Rutherford's identification, advised that
24 he was at Manchester, Kentucky Correctional

1 Facility when these calls possibly had been
2 made.

3 And Mr. Tang called me back on March 4,
4 2011 at approximately 11:30. He stated that
5 there were no tapes that he found, that there
6 were no flagged conversations for Rutherford,
7 but transactional data is available and he
8 stated that I should get a subpoena, the state
9 honored subpoena. In order to get a state
10 subpoena honored by the feds we would have to go
11 through the U.S. Attorney's Office pursuant to
12 28 C.F.R. 16.21. He also asked that if we do go
13 that route, to cc him on that, and that
14 information was turned over to the investigators
15 in this case.

16 Q. So is that something that if the Commission
17 instructs you to do, that you could attempt or
18 believe that you may be successful in obtaining?

19 A. Yes, if we got a subpoena.

20 Q. If the Commissioners instruct you to do that?

21 A. Yes.

22 MS. MONTGOMERY-BLINN: Does that
23 answer your question, Mr. Vickory?

24 MR. VICKORY: My question was really

1 more like what is the transactional data?

2 Is that -- do you know --

3 A. I don't know what transactional data is. And I
4 tried to call Mr. Tang this afternoon to see if
5 I could get more information. He stated that he
6 had a call out to the Manchester Correctional
7 Institution, that they've got a section out
8 there that deals with it, and he could not get
9 up with them at this time.

10 Q. Okay.

11 JUDGE SUMNER: Thank you.

12 Q. Ms. Ellis, you can step down. Thank you.

13 (THEREUPON, MS. ELLIS STEPS DOWN FROM
14 THE WITNESS STAND.)

15 * * * * *

16 MS. MONTGOMERY-BLINN: The Commission
17 recalls Jamie Lau.

18 (THEREUPON, JAMIE LAU RETURNS TO THE
19 WITNESS STAND.)

20 EXAMINATION BY MS. MONTGOMERY-BLINN:

21 Q. Mr. Lau, during your investigation did you come
22 across the name Kevin Polk?

23 A. I did.

24 Q. Oh, I'm sorry; I'm sorry. Let me back -- I

1 apologize. Mr. Lau, during the lunch break were
2 you able to research whether or not Robert
3 Rutherford had ever applied for or received a
4 sentence reduction because of his confession?

5 A. I was.

6 Q. And what were you able to discover?

7 A. I went to the federal PACER system and I
8 reviewed the docket report for Mr. Rutherford's
9 conviction which he is currently serving a
10 sentence for in the federal correctional system.

11 Q. Is that the document you're holding there in
12 your hand?

13 A. It is the document I'm holding in my hand.

14 Q. And that document has been distributed to the
15 Commissioners?

16 A. It has. And I -- based on my review of this
17 document, in particular the entries on page 6 of
18 7, following Mr. Rutherford's confession it does
19 not appear from the court records that
20 Mr. Rutherford ever received any reduction in
21 his sentence.

22 MS. MONTGOMERY-BLINN: Commissioner
23 questions about this document?

24 MR. VICKORY: Does this indicate

1 whether or not he applied for it? I'm not
2 real sure what the mechanism is for it, I
3 just wondered if -- or the process.

4 A. There's an entry on 5/11/2004 with regards to
5 Mr. Rutherford, it's an order. The federal
6 PACER system does not have electronic documents
7 before November 2004, so this was prior to
8 November 2004, so I don't have the document in
9 front of me and what that order says. But it's
10 an order as to Mr. Rutherford that the clerk
11 will not file documents submitted. In the event
12 the Defendant submits future frivolous
13 documents, a pre-filing review system shall be
14 imposed. So my understanding based on that, the
15 only conclusion I could draw is that he did
16 submit something. What the contents of that
17 submission are, I'm unsure of, but this order
18 addresses those materials that were submitted.

19 MR. BECTON: And the following answer
20 shows that a pre-filing injunction was
21 entered?

22 A. A pre-filing injunction at a later date it
23 appears was entered.

24 MR. BECTON: Prohibiting him from

1 filing -- on all pleadings from then are
2 not to be filed as the direction in
3 assigned judge?

4 A. That's correct. Those two entries are the only
5 two entries in the federal records pertaining to
6 Mr. Rutherford following his confession.

7 Q. Mr. Lau, during your investigation did you come
8 across the name of someone -- did you come
9 across the name Kevin Polk?

10 A. I did come across Mr. Polk's name.

11 Q. And tell us how you first learned about
12 Mr. Polk.

13 A. Mr. Polk's name was mentioned in two interviews
14 that I conducted, the first being the initial
15 interview with Bradford Summey. During the
16 course of that interview with Bradford Summey I
17 asked who he associated with during this period
18 in 2000. He indicated that he hung out with an
19 individual named Mr. Kevin Polk as well as his
20 brother, Johnny Polk. Additionally, when I
21 interviewed Mr. Kagonyera for the first time,
22 Mr. Kagonyera said that while he was
23 incarcerated in the Buncombe County Detention
24 Facility in 2002 an individual named Mr. -- an

1 individual named Kevin Polk came to him and was
2 surprised to learn that he was still
3 incarcerated for the Bowman homicide.

4 Mr. Kagonyera said that Mr. Polk told him, they
5 still have you in here for this? I know who
6 committed this crime. And then Mr. Polk
7 conveyed to him the names of the individuals who
8 committed the crime. I had sought to confirm
9 that information by following up with Mr. Polk.

10 Q. Were you able to locate Mr. Polk?

11 A. With some -- Mr. Polk was -- when I initially
12 contacted him, Mr. Polk is in the Federal Bureau
13 of Prison system. Mr. Polk, I contacted the
14 Bureau of Prisons and I spoke with them, and
15 Mr. Polk was in a halfway setting because he was
16 being transitioned for release. They couldn't
17 give me the location. All they said is they
18 could speak with his counselors there to
19 determine whether or not he would be willing to
20 speak with me. Several attempts to contact the
21 Bureau of Prison following that, the individual
22 who was in charge of Mr. Polk, his unit manager
23 for his custody, were not returned. Finally, I
24 found that Mr. Polk had a Facebook page. I

1 contacted Mr. Polk on his Facebook page and I
2 asked Mr. Polk to contact me through his
3 Facebook page, and he returned -- he called me
4 based on the number I left for him on his
5 Facebook page.

6 Q. So he called you?

7 A. He called me, yes.

8 Q. And were you able to record that phone
9 conversation?

10 A. I was able to record that phone conversation.
11 And I should state for the Commission that in my
12 message on Facebook I told him about the
13 Innocence Commission. I said that I understood
14 he hung out with a Mr. Bradford Summey in 2000,
15 that was all I said about Mr. Summey. And
16 additionally I said that Mr. Kagonyera told me
17 that he may have information about the Bowman
18 homicide, and I asked him that he could call me
19 so we could discuss.

20 Q. And when he called you, did you turn the
21 recorder on as soon as you received that phone
22 call?

23 A. I did. As soon as I learned it was Mr. Polk on
24 the phone I began recording.

1 Q. I would like to ask you to listen to this audio
2 clip.

3 A. Sure.

4 (THEREUPON, THE AUDIO CLIP IS PLAYED.)

5 Q. Mr. Lau, is that you on that recording?

6 A. Yes, it is.

7 Q. And is that a recording a fair and accurate
8 representation of the phone call that you
9 participated in with Mr. Polk?

10 A. Yes, it is. It should be noted that there were
11 two follow-up phone calls that Mr. Polk made to
12 me. The first phone call he wanted to know more
13 about what was going on, why I had contacted him
14 initially. And I'm not sure if it was that
15 phone call or the second phone call, but he
16 wanted to ascertain if I was investigating him
17 as a suspect in this crime. The third phone
18 call he was concerned about how this material
19 would be used and whether or not he would have
20 any risk to his safety.

21 Q. And did you explain the Commission's procedures
22 to Mr. Polk?

23 A. I did explain at that time to Mr. Polk how this
24 information would be used.

1 Q. And did you ever promise anything to Mr. Polk
2 for his statement?

3 A. I made no promises to Mr. Polk.

4 Q. Did you ever make any suggestion to Mr. Polk
5 about what you would do in regards -- or that
6 you would help him in any way?

7 A. I never said anything to Mr. Polk with regards
8 to the Commission providing him any assistance,
9 help with anything.

10 Q. Did you make clear to Mr. Polk that you don't
11 represent Mr. Kagonyera and Mr. Wilcoxson?

12 A. I believe I did explain that in one of those
13 phone calls.

14 Q. And on the Facebook message?

15 A. On the Facebook message I believe I wrote that
16 we investigate innocence claims. I'm not sure
17 if I said that I did not represent
18 Mr. Kagonyera. I could refresh what that
19 message, if you'd like me to look at it.

20 MS. MONTGOMERY-BLINN: Commissioners,
21 questions?

22 MR. JENKINS: I shouldn't ask this, it
23 might put him on the spot, but how credible
24 did you find his information?

1 A. Well, he --

2 MR. JENKINS: That may be an unfair
3 statement to ask you.

4 A. What you guys hear --

5 MR. JENKINS: Just strike that.
6 That's really not a fair question. Let's
7 move on.

8 JUDGE SUMNER: Anyone else?

9 MR. VICKORY: Did you check on the FBI
10 Agent Aysen?

11 A. At the time in question, this was just a week or
12 two, I hadn't had the opportunity to speak with
13 the FBI agent. I can say with regard to follow-
14 up, we were interested in whether or not he had
15 spoke with an FBI agent and what records there
16 was of that. We went and reviewed his federal
17 court file, we found them there. He had made a
18 motion what's considered a 5K1.1 motion for a
19 reduction in his sentence based on information
20 he provided to -- let me correct that. I'm not
21 sure if it was his motion, a 5K motion, but he
22 made a motion indicating that he provided
23 information to federal individuals, federal
24 agents, but that he had not received a

1 sentencing reduction, and he was seeking a
2 sentencing reduction based on the information.
3 The court ordered his attorney at the time --
4 his attorney was Mr. Jack Stewart, the same
5 attorney who represented Mr. Robert Wilcoxson
6 earlier in this case. The court order required
7 Mr. Stewart to submit an affidavit regarding
8 whether or not Mr. Stewart tried to seek a
9 sentence reduction for Mr. Polk. In that
10 affidavit of Mr. Stewart, it shows that Mr.
11 Polk, Mr. Stewart, and this FBI agent,
12 Mr. Aysen, met and information was provided from
13 Kevin Polk about certain issues that would
14 result in a reduction in his sentence.
15 Mr. Stewart said the information Mr. Polk was
16 providing wasn't credible, which is one of the
17 reasons why he did not pursue the sentence
18 reduction form based on that meeting, but it
19 does appear from that affidavit that a meeting
20 took place that Agent Aysen was at with
21 Mr. Stewart and Mr. Polk.

22 MR. BECTON: Did Mr. Stewart know what
23 the information was?

24 A. I'm sorry?

1 MR. BECTON: Or are you saying that
2 the Stewart who represented one of the
3 Defendants is saying the information
4 provided by the Defendant wasn't credible?

5 A. That's what he was saying. It did not say in
6 there what specifically the information was that
7 was conveyed during the course of that meeting.

8 MR. JENKINS: I've got one. Maybe I
9 wasn't paying attention close enough, but
10 the information you're talking about, we
11 don't know whether that was the same
12 information about the homicide, it could
13 have been different information?

14 A. I'm sorry?

15 MR. JENKINS: The information he was
16 just discussing that he was -- was that
17 information -- it could have been any
18 information, not necessarily information
19 about the Bowman homicide?

20 A. The information we heard on the phone call?

21 MR. JENKINS: No, sir. The
22 information you were just discussing --

23 A. The information, yes, that Kevin Polk relayed to
24 Agent Aysen in front of his attorney,

1 Mr. Stewart, we don't know what the content of
2 that information was. We know the affidavit
3 said that it wasn't credible.

4 MR. JENKINS: Okay.

5 MS. SURGEON: What did the agent say
6 about it?

7 A. The agent? I was unable to speak with the
8 agent. We did not speak with Agent Aysen.

9 MS. ASHENDORF: So he really wasn't
10 using the information about Rob Rutherford
11 to give to the agent to reduce his -- he
12 was giving some other information to reduce
13 his sentence?

14 A. We don't know what information he was giving.
15 We just have a copy of the affidavit that was
16 provided by Mr. Stewart. And if I may, I'll
17 read from that affidavit.

18 JUDGE SUMNER: This is Mr. Stewart's
19 affidavit?

20 A. This is Mr. Stewart's affidavit. "The
21 petitioner's allegation that the government
22 acted inappropriately in violating his plea
23 agreement by not allowing a reduction in
24 sentence based upon Defendant's cooperation is

1 plainly false. What the petitioner fails to
2 mention is that shortly following the
3 Defendant's detention on February 28, 2002,
4 undersigned counsel arranged at the request of
5 the movant a lengthy debriefing session on
6 March 8, 2002 conducted by FBI Agents Andrew
7 Romanella and Mark Aysen for the express purpose
8 of providing substantial assistance. Despite
9 counsel's repeated admonitions to speak candidly
10 and forthright, the petitioner's interview was
11 continually marked with inconsistencies,
12 half-truths, and blatant attempts to evade the
13 truth while concomitantly minimizing the
14 Defendant's role in the conspiratorial scheme.
15 Consequently, while all parties had been hopeful
16 that the Defendant's interview would be
17 fruitful, it was equally obvious to those same
18 parties, including the Defendant, that the
19 attempt at providing substantial assistance was
20 not productive. Kevin Polk had clearly not
21 provided truthful information or evidence to the
22 government to qualify for substantial assistance
23 to warrant a downward departure at sentencing."

24 JUDGE SUMNER: The FBI Agent Aysen did

1 not file an affidavit?

2 A. I'm sorry?

3 JUDGE SUMNER: The agent did not file
4 an affidavit?

5 A. No. There's -- the motion was filed by Kevin
6 Polk. After that there was an order requiring
7 Jack Stewart to file an affidavit in response to
8 Polk's allegations. Jack Stewart, Mr. Stewart,
9 filed that affidavit, and then there was an
10 order denying Mr. Polk's motion.

11 MS. SURGEON: And who did Mr. Stewart
12 represent?

13 A. He was Mr. Wilcoxson's defense attorney during
14 the course of this investigation.

15 MR. VICKORY: And Bacoate?

16 A. I'm sorry?

17 MR. VICKORY: And Bacoate?

18 A. And he's currently Mr. Bacoate's, representing
19 Mr. Bacoate in a federal investigation.

20 MS. ASHENDORF: And he represented Mr.
21 Polk, too?

22 A. And he represented Mr. Polk, that is correct.

23 MR. VICKORY: So Polk's information
24 was clearly at odds from another client who

1 was in prison or had gone to prison?

2 A. If that's the information that Mr. Polk conveyed
3 during that meeting.

4 MR. VICKORY: Right.

5 A. As I said, we don't have any information about
6 what information was actually conveyed.

7 MS. ASHENDORF: It sounds like from
8 the affidavit that you read that Mr. Polk
9 was giving information to the authorities
10 about something he was involved in trying
11 to lessen his sentence, and so it would
12 seem like it would exclude our --

13 A. I can't speak to what was said at that meeting.

14 MS. MONTGOMERY-BLINN: Any more
15 questions about Mr. Polk?

16 Q. Mr. Lau, if you would just remain here.

17 MS. MONTGOMERY-BLINN: The Commission
18 staff was able to interview most of the law
19 enforcement officers who participated in
20 the investigation of this case, many are
21 now retired or working at another location,
22 but many are also still at the sheriff's
23 department. We'll go through -- I'll ask
24 Mr. Lau to go through the testimony of

1 those that he was able to locate or that
2 were still in the area.

3 Q. Mr. Lau, were you able to interview will
4 Cummings?

5 A. I was.

6 Q. And tell us, first off, Mr. Cummings, who was he
7 or what was he doing in relation to the Bowman
8 homicide back in 2000?

9 A. Mr. Cummings was a patrol officer and he was the
10 patrol officer along with an officer, or Deputy
11 John Miller, who were the first responders that
12 evening.

13 Q. And is there a report in the sheriff's
14 department file from Mr. Cummings?

15 A. Yes, there is.

16 Q. And on what date did you interview Mr. Cummings?

17 A. We interviewed Mr. Cummings on March 30, 2011.

18 Q. And where is he employed now?

19 A. He's remained with the Buncombe County Sheriff's
20 Department.

21 Q. And the other person that was the first
22 responding officer with Deputy Cummings, was he
23 available to be interviewed?

24 A. No, he was not.

1 Q. And why is that?

2 A. He was -- he passed away. He's deceased from a
3 heart attack.

4 Q. All right. When Mr. Cummings spoke with you,
5 did he tell you about what he saw when he first
6 arrived at the Bowman home?

7 A. Yes, he did.

8 Q. And what did he say?

9 A. He said that when he first arrived, he found
10 Mr. Bowman shot but still cognizant in the back
11 bedroom of the home.

12 Q. Did he tell you if he did any reporting, did he
13 make any --

14 A. He did, he made a report that night.

15 Q. And in the report did it state anything about
16 Mr. Bowman's condition?

17 A. In the report it -- I don't specifically recall
18 if it stated about, anything about his
19 condition, but the report did not make mention
20 of Mr. Bowman being cognizant when the officer
21 arrived.

22 Q. And did Mr. Cummings or Deputy Cummings tell you
23 whether or not Mr. Bowman was speaking?

24 A. He did say that Mr. Bowman was speaking.

1 Q. And what did he say about that?

2 A. He said that Mr. Bowman could not tell him who
3 had did this particular crime and that
4 Mr. Bowman told him if he knew, he would tell
5 him.

6 Q. That Mr. Bowman said this to the deputy?

7 A. Mr. Bowman said this to Mr. -- or Deputy
8 Cummings, yes.

9 Q. And is that in the report that Deputy Cummings
10 wrote at the time?

11 A. That is not in Deputy Cummings' report.

12 Q. Did Deputy Cummings tell you that Mr. Bowman
13 said anything else to him?

14 A. Cummings said that he was either told by the
15 victim or someone else, he wasn't exactly sure,
16 that the perpetrators burst through the door,
17 Bowman ran to the back bedroom, barricaded
18 himself behind the door. The perpetrator yelled
19 at Bowman to open the door and then shot Bowman
20 through the door.

21 Q. And was Deputy Cummings clear on when he learned
22 that information, if it was that night at the
23 home or if it was later during the
24 investigation?

1 A. Other than his statement that Walter Bowman told
2 him he didn't know who it was and that if he
3 knew who it was, he would tell Deputy Cummings,
4 Mr. Cummings said his recollection was blurring
5 between what he remembered from the night of and
6 what he had learned subsequent.

7 Q. Did you ask Deputy Cummings about Fairview in
8 2000?

9 A. I did ask him about Fairview. I was interested
10 in whether Mr. Cummings could explain to me if
11 other occurrences such as this were occurring in
12 the Fairview area during this given period of
13 time.

14 Q. And what did he say?

15 A. He said that there were no specific problems
16 that he could remember. He said that they had
17 some individuals that they tended to arrest time
18 and time again for drug possession.

19 Q. Do you remember whether there was any other
20 criminal activity that night in Fairview?

21 A. He did not remember any other criminal activity
22 that night in Fairview.

23 Q. All right. Were you able to interview Deputy
24 Tim Goodridge?

1 A. Yes, I was able to interview Detective
2 Goodridge.

3 Q. Or Detective. And in 2000 during the Bowman
4 homicide what was Detective Goodridge's role?

5 A. Detective Goodridge was a homicide detective who
6 responded to the crime scene.

7 Q. And where is he employed now?

8 A. He is currently still a detective with the
9 Buncombe County Sheriff's Office.

10 Q. All right. And what did Detective Goodridge
11 tell you?

12 A. Detective Goodridge stated that he recalled that
13 there were breaking and enterings in the
14 Fairview area, but he did not specifically
15 recall any violent crimes. And I also asked him
16 and he could not specifically recall any other
17 crimes occurring in the Fairview area during the
18 general time surrounding this crime. Detective
19 Goodridge, I asked him about something that we
20 had learned from Lieutenant Constance, and
21 Lieutenant Constance had conveyed to us that he
22 wrote up Lieutenant or Detective Goodridge the
23 following day based on their investigation that
24 night at the scene, wrote up in a discipline

1 fashion. I asked Detective Goodridge if he
2 recalled having been wrote up by Lieutenant
3 Constance. He said that he didn't specifically
4 recall it, but that they did not see eye-to-eye.

5 I asked him -- because in this case what
6 happened was two detectives responded to the
7 scene, Detective Bob Carroway, who is no longer
8 with the Buncombe County Sheriff's Office, and
9 Detective Goodridge, they responded to the
10 scene, they were the detectives on the scene
11 that night. The following morning they were
12 removed from the case and they were replaced by
13 Detective George Sprinkle and Detective Mike
14 Murphy. I asked Detective Goodridge if he found
15 this to be unusual, and he said it was not
16 unusual.

17 I asked Detective Goodridge if he could
18 recall a case in which the lead detectives were
19 excluded from the interrogation. Detective
20 Goodridge said he could not recall a time when a
21 lead detective on a case was not present during
22 interrogation. He said another individual from
23 the sheriff's office may do the interrogation
24 itself because his example was maybe they had a

1 rapport with the specific individual, but to his
2 knowledge the lead detective would have been
3 present during the interrogation.

4 Q. Was that situation in this case?

5 A. I asked about that because in several of the
6 statements made in this case Detective Sprinkle
7 and Detective Murphy are not said to be part of
8 the interrogation as part of the summary reports
9 we have of those statements, they do not include
10 Detective Sprinkle or Detective Murphy and
11 that's why I asked him that question.

12 Q. Did you ask him if he ever recalled the district
13 attorney being present during interrogations?

14 A. I did ask if he recalled the district attorney
15 being present during the interrogations and he
16 said he never recalls the DA ever being present
17 in an interrogation with the exception of drug
18 cases. He said the district attorney was
19 actively involved in drug cases and it was
20 common for him to be present during those cases.

21 Q. Did you ask him about Matt Bacoate?

22 A. I did ask him if he had any specific information
23 about Mr. Bacoate or specific -- if he knew
24 Mr. Bacoate and what he could say about

1 Mr. Bacoate. And he said that what he knows of
2 Mr. Bacoate is he has been part of turning
3 individuals over with information regarding
4 narcotics or drug crimes.

5 MR. BECTON: Say that again, I'm
6 sorry.

7 A. He has been a part -- he said, I know that
8 Mr. Bacoate has been a part of turning over
9 individuals that want substantial assistance
10 with narcotics with the narcotics unit, but I
11 don't know, I never worked with him personally.

12 I asked him about his particular
13 investigation in this crime and he stated that
14 detectives on the scene that night did not have
15 any information to follow up on. He said the
16 individuals he remembered speaking to did admit
17 to being home when this occurred and that that
18 evening there was no place to start with the
19 investigation.

20 Q. All right. Were you able to interview Deputy
21 Mike Wright?

22 A. I was.

23 Q. And what was Deputy Wright's role during the
24 2000 investigation?

1 A. Mr. Wright was the crime scene ID tech that
2 evening.

3 Q. And in that role what did he do that night?

4 A. He processed the scene, he collected evidence on
5 the scene. Additionally, through our interviews
6 we were told that he collected the door, took
7 pictures from the crime scene that night, stuff
8 of that nature.

9 Q. And have you ever seen those documents that he
10 made or the photos that he took or any sketches
11 or things like that?

12 A. We have seen none of those items from the
13 processing of the crime scene on that evening.

14 Q. They're not in the sheriff's report that was
15 turned over to you?

16 A. They were not in the documents that was turned
17 over to us by the sheriff's department. I spoke
18 with Mr. Wright, he is now retired from the
19 Buncombe County Sheriff's Office, and I asked
20 him first whether or not he still retains any of
21 his personal files from his period of employment
22 with the Buncombe County Sheriff's Office. He
23 told me he does not. He told me that when he
24 retired, he left the materials at the sheriff's

1 office. He said that they were in his filing
2 cabinets when he retired, and that if they still
3 existed, they would remain at the sheriff's
4 office in his filing cabinets or -- unless they
5 have been moved somewhere else.

6 I spoke with the sheriff's office, I spoke
7 with Mr. Roney Hilliard, Detective Hilliard,
8 Detective Hilliard, in response to my request,
9 said he could locate what he believed to be
10 Mr. Wright's filing cabinets, went through those
11 materials, and that they were unable to locate
12 anything with regards to the Bowman homicide in
13 those materials.

14 Q. But Mr. Wright recalled taking pictures and
15 making sketches, is that correct?

16 A. He did recall taking pictures and making
17 sketches, correct. If --

18 Q. Go ahead.

19 A. well, as I said yesterday, when we showed the
20 photos of the bandanas, it was a policy of the
21 sheriff's office at the time, according to Eddie
22 Davis, Mr. Davis said there was the policy for
23 the individuals who processed the scene and took
24 the photographs to maintain their own file, and

1 that's -- those photos were located in
2 Mr. Davis's personal files when we interviewed
3 him. So what Mr. Wright is telling us about how
4 he kept his files is consistent with our
5 experience and with what learned from Mr. Davis.

6 Q. And those documents were not in the sheriff's
7 files that we received as part of our discovery
8 request?

9 A. We have not received those documents.

10 Q. Were they in the district attorney's file that
11 you received as part of the discovery request?

12 A. They were not in the district attorney's file as
13 well.

14 Q. All right. Did you speak to Deputy Eddie Davis.

15 A. I did.

16 Q. Sergeant Eddie Davis?

17 A. I did speak with Mr. Davis.

18 Q. And his role in 2000 during the Bowman homicide?

19 A. Similar to Wright, he did crime scene
20 investigations. He's currently a detective with
21 the Buncombe County Sheriff's Office.

22 Q. And what did Mr. Davis do or did he collect any
23 evidence in this case?

24 A. Well, as I mentioned yesterday, Mr. Davis

1 collected the bandanas the morning after the
2 homicide. He provided us with that hand drawn
3 map of the locations of the bandanas as well as
4 the photos we had of those bandanas.

5 Q. Is Mr. Davis' name listed anywhere else in this
6 case?

7 A. Mr. Davis is the submitting officer of the SBI-5
8 with the bandanas and gloves that were submitted
9 and the evidence that was submitted in this case
10 to the State Bureau of Investigation.

11 Mr. Davis, having been the individual that
12 submitted those materials to the State Bureau of
13 Investigation, the reports that went back that
14 you guys reviewed yesterday, the report on the
15 CODIS hit, the notification of CODIS hit as well
16 as the initial report of results on DNA testing
17 from March of 2001, those materials were
18 directed to Mr. Davis at the Buncombe County
19 Sheriff's Office.

20 Q. Does Mr. Davis recall receiving the notification
21 for the CODIS hit?

22 A. Mr. Davis does not recall the Buncombe County
23 Sheriff's Office. Well, he doesn't recall the
24 notification of the CODIS hit in this case, nor

1 does he recall ever -- the Buncombe County
2 sheriff's Office ever receiving a CODIS hit or a
3 notification of a CODIS hit.

4 Q. Did he think that was something he would recall?

5 A. He thought that if he received a notification of
6 a CODIS hit from the State Bureau of
7 Investigations, that it would have been
8 memorable and that he would remember it.

9 Q. Detective Elkins, you've mentioned his name
10 already a number of times during this hearing.
11 Can you tell us, in 2000 what was his role in
12 the investigation?

13 A. Lieutenant Elkins was a detective in 2000. He
14 participated in the interrogation of Larry
15 Williams and Damian Mills.

16 Q. And where is Mr. Elkins employed and what is his
17 employment history?

18 A. Elkins remains employed at the Buncombe County
19 sheriff's Office, he's a lieutenant there now.
20 From the period of 2000 to today his employment
21 with the sheriff's office has not been
22 continuous. In 2004 he was terminated by
23 sheriff Bobby Medford. He rejoined the
24 sheriff's office in 2006 when Mr. Medford lost

1 the election and Sheriff Duncan became the
2 sheriff in Asheville.

3 Q. Does he recall working on this case?

4 A. He vaguely recalls his work on the case. He
5 remembers during an interview of Damian Mills
6 that he stopped the interview and got Lieutenant
7 Constance because Mills was providing details of
8 the homicide that Elkins was not familiar with,
9 the Bowman homicide. Elkins could not remember
10 when we spoke with him the first time
11 specifically being present when Mr. Mills was
12 giving the statement and all those details that
13 are provided in the report from that statement;
14 however, he indicated that he would not have
15 wrote that report were he not present during the
16 period in which Mr. Mills was making those
17 statements. That was basically his
18 recollection.

19 He also was the individual who collected
20 the video that was played earlier today. He did
21 not recall specifically collecting that video;
22 however, he did identify it as his handwriting
23 at the top of the property record form and said
24 that he would have collected the video if his

1 handwriting was on the top of the property
2 control form and he was also in the chain of
3 custody on the backside.

4 Q. Did you ask him about the video being recorded
5 over?

6 A. He was in the room with Sheriff Duncan and
7 myself when we were speaking with Mr. Duncan or
8 Sheriff Duncan regarding the recording over the
9 videotape. I don't remember him specifically --
10 I remember Sheriff Duncan specifically saying
11 that it could have been inadvertently recorded
12 over given the equipment and the detectives who
13 are in the chain of custody, Detective Sprinkle
14 and the evidence custodian, Philip McMahan. But
15 I don't remember specifically whether Elkins had
16 any recollection regarding viewing the video or
17 it being recorded over.

18 Q. And did you talk to Detective Elkins about the
19 CODIS hit in this case?

20 A. I did speak with Lieutenant Elkins regarding the
21 CODIS hit.

22 Q. And what did he say about that?

23 A. Well, Lieutenant Elkins is listed on the SBI
24 phone log as an individual who spoke with SBI

1 Agent Baize regarding the CODIS hit. According
2 to those phone logs, Agent Baize called the
3 sheriff's office in an attempt to contact George
4 Sprinkle, was notified by Roney Hilliard that
5 George Sprinkle was no longer employed with the
6 sheriff's office, but Detective Hilliard
7 provided Lieutenant Elkins's number to
8 Agent Baize, and those phone logs show Agent
9 Baize having a discussion with Lieutenant Elkins
10 where Lieutenant Elkins said that he would
11 contact the district attorney and then that he
12 would contact Agent Baize again once he finds
13 out what the district attorney had to say.

14 Elkins did not recall having this
15 conversation with Agent Baize. He said that
16 based on his role as the lieutenant at that
17 point in time, the pattern that occurred,
18 Detective Hilliard providing his information to
19 Agent Baize, is consistent with his employment
20 and it would be consistent for him to be the one
21 who called Agent Baize back, but he does not
22 recall having ever had that conversation with
23 Agent Baize.

24 Q. And did you speak to Lieutenant Sam Constance?

- 1 A. I did speak with Lieutenant Constance.
- 2 Q. And his role in 2000 during the investigation?
- 3 A. Lieutenant Constance was over the criminal --
- 4 was the lieutenant of the criminal investigation
- 5 division in 2000. He was present during the
- 6 interrogations of Mr. Teddy Isbell,
- 7 Mr. Larry Williams, and Mr. Damian Mills.
- 8 Q. Where does Lieutenant Elkins work now?
- 9 A. I'm sorry, Lieutenant Constance?
- 10 Q. I'm sorry, Constance.
- 11 A. Lieutenant Constance is currently the lead
- 12 investigator for the fraud section of the
- 13 Industrial Commission.
- 14 Q. And did he speak with you about the case?
- 15 A. He spoke with me about the case. He reviewed
- 16 the file. He asked before he spoke with me if I
- 17 would be willing to provide him a copy of the
- 18 file, and I said that that would be no problem.
- 19 He came to the office here to pick up a copy of
- 20 that file and, subsequently, we had an interview
- 21 with regards to his recollection from the time
- 22 after having reviewed that file.
- 23 Q. And did he recall things about the
- 24 investigation?

1 A. He reviewed the file and he could mostly only
2 restate what was on and recall what was on those
3 reports. He added a few personal recollections,
4 one of them was with regards to the Isbell
5 interrogation, the interrogation in September
6 when Lieutenant Constance brought Isbell from
7 the hotel to the sheriff's office. His
8 recollection of that conversation is that
9 Mr. Isbell was not noticeably impaired or under
10 the influence, that he wasn't slurring words.
11 He also said that Isbell was talking, that based
12 upon his recollection there was nothing
13 custodial about that interview. They made every
14 effort to comply with the requests of
15 Mr. Isbell. And he said that Isbell was talking
16 freely and that a pager went off, and once that
17 pager went off, Isbell was done with what he had
18 to say or was no longer cooperative and would
19 not talk any further to the sheriff's office.

20 Q. Did you ask him whether it was common for
21 Sheriff Medford to participate in the
22 interrogations?

23 A. I should say, in addition to the statement I
24 just gave, he also felt that Isbell's appearance

1 during the course of that statement was
2 consistent with an individual under stress,
3 having been -- while being interrogated or
4 questioned about a murder.

5 Q. And did you ask him whether or not it was common
6 for Sheriff Medford to participate in
7 interrogations?

8 A. He said it was common for Sheriff Medford to be
9 there.

10 Q. And did you ask him if he remembered the car
11 that Kenneth Kagonyera drove?

12 A. He remembered Mr. Kagonyera's car. He was
13 showed pictures, the still photos from the gas
14 station of the side view of the vehicle. He
15 noted differences between the pictured car and
16 Mr. Kagonyera's car. He said that the front end
17 wasn't right, it wasn't the same, and that
18 Kagonyera's car was a four-door and the picture
19 of the vehicle in the still photo appeared to be
20 a two-door vehicle.

21 Q. Did you ask Lieutenant Constance about any other
22 people from -- or did he tell you anything about
23 anyone, anybody else in the case?

24 A. Well, we asked him about whether he had spoken

1 with any individuals about this case recently
2 prior to our interview, and he said that he had
3 ran into Freddie Wadsworth, who, if you remember
4 from yesterday, is the father of Kenneth
5 Kagonyera's girlfriend, Tisha Lee. And he said
6 that Mr. Wadsworth approached him at a store and
7 asked Lieutenant Constance when he was going to
8 collect his reward money in this case.

9 Q. And did Lieutenant Constance say when that was?

10 A. He said that that was recent.

11 Q. Recent to your interview?

12 A. Recent to our interview, yes.

13 Q. And did you ask Lieutenant Constance about
14 whether or not he wrote up these responding
15 officers during the investigation?

16 A. Constance said he wrote up the three responding
17 officers for doing a bad job at the crime scene.
18 He said he wrote up Goodridge and Carroway, he
19 said Sergeant Sherry Frisbee, I believe was her
20 name, was also wrote up. He conveyed to us that
21 Medford removed Goodridge and Carroway and
22 assigned Sprinkle and Murphy as the leads on
23 this case the following morning.

24 Q. And were you able to interview Detective Mike

1 Murphy, one of the lead detectives?

2 A. I did interview Detective Murphy as a part of
3 our investigation.

4 Q. And where is Detective Murphy now employed?

5 A. Detective Murphy was the co-lead on this case
6 and he's currently the sergeant in charge of
7 training at the Buncombe County Detention
8 Facility, or the Buncombe County Sheriff's
9 Office.

10 Q. And was Detective Murphy a homicide detective?

11 A. This investigation was Detective Murphy's first
12 and only homicide investigation according to
13 Mr. Murphy.

14 Q. And did Detective Murphy agree to the interview?

15 A. He agreed to be interviewed.

16 Q. Go ahead.

17 A. I'm sorry?

18 Q. Go ahead.

19 A. He agreed to be interviewed; we conducted that
20 interview. Through the course of the interview,
21 in response to most of my questions he stated
22 that he did not recall. He stated that he could
23 not recall the bandanas or gloves, anything
24 about those items, the surveillance video. He

1 said that he likely viewed the video with
2 Detective Sprinkle because they worked closely
3 together, but he could not recall. He couldn't
4 recall the substance of any of the
5 interrogations and he could not recall ever
6 receiving or reviewing the DNA results.

7 Q. And did you interview Detective Sprinkle, the
8 other lead detective?

9 A. I did interview Detective Sprinkle.

10 MS. MONTGOMERY-BLINN: Before we get
11 into that interview, are there any
12 Commissioner questions thus far?

13 JUDGE SUMNER: Ms. Ashendorf, yes,
14 ma'am.

15 MS. ASHENDORF: Maybe my mind stopped
16 while you were going over this, but on two
17 different occasions you mentioned the
18 write-up of Detective Goodridge. Was it
19 ever disclosed to you what was in the
20 write-up and why they were taken off the
21 case?

22 A. We don't have a copy of it. Lieutenant
23 Constance said that they were unhappy with their
24 performance at the crime scene that night and

1 that that's why they were wrote up. One of the
2 reasons we were asking about it was we were
3 interested in what happened and why Goodridge
4 and Carroway were not the investigators that
5 followed through and why Sprinkle and Murphy had
6 been assigned, and that was the information that
7 was provided, what I said, that they were
8 unhappy that night and Lieutenant Constance
9 wrote them up based on their performance, it was
10 performance based, and that Sheriff Medford --
11 we don't have copies of that.

12 MS. ASHENDORF: Had Detective
13 Goodridge investigated or been a detective
14 on other homicides?

15 A. That's a good question.

16 MS. ASHENDORF: Because you said
17 that --

18 A. I should have notes of that.

19 MS. ASHENDORF: You said Detective
20 Murphy, this was his first homicide, so he
21 was being -- he was replacing someone who
22 might have had more experience.

23 A. If you don't mind me referring to my notes of my
24 interview with Mr. Goodridge. (Mr. Lau reviews

1 documents.) I asked him in 2000 -- I asked him
2 what types of crimes did he investigate in 2000,
3 was there a specific role he filled or was it
4 general detective work for whatever came in. He
5 said he really didn't remember. "I worked a
6 sexual assault -- I was a sexual assault
7 investigator was my first job. After three
8 years on patrol I worked as a sexual assault
9 investigator. I did that, I think, maybe a
10 year-and-a-half. I went to narcotics, did that
11 a couple of years, went back to investigations,
12 and I don't know whether it was -- I want to say
13 I was working B&Es when I came back maybe or
14 maybe B&Es before that, breaking and entering.
15 Then I worked general assignment, which is
16 anything from bank robbery, homicide, assault.
17 So we -- at that point it was basically cut up
18 into three categories, sexual assault, B&E squad
19 and general assignment. I worked general
20 assignment along with Bob Carroway, I believe.

21 How many years have you been -- how many
22 years have you been, in 2002, have you been with
23 the sheriff's office? He had been with the
24 sheriff's office for nine years.

1 What was your experience prior to coming to
2 the sheriff's office?" He worked for a year, six
3 months or a year, he worked at the airport for
4 the airport police, and that's the background.
5 So at the time he was a general duty detective
6 that covered assault, B&E, or robbery, but
7 homicide --

8 JUDGE SUMNER: Ms. Surgeon?

9 MS. SURGEON: Were the first
10 responders ever able to tell you any reason
11 why they feel they were removed?

12 A. Detective Goodridge could not recall
13 specifically having been written up that
14 evening. He said that him and Lieutenant
15 Constance often didn't see eye-to-eye. He
16 didn't feel -- based on his statement to us, he
17 didn't find it unusual that he had been removed.
18 Lieutenant Constance indicated to us that it was
19 performance based that Sheriff Medford removed
20 him.

21 MS. SURGEON: And what did the lead
22 detective then do to investigate?

23 A. That's what we're covering with regards to -- I
24 will go into Detective Sprinkle's account of

1 that, but Mr. Murphy, he didn't recall much of
2 this case at all.

3 MS. SURGEON: And this was his first
4 case?

5 A. This was his first and only homicide
6 investigation.

7 MR. BECTON: You mentioned earlier
8 that Walter Bowman was conscious when you
9 got there. And I'm trying to figure out if
10 you said that either he told Cummings
11 Walter Bowman ran from the room to the
12 bedroom or someone else told him that and
13 he found out later.

14 A. Deputy Cummings was unsure whether that
15 information was conveyed to him specifically by
16 the deceased, Walter Bowman, or whether or not
17 he heard that. He said his memory was sort of
18 unclear when he first heard certain pieces of
19 information.

20 MR. BECTON: And who could he have
21 heard it from if there were only two people
22 there that night at the time the shooting,
23 other than the shooter?

24 A. Well, that's -- I'm sorry, that's -- maybe I'm

1 being unclear. He may have heard it subsequent
2 to that night at any given time as the time has
3 passed through the years.

4 MR. BECTON: Okay.

5 JUDGE SUMNER: Chief?

6 MR. JENKINS: I'm sorry, I'm skipping
7 back to the discussion about some very
8 important things were said that the
9 Defendant -- not the Defendant, but the
10 deceased, the victim, was still alive when
11 he arrived on the scene. I know I'm
12 jumping back to another -- did he say why
13 he failed to put that information in the
14 initial report? why would he have left
15 that out, that the victim was still alive
16 and was talking to him?

17 A. He didn't say; he didn't.

18 MR. BECTON: I've got another question
19 along another line. You mentioned that it
20 was Eddie Davis who said it was his writing
21 on the top of the video. You said, he was
22 in the room when I was speaking about the
23 recording over.

24 A. I'm sorry. It was Lieutenant Elkins who

1 identified the writing at the top of the
2 property control form.

3 MR. BECTON: And not Davis?

4 A. Not Davis. It was Lieutenant Elkins.

5 MR. BECTON: Did I understand you to
6 say then that, he then said that could have
7 been done accidentally?

8 A. When I met with Sheriff Duncan pertaining to
9 this case in January, I sat down with Sheriff
10 Duncan because we had agreed to speak with him
11 regarding our investigation, and Sheriff Duncan
12 has been at all times cooperative and helpful to
13 our organization, our agency. And him and I had
14 agreed that we would meet so I could share with
15 him some of our findings. This was after we
16 learned of the video. And when I spoke with him
17 with regards to the video on the phone, we had
18 agreed that we should meet and discuss our
19 investigation. And we were meeting for multiple
20 reasons, we were meeting to share with him some
21 of what we had found, we were also meeting with
22 him to speak with him about some of the
23 additional cooperation. Having what we know at
24 that point in time, we were prepared to begin

1 our interviews of law enforcement officers. And
2 we wanted to speak with the sheriff prior to
3 seeking out those law enforcement officers and
4 conducting these interviews.

5 So I met with the sheriff on that day and I
6 presented some of what you guys are seeing today
7 and yesterday, I presented some of that
8 information to the sheriff. At that point in
9 time he saw the log with regards to the CODIS
10 hit, the call log. He called Lieutenant Elkins
11 into his office to discuss that. Through the
12 course of that discussion and that meeting in
13 the sheriff's office with Sheriff Duncan, at
14 that point, while we were meeting in that
15 environment, Sheriff Duncan or Lieutenant Elkins
16 said that based on the equipment they had and
17 the two individuals on the evidence control form
18 from October 23, George Sprinkle and Philip
19 McMahan, based on the equipment and those two
20 individuals being the individuals that handled
21 the videotape that day, they said that it could
22 have been inadvertent, one of those two, and I
23 can't specifically remember who.

24 MR. BECTON: That's what I thought you

1 said. So my question is, did you tell him
2 that George Sprinkle had already told you
3 that, in his view, it could not have been
4 inadvertently --

5 A. At that point in time Mr. Sprinkle had not said
6 that to us. That was when we began to engage
7 law enforcement to begin conducting interviews
8 of law enforcement after I had met with the
9 sheriff.

10 JUDGE SUMNER: Any other questions?

11 MS. CHILTON: I have one. Do you have
12 any record of crime scene photos being
13 taken?

14 A. We were told by Mr. Wright, Mike Wright, who
15 processed the scene that night that there were
16 photos.

17 MS. CHILTON: But you did not?

18 A. That's it. There are no records in the file.
19 And based on what Eddie Davis or Mr. Davis
20 conveyed to us, Mr. Wright would have been the
21 custodian and kept his own file for that
22 material.

23 MS. ASHENDORF: Who is it that didn't
24 report that the deceased was alive when he

1 arrived at the scene, was it Mr. Goodridge?

2 A. No, that was Deputy Will Cummings.

3 Q. Detective George Sprinkle, he was the other --
4 or what was his role in this case in 2000?

5 A. He was the co-lead on this case along with
6 Detective Mike Murphy.

7 Q. And when was he assigned to this case?

8 A. He was assigned the morning after the homicide.

9 Q. And what does he do now? Is he employed now?

10 A. He's currently retired.

11 Q. And did Detective Sprinkle agree to be
12 interviewed?

13 A. We reached out to Detective Sprinkle first in a
14 letter. We didn't receive a response from him
15 to that letter. We spoke with the sheriff. As
16 I stated, Sheriff Duncan had assigned Detective
17 Hilliard from his department to work with us for
18 all matters with regard to this case, and
19 Detective Hilliard, who was throughout the
20 course of our investigation, anytime I asked him
21 to do something, he assisted. And I told him
22 that we had had difficulty or we had not been
23 responded to by Detective Sprinkle and that we
24 would like to speak with Detective Sprinkle.

1 And I asked Mr. Hilliard if he knew Detective
2 Sprinkle. He said that he did know
3 Detective Sprinkle. He made a personal visit to
4 Detective Sprinkle, he asked Detective Sprinkle
5 if he would speak with us. We still did not
6 receive a response after Mr. Hilliard made
7 contact with Detective Sprinkle, so at that
8 point in time I subpoenaed him to be disposed on
9 February 22.

10 Q. To be deposed?

11 A. Yes.

12 Q. And did Mr. Hilliard tell you if Detective
13 Sprinkle indicated whether or not he would be
14 willing to talk to you or if he talked to
15 anybody about this case?

16 A. Detective Sprinkle said that he had spoken with
17 the district attorney after receiving the
18 subpoena. He said that the district attorney
19 told him it was a deposition and to go ahead and
20 speak with us.

21 Q. So Detective Sprinkle indicated, and I know that
22 this is pretty far removed with regard to
23 hearsay, but he indicated to Mr. Hilliard that
24 he did receive your letter?

1 A. Well, when Mr. Hilliard went to visit him on
2 that day, we met with Mr. Hilliard after the
3 February 9th date or we actually met with
4 Mr. Hilliard on February 9th, and Mr. Hilliard
5 or Detective Hilliard told us that he had talked
6 with Sprinkle, Sprinkle had received our letter,
7 Sprinkle had called the district attorney and
8 the district attorney had told him he could talk
9 to us. And then we sent him the subpoena for
10 the deposition and at the start of the
11 deposition he told us that he had never received
12 that letter.

13 Q. Detective Sprinkle told you he had never
14 received the letter?

15 A. He told us he had never received the letter.

16 Q. And did Detective Sprinkle indicate that there
17 were any reasons why his memory might not be
18 accurate?

19 A. I'm sorry. I read that from my notes, but I
20 would like to confirm that before I say
21 Detective Sprinkle told us he didn't receive
22 that letter.

23 Q. Of course. Please do.

24 A. (Mr. Lau reviews document.) He told me that he

1 lost the letter, that he still didn't have the
2 letter. Well, here are his exact words, I want
3 to make sure that I am accurate. He said, "I
4 just asked -- this is in response to my question
5 about Mr. Hilliard visiting him. He said, I
6 just asked him what it was about and who you
7 were and that I lost the letter, and I didn't
8 get the letter found until he come and talked to
9 me."

10 Mr. Lau, "okay."

11 Mr. Sprinkle, "I still don't have the
12 letter. My brother lost it."

13 So that's what he said to me with regards
14 to the first letter we sent him at the
15 deposition.

16 Q. Did Detective Sprinkle talk to you about his
17 health condition?

18 A. He told us that he had had a brain aneurism in
19 the past, a few years in the past. He said that
20 his short-term memory was affected by his brain
21 aneurism, but not his long-term memory. He also
22 indicated that he remembers information
23 regarding this case.

24 Q. Did you ask Detective Sprinkle if he had any

1 notes in this case?

2 A. I did ask Detective Sprinkle if he had any notes
3 in addition to what were in the Buncombe County
4 Sheriff's Office master file for this case. He
5 said that he had retired -- I'm sorry, he said
6 when he retired, he shredded everything.

7 Q. And did he indicate to you when he was assigned
8 to the case?

9 A. He said he was assigned the case the next
10 morning after the homicide by Sheriff Medford.

11 Q. And did he feel that that was common or rather
12 unusual?

13 A. He said he felt that it was unusual to remove
14 the original detectives and to assign him and
15 Murphy; however, he seemed to backtrack during
16 the statement because then he discussed how some
17 individuals had more experience than others and
18 maybe some individuals were assigned based on
19 their experience.

20 Q. Did he talk to you about locating Shawn Bowman
21 after the homicide?

22 A. He did. He told me that he located Shawn
23 Bowman, and he was adamant that he had located
24 him three days following the homicide. He also

1 told me that Shawn Bowman specifically
2 identified Mr. Kagonyera and Mr. Brewton, that
3 Shawn Bowman recognized Mr. Kagonyera from when
4 he came into the home, and that Shawn Bowman
5 repeatedly referred to Mr. Kagonyera as goofy.

6 Q. Now according to the detective's file was Shawn
7 Bowman located three days after the homicide?

8 A. Shawn Bowman wasn't found for over a month, and
9 I showed him that statement. And at that point
10 in time he said it was over a month before he
11 had spoken with Shawn Bowman.

12 Q. And just to note, I know we covered this
13 yesterday, when you interviewed Shawn Bowman,
14 you asked him about that and whether or not he
15 called Mr. Kagonyera goofy?

16 A. I did and he didn't -- he said that goofy was
17 not a word that he would have used in his
18 vocabulary.

19 Q. Did you ask Detective Sprinkle about the DNA
20 testing?

21 A. I showed him a copy of the report and I asked if
22 he had ever seen the report.

23 Q. And did you film this deposition?

24 A. I did film this deposition.

1 MS. MONTGOMERY-BLINN: All right. I
2 would like to play a clip of this
3 deposition and just ask that you watch
4 this.

5 (THEREUPON, A PORTION OF THE
6 VIDEOTAPED DEPOSITION OF DETECTIVE SPRINKLE
7 IS PLAYED.)

8 Q. Mr. Lau, were you there when this video was
9 made?

10 A. I was.

11 Q. Is it a fair and accurate representation of the
12 deposition or a portion of the deposition of
13 Detective Sprinkle?

14 A. It is.

15 Q. And Mr. Lau, just for a couple of points of
16 clarification, who was the woman that was in the
17 background of that video, the young woman?

18 A. It was the wife of Mr. Sprinkle.

19 Q. Just to clarify. And also, the report that you
20 just showed Detective Sprinkle, that 2001 DNA
21 report, was that in the sheriff's file that you
22 received?

23 A. It was in the sheriff's office file that I
24 received, yes.

1 Q. Was it in a district attorney's office file that
2 you received?

3 A. It was in the district attorney's office file
4 that I received, yes.

5 Q. Now, did you ask Detective Sprinkle about that
6 videotape that we've been discussing this
7 morning or today from the gas station?

8 A. I did.

9 Q. And did you show him the evidence log and ask
10 him about it?

11 A. I showed him the evidence log, he reviewed it,
12 and he said that it was his handwriting, the
13 portion of the evidence log that says, three
14 black males entering the store at 23:19 hours.

15 Q. And did you note to him that the log shows that
16 he is the last person on the chain of custody
17 before it was turned over to the evidence
18 custodian?

19 A. I did note that to him and I showed him. We
20 reviewed the chain of custody, yes.

21 Q. Did you ask him whether the individuals shown on
22 that video, if he knew who those people were,
23 the three black males?

24 A. Well, we had the enhanced version, and as we've

1 seen, the enhanced version has some portion
2 recovered that you can see of the individuals
3 walking into the store. I asked him if those
4 were the individuals that that note referred to.
5 He did not answer whether or not those
6 individuals were who that note referred to. He
7 said the video was of poor quality and did not
8 answer whether or not those were the three he
9 was referring to in that note.

10 Q. And did you talk to him about the vehicle in the
11 portion of that video?

12 A. I did. I spoke with him with regards to the
13 vehicle. Ms. Smith, in her testimony, read a
14 portion of his comments regarding that video
15 earlier today, but he referred to the video,
16 initially at the beginning when we started
17 talking about that video, he said
18 Mr. Kagonyera's car was on that video, and then
19 throughout the deposition he backed away from
20 that statement until he finally said he couldn't
21 tell what car was in the video.

22 Q. And that was after you showed him the still
23 photo of the video?

24 A. That was after I showed him still pictures of

1 the car.

2 Q. And you said you talked to him about whether or
3 not he could have recorded over that video?

4 A. I asked him questions about recording over the
5 video and he said it could not have been
6 inadvertently recorded over while it was in his
7 possession and that no one else had access to
8 that video while it was in his possession until
9 he turned it in to evidence.

10 Q. Did you talk to him about the interrogations?

11 A. I did. I spoke with him specifically with
12 regards to not being present during the
13 interrogations. Specifically I asked him about
14 the Teddy Isbell interrogation, and I asked him
15 as the lead investigator why he was not present
16 when Mr. Isbell was interrogated.

17 MS. MONTGOMERY-BLINN: I would like to
18 play that portion of the deposition.

19 (THEREUPON, A SECOND PORTION OF THE
20 VIDEOTAPED DEPOSITION OF DETECTIVE SPRINKLE
21 IS PLAYED.)

22 Q. Mr. Lau, you were present when this video was
23 made?

24 A. I was.

1 Q. Is it a fair and accurate representation of that
2 portion of the deposition of Detective Sprinkle?

3 A. It is.

4 Q. Did you ask Detective Sprinkle if he recalled
5 anything else that wasn't in the reports or
6 anything in addition?

7 A. I did. My final question to Mr. Sprinkle, or
8 one of my final questions to Mr. Sprinkle was if
9 there was anything else he could recall that he
10 wanted to share with us with regards to
11 information pertinent to our investigation. He
12 spoke of interviewing a Tyrell Dickey,
13 Mr. Dickey at a correctional institution. He
14 said that Dickey told him that when they left
15 the homicide and went to the house -- I'm sorry,
16 he said that Dickey told him that the
17 individuals involved, the Defendants, group B,
18 left the homicide and went to Dickey's home. He
19 said at Dickey's house Mr. Kagonyera told him
20 about, told Dickey about the murder, that they
21 had shot Mr. Walter Bowman. That statement by
22 Mr. Dickey is in your guys's brief.

23 I had spoken with Mr. Dickey and I plan to
24 testify more regarding Mr. Dickey when we get to

1 that portion of our investigation.

2 MS. MONTGOMERY-BLINN: Questions at
3 this point, Commissioners?

4 (No audible response.)

5 Q. Mr. Lau, if you will just remain seated.

6 MS. MONTGOMERY-BLINN: Commissioners, you
7 read in the summary of the investigation,
8 the pieces of the investigation that are in
9 your brief and a number of civilian
10 witnesses were also interviewed, friends of
11 the family, neighbors, that type of thing.
12 So I asked Mr. Lau to testify about the
13 civilian witnesses that he was able to
14 interview.

15 Q. Mr. Lau, were you able to interview a person
16 named Antonio Hayes?

17 A. A member of the Commission staff spoke with
18 Mr. Hayes.

19 Q. And can you tell us about that?

20 A. Mr. Hayes was called by Commission staff member
21 Adam Wrenn, and Mr. Wrenn spoke with Mr. Hayes
22 and asked him about information with regards to
23 the Bowman homicide.

24 Q. And you have a transcript of that telephone

1 call?

2 A. I do have a transcript of that telephone call.

3 Q. All right. And are you comfortable with
4 testifying about that telephone call based on
5 the transcript?

6 A. Yes, I am.

7 Q. And just as a reminder, you are the lead
8 assigned to this case so work that was done by
9 other staff members, was that reported to you?

10 A. Yes, that's correct.

11 Q. Go ahead.

12 A. Mr. Hayes during his conversation there was
13 nothing gained beyond what has already been said
14 in the statement. There's no new information to
15 add.

16 Q. And I believe you've already testified briefly
17 about -- oh, no, I'm sorry, the other son of the
18 Defendant -- I mean, of the victim, Leon Bowman.

19 A. Yes, I spoke with Leon Bowman; that's correct.

20 Q. And this is different than the son, Shawn
21 Bowman, who was present during the shooting?

22 A. Yes. Leon Bowman was not present during the
23 shooting. If you remember, Mr. Isbell stated to
24 us in our first interview that Leon Bowman and

1 Aaron Brewton were the ones that Mr. Isbell was
2 confident committed this crime. In our next
3 interview with Mr. Isbell, he stated that he was
4 with Leon Bowman in Pisgah View Apartments the
5 night of the crime.

6 Q. Were you able to talk with Mr. Bowman, Leon
7 Bowman?

8 A. I did speak with Mr. Bowman.

9 Q. And what did Mr. Bowman, Leon Bowman, tell you?

10 A. Mr. Bowman told me that Freddie Wadsworth was
11 the source of the information on the street. He
12 said that he had heard that Wadsworth had helped
13 get rid of the gun with Isbell. I asked him if
14 he personally heard this information from
15 Mr. Wadsworth. He said, no, but he did tell me
16 that Freddie Wadsworth was the source of the
17 information that was out there on the street
18 regarding the Bowman homicide.

19 Q. Did you ask him whether or not he was with Teddy
20 Isbell the night of the murder?

21 A. I did ask him if he was with Mr. Isbell the
22 night of the murder. He said he saw Mr. Isbell
23 on the night of the murder in the Pisgah View
24 apartment complex. He said that he left the

1 Pisgah View apartment complex and went to his
2 grandmother's house on Washington Avenue, I
3 believe it was, and that he was on -- in a home
4 on Washington Avenue when he learned of his
5 father's murder. He said he went to the
6 hospital, was with the family. Later on very
7 early in the morning of September 19 he returned
8 to Pisgah View apartment complex and Mr. Isbell
9 was still at the Pisgah View apartment complex.

10 Q. Did you ask him if he had any contact with Aaron
11 Brewton the night of the murder?

12 A. If you recall, Mr. Brewton told us that he
13 stopped by -- or, I'm sorry, that Mr. Leon
14 Bowman stopped by Mr. Brewton's apartment on the
15 evening of the murder. Mr. Leon Bowman said he
16 did not go by Mr. Brewton's apartment the night
17 of the murder.

18 Q. Back in 2000 during the investigation did Leon
19 Bowman speak to law enforcement?

20 A. Yes, he did.

21 Q. And did he talk to them about Robert Wilcoxson's
22 van driving past him or one that he believed to
23 be Robert Wilcoxson's van?

24 A. There's a summary report in the sheriff's

1 department's file from an interview with Leon
2 Bowman. In that summary report he says he
3 recalls a red van coming by him a few days after
4 the homicide and that somebody flashed a gun in
5 the window of the red van, and the summary
6 report said, I don't have the exact words, but
7 in an attempt to intimidate or something of that
8 fashion. So the gun was being flashed in an
9 intimidating manner.

10 Q. Did you ask Leon Bowman about that?

11 A. I did ask Mr. Bowman about this. He said he
12 recalls telling the sheriff's office that he
13 knew the Defendants to have guns and to
14 sometimes, as he put it, play with guns, but he
15 doesn't recall anyone flashing a gun at him from
16 Wilcoxson's van in that manner.

17 Q. You said that Leon Bowman had talked to you
18 about Freddie Wadsworth. Did he know that
19 Freddie Wadsworth was the father of Ken
20 Kagonyera's girlfriend?

21 A. I asked him about that. I asked him if he knew
22 that Mr. Wadsworth was the father of Tisha Lee,
23 and he said he did. I also asked him if he knew
24 of Ms. Lee and Mr. Kagonyera having any domestic

1 problems, and he said, yes, he knew them to
2 argue all the time.

3 Q. Did you ask him if he had heard or if he knew
4 who had committed this murder against -- who had
5 murdered his father?

6 A. I did ask him if he knew who committed this
7 murder. He told me that he has heard different
8 stories. He said one of the stories would say
9 it was some boys from Shiloh. Ms. Dawana Bowens
10 in this case said that Lacy Pickens,
11 Brad Summey, and Robert Rutherford, when they
12 hung out together, they hung out together in
13 Shiloh. He also said that he had a friend who
14 heard it was someone else, but his friend wants
15 to remain anonymous and that he would try to
16 speak with his friend about speaking to the
17 Commission.

18 Q. And did that happen?

19 A. That did not happen.

20 Q. The law enforcement back in 2000 conducted a
21 neighbor canvas and searched a couple of
22 neighbors. Were you able to get up with them
23 during your investigation?

24 A. (Mr. Lau reviews documents.) I was. I'm sorry.

1 Q. That's all right, take your time.

2 A. I think it's also important to note I asked
3 Mr. Bowman about whether or not he knew Tyrell
4 Dickey, this is Leon Bowman, and Mr. Bowman
5 stated that he did not know Leon Bowman.

6 Q. Did not know Tyrell Dickey?

7 A. I'm sorry, did not Tyrell Dickey, yes.

8 Yes, I was able to interview neighbors in
9 this matter.

10 Q. All right. And can you please tell us about
11 those interviews?

12 A. I interviewed neighbor, Matthew Cox, he was the
13 16-year-old young man interviewed in the initial
14 sheriff's department investigation, said he saw
15 suspects run by his house. Mr. Cox today is no
16 longer a 16-year-old, he's a sheriff's deputy.
17 And Mr. Cox spoke with me, and if you recall
18 yesterday when I was speaking about the map,
19 Mr. Cox told me that the suspects ran from the
20 Bowman residence past his house, which would put
21 them running in a northern direction up Church
22 Road or the direction I indicated on the map
23 yesterday. At that point in time we became
24 disconnected and subsequent attempts to contact

1 Mr. Cox failed.

2 Q. What about the neighbor named Emerson Carver?

3 A. Emerson Carver?

4 Q. What did he originally tell officers in 2000?

5 A. Mr. Carver originally told officers that he was
6 working in his garage with a friend and that the
7 friend saw a car drive away. Mr. Carver told us
8 that he saw an old, that he saw an old gray
9 sedan speed off and heard a gunshot. That
10 testimony is based on the transcript because
11 that was an interview that I did not
12 specifically do. That was another interview by
13 Mr. Wrenn from the Commission.

14 Q. So Mr. Carver now says to the Commission staff
15 that he saw an old, gray, long sedan speed off?

16 A. I'll read to you what the transcript says.
17 :Mr. Wrenn, now I have heard that you told the
18 sheriff, the deputy you spoke with that -- the
19 investigator you spoke with that you and Earl
20 were outside in your workshop when you heard a
21 gunshot?

22 Yeah, that's right; yeah.

23 And I believe here it says that

24 Mr. Stockton told you that he saw an older model

1 car speed off.

2 Yeah. There was an old, gray -- I couldn't
3 tell, tell you what the name of it was, but an
4 old, gray, long sedan. It was a big car.

5 Do you remember if it was four doors?

6 well, it was dark and I couldn't tell
7 whether it was four doors or not.

8 Okay.

9 But I remember, I remember it good and the
10 next morning, the next morning I think it was
11 his daughter was out there crying. You know
12 about this."

13 So based on his statement, it appears that
14 he remembered the vehicle.

15 Q. Okay. Did he back in 2000 tell officers that
16 he'd seen the vehicle?

17 A. I don't believe so, no. I believe it was his
18 friend, Mr. Stockton.

19 Q. He said that Stockton was the one that saw the
20 vehicle?

21 A. I believe so, yes.

22 Q. And did deputies interview Earl Stockton in 2000
23 or during your investigation --

24 A. No, deputies did not. There is no record in the

1 Buncombe County Sheriff's Office file that
2 Mr. Stockton had been interviewed.

3 Q. Were you able to locate Mr. Stockton?

4 A. Again Mr. Wrenn spoke with Mr. Stockton.
5 Mr. Stockton indicates that he doesn't remember
6 about this event.

7 Q. Now, a couple of witnesses were interviewed from
8 that gas station when the video surveillance,
9 during the time of that video surveillance tape.
10 Were you able to get up or the Commission staff
11 able to get up with any of those witnesses?

12 A. Yes, the staff was.

13 Q. And can you tell us about those interviews?

14 A. Well, Mr. Zeb Martin, who was one of those gas
15 station witnesses, couldn't remember any details
16 about what he had recalled seeing that night.
17 And Mr. Jack Holland remembers or believed that
18 it was an older model car, maybe a blue, maybe
19 an Oldsmobile, is what he said. Those
20 interviews were conducted by Ms. Ellis from the
21 Commission.

22 Q. Now, Mr. Wilcoxson has told the Commission that
23 he was with his girlfriend, Dea Johnson, during
24 at least part of that night. Were able to speak

1 with Ms. Dea Johnson?

2 A. I was able to speak with Ms. Johnson.

3 Q. And what did she say?

4 A. I spoke with Ms. Johnson at her home, and also I
5 spoke with her once on the phone, I spoke with
6 her a couple of times on the phone. When I met
7 with her at her home, she said that she was
8 Wilcoxson's girlfriend, they had a child
9 together. And what she told us was consistent
10 with what she had told the law enforcement, that
11 Larry and Cory were asleep in the van, and she
12 and Mr. Wilcoxson were asleep in the house. She
13 remembers falling to sleep with Mr. Wilcoxson
14 and waking up in the morning with him.

15 Q. Is that consistent with what Mr. Wilcoxson has
16 told the Commission?

17 A. Mr. Wilcoxson has said at some point that night
18 he slipped out early in the morning to go to a
19 young woman named Hannah Rogers' house, but that
20 then he went back, got back into bed and went to
21 sleep.

22 Q. Did he indicate that Ms. Johnson was asleep when
23 he left and asleep when he returned?

24 A. I don't specifically recall, but I believe that

1 to be the case.

2 Q. Now, did Ms. Dea Johnson talk to you about her
3 interviews with law enforcement or her interview
4 with law enforcement?

5 A. She did.

6 Q. What did she say?

7 A. She said to me, "so this occurs and you give a
8 statement to the police, you speak with the
9 police and you say that Robert was with you that
10 night?

11 Ms. Johnson, they got me; they got me.

12 They tried to say that I was at the scene.

13 Okay.

14 That, you know what I'm saying, me and -- I
15 mean, they just was putting all types of --

16 Mr. Lau, tell me about that interview.

17 It had a -- it was about four or five
18 different interviews. I probably signed one
19 statement, but they called me in four or five
20 different occasions.

21 Mr. Lau, okay.

22 Ms. Johnson, like I said, I'm seven months
23 pregnant with a daughter, I'm scared to death, I
24 don't know nothing. You know what I'm saying?

1 I didn't even know that this had happened, you
2 know what I'm saying, until they start -- and I
3 think once they started picking it up, this was
4 like a month already had, you know what I'm
5 saying, it had transpired.

6 Mr. Lau, do you remember some of the people
7 who were in those interviews?

8 Ms. Johnson, the police.

9 Mr. Lau, do you know specifically?

10 I know the sheriff, Bobby Medford, was one
11 of them. He's about the only one I really
12 remember.

13 Mr. Lau, okay.

14 Ms. Johnson, you know what I'm saying?
15 He's not the only one. On one occasion I had to
16 call my mother because they was like trying to
17 harass, you know what I'm saying, hound me and
18 make me say stuff that wasn't true, you know
19 what I'm saying, that wasn't true.

20 Mr. Lau, were you asked to say certain
21 things?

22 Ms. Johnson, no, I wasn't asked. I was
23 pretty much -- they was telling me, you know
24 what I'm saying, what I am supposed to have

1 done.

2 Mr. Lau, can you give me an example of
3 something, if you can remember, of something
4 that --

5 Ms. Johnson, like I said, one instance, he
6 told me that I was the one driving the car.

7 who is this that told you?

8 Bobby Medford.

9 Mr. Lau, okay.

10 Ms. Johnson, and that I can do a lot of
11 time behind this and they can get me just as
12 well as they got, you know what I'm saying, the
13 guys. I mean, this was ten years ago so to be
14 exact what come on to me, I really don't.

15 Mr. Lau, yeah. And you said that there
16 were multiple interviews, they brought you down
17 there?

18 Ms. Johnson, yeah. They brought us, me and
19 Cap, they -- I mean, they had us come down there
20 like four or five times and to charge him with
21 something totally different before they actually
22 kept him."

23 Q. Now, Mr. Kagonyera has -- oh, I'm sorry, can you
24 clarify who Cap is?

1 A. Cap was a nickname that Ms. Johnson had for
2 Mr. Wilcoxson.

3 Q. Thank you.

4 Now, Mr. Kagonyera has told the Commission
5 during his deposition and repeatedly has told
6 people that he was with his girlfriend, Latisha
7 Lee, during the time of the homicide. Is that
8 correct?

9 A. That's correct.

10 Q. And were you able to speak with Ms. Latisha Lee?

11 A. I was.

12 Q. And what did she tell you?

13 A. She didn't remember anything other than
14 Kagonyera had left the apartment that night.

15 Q. She didn't remember what time?

16 A. She didn't remember what time. And in her
17 statement to the police she said that he
18 returned sometime between 11:00 and 12:00 that
19 night, was what she recalled in her statement to
20 the police. But she couldn't tell me, when I
21 spoke with her she couldn't confirm that or not.
22 She remembered he left the apartment sometime
23 that evening and he was out of the apartment
24 sometime that evening.

1 Q. And also in her statement to police she said
2 that -- did she say that she knew that he had
3 been with Damian Mills?

4 A. She reviewed the statement. I provided her a
5 statement that -- with a copy of the statement
6 that she had given the police, and she said she
7 didn't know a Damian Mills. And I asked her was
8 this statement true, and she said that she
9 didn't know Damian Mills so she doesn't know how
10 she could have told law enforcement that
11 Mr. Kagonyera was with Damian Mills. And again,
12 that's a summary report of the statement that
13 Ms. Lee was said to have given.

14 Q. All right. Did you speak to a person named
15 Jerome Mooney?

16 A. I did speak with Mr. Mooney.

17 Q. And can you tell us who Mr. Mooney was or what
18 was his involvement during the investigation in
19 2000?

20 A. Mr. Mooney was said to be responsible for
21 helping hide the gun after the fact by Dericho
22 Jordan, who was one of the jailhouse informants
23 who gave a statement in this case.

24 Q. And is that on page 88 of the Commissioner's

1 brief?

2 A. Yes, it's on page 88 of the Commissioner's
3 brief.

4 Q. Thank you. And were you able to speak with
5 Mr. Mooney?

6 A. I was able to speak with Mr. Mooney. We
7 interviewed him at Mountain View Correctional
8 Institute.

9 Q. And what did he say about that statement by
10 Dericho Jordan?

11 A. He reviewed the statement. And in the statement
12 it says that Mr. Mooney, I believe it was from
13 the jail facility, called his brother and asked
14 his brother to get rid of the gun. He said that
15 he didn't know Mr. Jordan, he didn't know
16 Mr. Ricky Rizk, who was another inmate that was
17 said to be with Derrico Jordan or around when
18 statements were said to Mr. Jordan. He said
19 that at the time his brother was 11. I asked
20 him if he had anybody else that he considered
21 brothers, and he said, anybody else that he
22 considered brothers had been incarcerated at
23 that time so he said he didn't have a brother to
24 call. He said the statement was false and he

1 didn't know anything.

2 Q. Was he ever questioned during the Bowman
3 homicide by detectives?

4 A. There's no records that he was ever questioned
5 by the detectives in the Bowman homicide,
6 however, when we spoke with him, he said that
7 shortly after the Bowman homicide he and his
8 girlfriend, Lucinda Fair, were at her house,
9 were at Ms. Fair's house. He said that the
10 police did an early morning raid looking for
11 Larry Williams at the house and took he and
12 Ms. Inez Fair into custody. He said that during
13 that time he was interrogated. He said that he
14 was interrogated in a room in the CID division
15 of the sheriff's office. At that time there was
16 a whiteboard in the sheriff's office, in the CID
17 room at the sheriff's department, and the white
18 board had a list of names and pictures on it
19 related to the Bowman homicide. He said that he
20 recalls Mr. Kagonyera, Mr. Wilcoxson, he said
21 Mr. Kagonyera's cousin, didn't specify whether
22 that was Mr. Mills, he said Mr. Isbell, a fat
23 guy, and someone named Holloway.

24 Q. Were on that whiteboard?

1 A. Yes.

2 Q. Is there --

3 A. I'm sorry. He said the name Holloway, so I'm
4 not sure if there was a picture there.

5 Q. Is there any indication from any other
6 interviews in the file that the sheriff's
7 department was doing interrogation in a room
8 that had pictures in it?

9 A. There --

10 Q. When the sheriff's department interrogated Tony
11 Gibson, did he make any reference to that?

12 A. I don't remember.

13 Q. Now, is there any record in the sheriff's
14 department file of this interrogation that
15 Mr. Mooney speaks of?

16 A. There's no record in the sheriff's office file
17 with regards to this interrogation.

18 Q. What about the raid that Mr. Mooney said he was
19 picked up in?

20 A. We received some supplemental discovery from
21 Mr. Moore. In that supplemental discovery are
22 some of the handwritten notes that detectives
23 took during the course of this investigation.
24 There is a handwritten note in that material

1 that refers to a raid that occurred at the
2 apartment of Lucinda Inez Fair.

3 Q. What about a statement from a jail employee
4 about Jerome Mooney?

5 A. There was a statement by a jail employee, I
6 believe that statement is in the brief, I can't
7 be a 100 percent sure. The employee at the
8 Buncombe County Detention Facility -- it was the
9 day after the notes in the, the handwritten
10 notes say this raid occurred. The statement by
11 the Buncombe County Detention Facility employee
12 states that the individual, the deputy,
13 overheard Mr. Mooney talking in the shower at
14 the Buncombe County Detention Facility and
15 saying that Mooney was a suspect in this crime,
16 but that Larry Williams was the individual that
17 had information about this crime, or something
18 to that extent. That statement is memorialized
19 in a report that the deputy took.

20 Mr. Mooney indicated to us while we were
21 being interviewed that when he was brought in
22 for the interrogation and during that raid on
23 Lucinda Inez Fair's apartment, they had raided
24 the apartment because she was the ex-girlfriend

1 of Larry Williams and that they were looking for
2 Mr. Williams and not for him. He said that they
3 believed he was Larry Williams. He said that it
4 was Larry Jerome Williams, and his name was
5 Jerome Mooney, and they thought they were the
6 same individual and they did the -- they brought
7 him into custody. And he said he knew that they
8 were looking for Larry Williams during that
9 raid.

10 I also spoke with Ms. Fair on the phone and
11 Ms. Fair confirmed that there had been a raid on
12 her apartment and that they were both brought in
13 as part of that raid.

14 Q. Did Ms. Fair give a statement to the detectives
15 back in 2000?

16 A. She did give a statement back in 2000.

17 Q. And what was that statement?

18 A. That statement had to do with overhearing Aaron
19 Brewton making inculpatory statements at a dice
20 game in Pisgah View, and that statement is in
21 the Commissioners' brief.

22 Q. All right. And what did Ms. Fair tell you?

23 A. Ms. Fair confirmed the raid. She said that she
24 didn't provide that statement, it's a

1 handwritten statement. And what she told me was
2 -- I said, "what happened when they brought you
3 into the sheriff's office? Did they ask you to
4 come down or did they make you come down?

5 They handcuffed me and took me down.

6 Mr. Lau, what happened once you were there?

7 Ms. Fair, they were trying to get me to say
8 stuff I didn't know nothing about. I didn't
9 know any -- or I didn't anything about the
10 murder.

11 Mr. Lau, and?

12 Ms. Fair, and then all of a sudden when
13 they let me go, the next day they said that I
14 wrote a statement I didn't write, a statement.

15 Mr. Lau, so the statement they have that is
16 supposedly a statement you wrote down and it's
17 in handwriting, you didn't write that statement
18 out?

19 Ms. Fair, I didn't write anything. All I
20 wrote on a piece of paper is that I didn't know
21 anything."

22 I think I should say I spoke with Ms. Fair
23 over the phone and didn't have the opportunity
24 to provide her with a copy of the statement so

1 she could review it to potentially refresh
2 whether or not it was her handwriting on the
3 statement.

4 MS. MONTGOMERY-BLINN: May I approach
5 the witness, Your Honor?

6 JUDGE SUMNER: Yes.

7 Q. Mr. Lau, I'm handing you a document. If you'll
8 take a look at that and see if it refreshes your
9 recollection.

10 A. (Witness reviews document.)

11 Q. And what is that document?

12 A. This document is a summary report of the
13 interview of James Anthony Gibson at the
14 Buncombe County Sheriff's Department on
15 September 21, 2000.

16 Q. And does that report refresh your recollection?

17 A. It does refresh my recollection.

18 Q. And does that relate to the earlier question
19 that I asked you about when Jerome Mooney said
20 that they had a whiteboard in the criminal
21 investigative division with suspects on it?

22 A. It does.

23 Q. And what does that say?

24 A. It says that during his interview on

1 September 21, 2000, that he saw Kenny's,
2 Mr. Kagonyera -- it says Kenny, he saw Kenny's
3 photo on the board in CID.

4 Q. Mr. Gibson did?

5 A. Mr. Gibson did.

6 Q. Thank you.

7 MS. MONTGOMERY-BLINN: Commissioner
8 questions about the civilian witness
9 interviews?

10 MR. BECTON: I have two just for
11 clarification.

12 A. Sure.

13 MR. BECTON: You mentioned that
14 Wilcoxson said that he slipped out of Dea
15 Johnson's house to go to Hannah's house.
16 As I recall, that was around 3:00 a.m. for
17 an hour-and-a-half to do drugs and then
18 come back. Am I correct?

19 A. Yes. Mr. Wilcoxson said that it was early in
20 the morning. I don't have it in front of me,
21 but I believe the deposition says around
22 3:00 a.m. He said early in the morning in both
23 interviews. He was consistent with that
24 statement.

1 MR. BECTON: But nothing suggesting
2 that he slipped out around 11:00,
3 12 o'clock at night?

4 A. The statements that he's made are all we know
5 about when he slipped out. And to this day my
6 -- from what Ms. Johnson has told us, she does
7 not know he slipped out that evening.

8 MR. BECTON: Does not know. Did I
9 understand you to say that Latisha Lee, who
10 was dating Kenny, didn't know that
11 Damian Mills was Kenny's step-cousin?

12 A. She said to me that she didn't know a Damian
13 Mills.

14 MR. BECTON: Didn't he have a
15 nickname?

16 A. Day Day.

17 MR. BECTON: Okay.

18 MS. MONTGOMERY-BLINN: Any more
19 questions?

20 Q. Mr. Lau, if you will just stay seated.

21 A. Sure.

22 JUDGE SUMNER: Let's take a break for
23 about five minutes.

24 MS. MONTGOMERY-BLINN: Five minutes.

1 JUDGE SUMNER: Six minutes, maybe.

2 (THEREUPON, A SHORT RECESS WAS TAKEN.)

3 MS. MONTGOMERY-BLINN: Commissioners,
4 in your brief you have noted that a number
5 of informants came forward that had
6 information to relay about what the people
7 in group B had said to them while they were
8 in custody, and the Commission staff was
9 able to get up with a number of those
10 informants. So I'll ask Mr. Lau to provide
11 testimony about that.

12 Q. Mr. Lau, if you'll begin with Millis Bryson,
13 whose original statement to the sheriff's
14 department, we did include the entire statement
15 in the brief, is on page 52. What did he
16 originally, in summary, tell the sheriff's
17 department?

18 A. Mr. Bryson originally said that while in jail
19 with Mr. Kenneth Kagonyera, Kagonyera had told
20 him that Detroit Larry and Detroit's cousin had
21 committed this crime.

22 Q. And where is Mr. Bryson now?

23 A. Mr. Bryson is currently located in federal
24 prison on an unlawful transport of firearms

1 charge.

2 Q. And were you able to speak with Mr. Bryson?

3 A. I was. I spoke with him on February 4, 2011.

4 It was a phone conversation that was set up
5 through his unit manager at the federal prison.

6 Q. And prior to that conversation were you able to
7 convey or send a copy of his report or his
8 original statement to him?

9 A. I was able to fax a copy of his original
10 statement to him so he could review it through
11 that phone conversation.

12 Q. And did he speak with you?

13 A. He did speak with me.

14 Q. And what did he tell you about that original
15 statement and his recollection?

16 A. I asked him to review that statement, and he
17 said he did not get it and never spoke with
18 detectives about this case.

19 Q. Did he ever say he did speak with Mr. Kagonyera
20 and Mr. Brewton while in custody?

21 A. He did say that he spoke with Mr. Kagonyera and
22 Mr. Brewton. And I'm trying to find my notes on
23 what specifically they told him. (Mr. Lau
24 reviews document.) I apologize for the delay.

1 Q. Take your time, please.

2 A. Mr. Bryson said that Mr. Brewton told him that
3 he didn't do nothing. Mr. Bryson told me that
4 Mr. Brewton said he didn't do nothing, he said
5 he was innocent. He said that Mr. Kagonyera, he
6 said Mr. Kagonyera also told him that he was
7 innocent and did not do it.

8 Q. Were you able to speak to the informant named
9 Glenda Ann Belton? This is on page 55 of the
10 Commission brief.

11 A. I did not have an opportunity to speak with
12 Ms. Belton. Ms. Belton is now deceased.

13 Q. Were you able to speak with Derrico Jordan or
14 Ricky Rizk? This is on page 88 of the
15 Commission brief.

16 A. We attempted to speak with Derrico Jordan. He
17 was in federal custody. We made efforts with
18 the prison to schedule an opportunity to speak
19 with him. Through the course of those efforts,
20 the prison never set a scheduled interview, and
21 then we didn't have any additional communication
22 with them after that. We made multiple calls
23 trying to get that scheduled and then we never
24 heard back from them after our final call.

1 We didn't locate Mr. Rizk during the course
2 of our investigation.

3 Q. Did you attempt to locate Mr. Rizk and weren't
4 able to?

5 A. We did do some searches for him. It's possible
6 that he's in California or Virginia. We were
7 unable to pin down specifically where he was.

8 Q. Randy Hodge was an informant on page 99 of the
9 Commission's brief. Will you talk about what
10 Mr. Hodge originally told the sheriff's
11 department?

12 A. Mr. Hodge discussed in his statement to the
13 sheriff's department an apartment breaking and
14 entering that Mr. Kagonyera and his cousin,
15 Mr. Mills, Day Day, had allegedly told Mr. Hodge
16 about. We did not speak with Mr. Hodge because
17 the statement that he gave did not appear to be
18 related or to provide information consistent
19 with the Bowman homicide.

20 Q. And did Mr. Hodge come forward immediately after
21 the Bowman homicide or was it sometime later?

22 A. I'm not 100 percent sure when it was that he
23 came forward. If I remember correctly, it was
24 sometime later. But it's on page 99 of the

1 brief if the Commissioners would like to look at
2 the date on that.

3 MS. MONTGOMERY-BLINN: May I approach
4 the Witness, Your Honor?

5 JUDGE SUMNER: Yes, ma'am.

6 Q. Mr. Lau, I'm handing you a copy of the brief.

7 A. Sure.

8 Q. Does that refresh your recollection?

9 A. It does refresh my recollection. It was almost
10 two years following the homicide.

11 MS. MONTGOMERY-BLINN: At this point,
12 we're about to talk about the last
13 informant, but do the commissioners have
14 any questions at this point?

15 (No audible response.)

16 Q. The statement of Tyrell Dickey over on page 98
17 in the brief, Mr. Lau, would you remind the
18 Commissioners what's in that statement?

19 A. Mr. Dickey, it was exactly one year to the day
20 of the Bowman homicide, gave a statement to
21 Detective George Sprinkle. In that statement he
22 said this group of individuals, group B, went to
23 his home following the homicide. At that time
24 he said that Mr. Kagonyera told him that they

1 were robbing Mr. Bowman, that Mr. Kagonyera told
2 him that Aaron Brewton had shot Mr. Bowman, and
3 he said that Mr. Kagonyera asked him if he could
4 stay with Mr. Dickey, but that Mr. Dickey said
5 he could not because he had a child. He also
6 said that this statement occurred while he was
7 living on Jordan Road in Swannanoa.

8 Q. And how long after the homicide was it that
9 Mr. Dickey spoke to detectives?

10 A. It was exactly one year later.

11 Q. Were you able to speak with Mr. Dickey?

12 A. I was able to reach Mr. Dickey.

13 Q. And did you interview him?

14 A. I did. I interviewed him in person at his home
15 on March 11, 2000.

16 Q. And what did he say?

17 A. I'm sorry, 2011. He told me that they came to
18 his apartment in Pisgah View. He told me that
19 Kenneth told him that Detroit shot Mr. Bowman
20 through the door. He stated that Mr. Kagonyera
21 stayed with him for a few days, and that once
22 Dickey learned of the murder, he told him he
23 could no longer stay there.

24 Q. Are the details consistent or inconsistent with

1 the sheriff's department?

2 A. These details were inconsistent with the prior
3 statement that he had given.

4 Q. And just to clarify, is it your understanding
5 that when he refers to Detroit, he's speaking
6 about Robert Wilcoxson?

7 A. I'm sorry. Yes, Detroit was the street name for
8 Mr. Wilcoxson.

9 Q. Did you have any further contact with
10 Mr. Dickey?

11 A. Yes, I did. I had three phone calls with
12 Mr. Dickey. The phone calls took place over
13 April 18 and April 19.

14 Q. And who called who for these phone calls?

15 A. I initially called Mr. Dickey on the 18th
16 because I wanted to ask him a few more questions
17 about his statements given the inconsistency
18 between the one he gave police and the one he
19 gave to me when I first met with him at his
20 home.

21 MS. MONTGOMERY-BLINN: I forgot that I
22 had slides about these informants and their
23 records, I apologize.

24 (THEREUPON, MR. BRYSON'S AND

1 MR. DICKEY'S RECORDS ARE DISPLAYED.)

2 MS. MONTGOMERY-BLINN: There's
3 Mr. Bryson, Mr. Bryson's record, part one,
4 part two, part three. This is Tyrell
5 Dickey, who Mr. Lau is currently testifying
6 about.

7 Q. Mr. Lau, I'd like to play the recordings of
8 those phone conversations.

9 A. Sure.

10 (THEREUPON, PHONE CALL NUMBER ONE WAS
11 PLAYED.)

12 Q. Were you one of the people in that phone call?

13 A. Yeah, that was my voice asking the questions.

14 Q. Is that a fair and accurate representation of
15 that phone call?

16 A. It is.

17 (THEREUPON, PHONE CALL NUMBER TWO WAS
18 PLAYED.)

19 Q. And were you a part of that phone call, Mr. Lau?

20 A. Yes, I was.

21 Q. And is this a fair and accurate representation
22 of that phone call?

23 A. Yes, it is. I think it should be noted before
24 you play call number three that this is the end

1 of our communications on April 18. That evening
2 on my phone in my work office I had two messages
3 and three calls, three calls and two messages
4 were left, by Mr. Dickey asking me to call him
5 because he wanted to tell me something.

6 Q. And so you did call Mr. Dickey?

7 A. I called Mr. Dickey the following morning.

8 (THEREUPON, PHONE CALL NUMBER THREE
9 WAS PLAYED.)

10 Q. Mr. Lau, were you a participant in that phone
11 call?

12 A. Yes, I was.

13 Q. And was that a fair and accurate recording of
14 that phone call?

15 A. Yes, it was.

16 Q. Now, Mr. Lau, during the deposition of Robert
17 Wilcoxson, he mentioned a federal inmate

18 program, he referred to it as the 4K program.

19 Did you do any research or figure out what he
20 was talking about?

21 A. Well, what he was referring to, and this was
22 specifically in regard to we asked him about the
23 statement to Mr. Jordan and Mr. Rizk, who we
24 were unable to speak with. And he was talking

1 about the 5K program and that they were federal
2 inmates seeking to get relief on their sentence
3 or to get their sentence reduced by providing
4 substantial assistance to the incarceration of
5 other individuals. The federal sentencing
6 guidelines under section 5K1.1 allows the court
7 to depart from the guidelines following a 5K
8 motion if the Defendant has provided substantial
9 assistance in investigating or prosecuting
10 another person who has committed an offense.
11 The Buncombe County Detention Center housed
12 federal inmates and Dericho Jordan and Ricky
13 Rizk were federal inmates. There is in the file
14 the handwritten notes, and it's also in the
15 brief, from Dericho Jordan of several cases that
16 he was writing information about and providing
17 statements in.

18 MS. MONTGOMERY-BLINN: Commissioners,

19 do you have any questions? No?

20 (No audible response.)

21 Q. All right. Mr. Lau, just a couple more
22 questions for you.

23 MR. BECTON: I have one.

24 MS. MONTGOMERY-BLINN: Yes, please.

1 MR. BECTON: We just heard what
2 Mr. Hodge said. I'm looking at page 99.
3 It indicates that he was in prison at the
4 time that he claims Kenny talked to him
5 that night at his home.

6 A. I'm sorry?

7 MR. BECTON: On page 99 there's
8 September 9, 2002 interview with Hodge --

9 A. We were listening to Mr. Tyrelle Dickey.

10 MR. BECTON: Oh, that's right. Wrong
11 one, okay.

12 A. I'm sorry.

13 MR. BECTON: Thank you. My other
14 question has to do with Bryson. In the
15 file there are suspects alleged confessions
16 to others. On 10/8 Bryson said that
17 Williams and Kenny told him about the case,
18 one on September 21 in which Bryson says
19 Kenny implicates Wilcoxson, Williams, and
20 Isbell. Is it my understanding that Bryson
21 told you that he never implicated anybody
22 and never heard anything about this?

23 A. Mr. Bryson told us that he reviewed the
24 statement, didn't know these people. The only

1 person he said that he knew -- well, he said he
2 knew of those individuals, Mr. Kagonyera and
3 Mr. Brewton, and he said that it wasn't his
4 statement. I asked him, did you remember ever
5 having conversations with Ron Moore in his
6 office about this case? And at this point in
7 time he had the statement with him.

8 He said, no.

9 What about with anybody from the Buncombe
10 County Sheriff's Office regarding this case?

11 No; no.

12 MR. BECTON: So at the time of the
13 first statement by anybody in group B that
14 -- some involvement, if you listen to
15 Bryson, there was information,
16 misinformation pouring out there that
17 Bryson had identified these people or had
18 told that they were involved?

19 A. I'm sorry. I don't know if I understand your
20 question. And let me -- I'll refer to the brief
21 as well.

22 MR. BECTON: If Bryson says he didn't
23 talk to these people or that no one told --
24 they didn't tell him they were involved,

1 but there are statements that he did and
2 these statements were taken before anybody
3 in group B made a confession, any
4 confession, again, there is misinformation
5 floating in the police department
6 records --

7 Q. Can you direct me to where you're looking at in
8 the brief? I'm sorry.

9 MR. BECTON: Well, I'm actually
10 looking at your --

11 MS. MONTGOMERY-BLINN: Is it page 52,
12 Judge Becton?

13 MR. BECTON: Well, I have it on my
14 chart here so I'll just have to cross-
15 reference. (Mr. Becton reviews document.)
16 Let me find this and come back to it. Go
17 to your next witness. I will find it while
18 you talk.

19 MS. MONTGOMERY-BLINN: Are there other
20 commissioner questions?

21 (No audible response.)

22 Q. Mr. Lau, is there anything from your
23 investigation that you have attempted and that
24 we have not covered?

1 A. You've heard the name Freddie Wadsworth, who is
2 the father of Tisha Lee. I attempted to reach
3 him, but was unsuccessful in my efforts to reach
4 him. I imagine you've heard in the testimony
5 that according to Mr. Leon Bowman he was the
6 source of the information on the streets. He
7 attempted, according to our interview with
8 Mr. Devereux, which Mr. Devereux attested about,
9 testified about, and according to Mr. Kagonyera,
10 Mr. Wadsworth met with Mr. Kagonyera at the
11 district attorney's office and tried to speak
12 with Kenneth Kagonyera regarding accepting a
13 plea. And Mr. Wadsworth also, according to Sam
14 Constance, recently approached him about
15 receiving the reward money in this case.

16 The other thing with regards to our
17 investigation was the DNA testing on the door
18 panel and blue shirt. we just didn't have time
19 to do any more locations on the blue shirt or
20 the door panel prior to this hearing.

21 MR. SMITH: May I ask one quick
22 question about that? The blue shirt again,
23 I'm not quite sure in my mind where it was
24 found and how it related to the scarves in

1 terms of its location.

2 A. It was found about .3 miles from the bandanas on
3 Old Fort Road. The shirt, it's unclear whether
4 or not -- in the investigative file they don't
5 reference it as an item of evidence that they --
6 it's unclear whether or not the shirt even has
7 anything to do with the homicide.

8 MR. SMITH: It could have been just,
9 it just could have come off a truck or
10 something? There's no way way to know.

11 A. It's unclear from the file what the shirt -- how
12 the shirt relates. We know that the shirt was
13 submitted to evidence four days after the
14 bandanas, but we don't have a record of when
15 that shirt was collected. It's on the hand-
16 drawn map, which could indicate that it was
17 collected at the same time, but that's unclear.

18 MR. SMITH: Thank you.

19 Q. Mr. Lau, during this investigation we've gone
20 through the new evidence that you uncovered that
21 was not available at the time of the plea and
22 the evidence that has all been presented here
23 today. Was there any new evidence uncovered
24 that further implicated the people in group B,

1 the co-Defendants, the people who were
2 convicted?

3 A. To my knowledge, no.

4 MS. MONTGOMERY-BLINN: Commissioner
5 questions?

6 (No audible response.)

7 Q. I think Judge Becton is still working on a
8 question so I'll ask you to remain, Mr. Lau.

9 A. May I just say this to Judge Becton, because I'm
10 looking at the brief as well, and to the
11 Commissioners? I'm looking at the brief and I
12 see two statements here by Millis Bryson. I
13 believe that Mr. Bryson only had one of these
14 statements in front of him when I was
15 interviewing him, and I don't recall which one
16 it was at this point in time. And I'm saying
17 this because when I look at these two
18 statements, I do recall sending him a statement
19 and I believe it was one of the two, and I don't
20 specifically recall which statement I had faxed
21 to the correctional institute.

22 MR. BECTON: what page are you on in
23 the Bryson statement?

24 A. 52 there is a handwritten statement, and 54

1 there's a statement. I believe those are both
2 attributed to Millis Bryson.

3 MR. BECTON: My page says Kenny's
4 statement, that's why I was asking.

5 A. There was a notation on the file. There's a
6 sticky note on this statement, one of them that
7 says Millis statement. So my understanding --
8 well, based on that note that is along with this
9 statement in the file, we believe that this was
10 a handwritten statement by Millis Bryson.

11 Q. And the title is Kenny's statement?

12 A. The title on it says Kenny's statement.

13 MS. MONTGOMERY-BLINN: May I approach
14 the witness, Your Honor?

15 JUDGE SUMNER: Yes.

16 A. Thank you. I'm reviewing my report from that
17 phone conversation. It was not the handwritten
18 statement that was provided to Mr. Bryson when I
19 faxed it to the federal correctional institute.
20 I just want that to be clear as you're
21 considering deliberating.

22 MS. MONTGOMERY-BLINN: Are there any
23 more questions for Mr. Lau?

24 (No audible response.)

1 Q. Mr. Lau, you can come down.

2 A. Thank you.

3 (THEREUPON, MR. LAU STEPS DOWN FROM
4 THE WITNESS STAND.)

5 * * * * *

6 MS. MONTGOMERY-BLINN: Commissioners, this
7 is the close of the evidence that I have to
8 present to you. Ms. Evita Bowman, one of the
9 daughters of the victim, would like to speak and
10 make an victim impact statement, and then I will
11 brief you on your standard of review and the law
12 as you move into deliberation. Would you like
13 Ms. Bowman to come forward now?

14 JUDGE SUMNER: Yes.

15 MS. MONTGOMERY-BLINN: And if you will just
16 give me one moment to confer with Ms. Bowman.

17 (THEREUPON, MS. MONTGOMERY-BLINN
18 CONFERS WITH MS. BOWMAN.)

19 MS. EVITA BOWMAN: I would like to thank
20 you all for allowing me to be here today. And I
21 also just want to say, you know, it's been a
22 long, this has been a long trial from beginning
23 to the end, and I didn't know ten years later
24 that it was going to be opened back up. I've

1 learned a lot today that we didn't learn in the
2 beginning. And I feel like if the judicial
3 system in Buncombe County could do a better job
4 than what they did as far as structurizing
5 trials and the way they were closed and put
6 together, but other than that I've learned a lot
7 of information today. And whatever the outcome
8 is, I just feel like, you know, a lot of the
9 young boys and people out there, they have
10 records that reflect on them, but there's a lot
11 of people that work in the district attorney's
12 office, the court system, and different places,
13 that they have a lot of flaws with them, too,
14 and they're going behind a lot of things.

15 In Asheville itself right now there's a lot
16 of investigations going on, the Asheville Police
17 Department is under investigation, and the
18 district attorney, and places that's supposed to
19 be helping young people turn their lives around.
20 So I just wish that the system would get better
21 and hope that we come to some kind of closure
22 today, and that's all.

23 JUDGE SUMNER: Ms. Bowman, thank you very
24 much. Thank you.

1 MS. MONTGOMERY-BLINN: Thank you so much.

2 MS. BOWMAN: You're welcome.

3 MS. MONTGOMERY-BLINN: Commissioners, this
4 is the evidence that I have to present to you.
5 I would just like to remind you again of the
6 standard of review, this is taken directly from
7 the Commission Statutes, and I'll read it to
8 you. In cases where the person entered and was
9 convicted on a plea of guilty, if all eight
10 voting members of the Commission conclude that
11 there is sufficient evidence of factual
12 innocence to merit judicial review, the case
13 shall be referred.

14 of course, it's your decision on what you
15 decide to do with this case and I've just
16 outlined brief potential options that I saw for
17 you to consider. Of course, the first one is
18 that there is sufficient evidence and that the
19 case should be referred. The second one is that
20 there is not sufficient factual evidence of
21 innocence and the case and should not be
22 referred and it would be closed. But I also, of
23 course, just remind you, if you would like the
24 staff to conduct additional investigation and

1 you would like to direct me to do additional
2 investigation and continue the hearing, of
3 course, that is also always an option that you
4 have.

5 And at this time I will tell you that I am
6 done. And if you would like to begin deliberation
7 whenever you are ready.

8 JUDGE SUMNER: All right. Thank you. This
9 is a closed session at this point and everyone
10 else will be excused except voting Commissioners
11 of the staff and Ms. Montgomery-Blinn.

12 (THEREUPON, DELIBERATION PROCEEDINGS
13 TOOK PLACE OFF THE RECORD AND WERE NOT
14 REPORTED BY THE COURT REPORTER.)

15 JUDGE SUMNER: We're back on the record at
16 this time. The commissioners in deliberation
17 have decided that in the matters of the State of
18 North Carolina versus Kenneth Manzi Kagonyera,
19 Robert Wilcoxson, III, File Numbers 00 CRS
20 65086, 00 CRS 65088, by unanimous decision of
21 eight to zero, that this Commission has found
22 that there exists evidence of factual innocence
23 sufficient to merit judicial review -- there
24 exists sufficient evidence of factual innocence

1 to merit judicial review. This Commission also,
2 having considered their responsibility under
3 enabling statutes, has determined that no
4 further action is required at this time.

5 The Commission further wishes to thank
6 Ms. Kendra Montgomery-Blinn and the entire
7 Commission staff for the excellent work done in
8 these matters. And at this point this
9 Commission hearing is adjourned. Thank you,
10 folks.

11 * * * * *

12 (THEREUPON, THE HEARING WAS CONCLUDED AT
13 7:03 P.M.)

14 _____
15
16
17
18
19
20
21
22
23
24

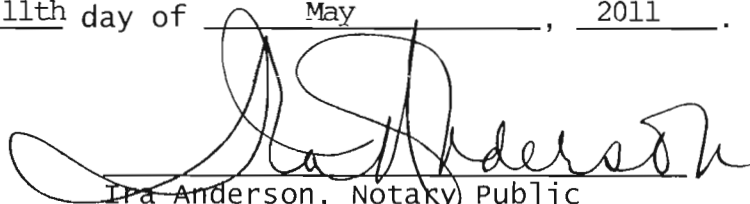
NORTH CAROLINA
CABARRUS COUNTY

C E R T I F I C A T E

I, Ira Anderson, Court Reporter, and a Notary Public, the officer before whom the foregoing proceeding was conducted, do hereby certify that the witness(es) whose testimony appears in the foregoing proceeding were duly sworn by me; that the testimony of said witness(es) were 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 transcript of the testimony of the witness(s).

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 11th day of May, 2011.


Ira Anderson, Notary Public
Notary No. 199773380004

CERTIFICATION
NULL AND VOID IF
ENVELOPE SEAL IS BROKEN