

NORTH CAROLINA GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA	)	COUNTY OF WASHINGTON
)	
v.	)	94 CRS 1984
	)	94 CRS 1566
LEROY SPRUIELL,)	
)	
Defendant.)	
_____)	

STATE OF NORTH CAROLINA	)	COUNTY OF WASHINGTON
)	
v.	)	94 CRS 1973
	)	94 CRS 1565
WALLACE BRANDON JONES,)	
)	
Defendant.)	
_____)	

HEARING BEFORE THE
NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

VOLUME I OF V

(Pages 1 - 237)

Monday, October 1, 2018

Wanda B. Constantino, CVR-CM-M
AOC-Approved Per Diem Reporter
1102 Driftwood Drive
Siler City, North Carolina 27344
919.548.4914
wanda@mywordservices.com

APPEARANCES

Commi ssi oners Present and Servi ng:

The Honorable Anna Mi l l s Wagoner, Chair

Ni gl e "Tex" Barrow, Esq. , Commi ssi oner

John Boswel l , Esq. , (Al ternate servi ng as Commi ssi oner)

Johnson Bri tt, Esq. , Commi ssi oner

Ms. Cami l l a Cover (Al ternate servi ng as Commi ssi oner)

Sheri ff Kevi n Frye, Commi ssi oner

Mi chael Grace, Esq. , Commi ssi oner

Ms. Jenni fer Thompson (Al ternate servi ng as
Commi ssi oner)

Al so Present:

Deborrah L. Newton, Esq. (Commi ssi oner servi ng
as Al ternate)

Li ndsey Gui ce Smi th, Esq.

North Caroli na Innocence Inqui ry Commi ssi on

Admi ni strati ve Offi ce of the Courts

Post Offi ce Box 2448

Ral ei gh, North Caroli na 27602

TABLE OF CONTENTS

	<u>PAGE</u>
Col loquy	5
Opening Comments by Ms. Guice Smi th	8
<u>COMMI SSION' S WI TNESSSES</u>	
Catheri ne Matoi an Exami nati on by Ms. Guice Smi th	14
Beth Tanner Exami nati on by Ms. Guice Smi th	105
Col loquy	106
<u>COMMI SSION' S WI TNESSSES (Cont' d.)</u>	
Catheri ne Matoi an (re-cal led) Exami nati on by Ms. Guice Smi th	108
Joseph M. Ludas Exami nati on by Ms. Guice Smi th	133
Catheri ne Matoi an (re-cal led) Exami nati on by Ms. Guice Smi th	156
Comments by Ms. Guice Smi th	157
<u>COMMI SSION' S WI TNESSSES (Cont' d.)</u>	
Meghan Cl ement Exami nati on by Ms. Guice Smi th	159
Col loquy	237

TABLE OF CONTENTS (Cont' d.)

<u>HANDOUTS</u>		
<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE IDENTIFIED</u>
1	Map	18
2	Portion of John Skinner Interview	72
3	Affidavit of John Skinner	72
4	Affidavit of Maynard Harrell	84
5	Affidavit of Seth Edwards	88
6	Affidavit of Connie Widenhouse	92
7	Affidavit of Leticia Echols	95
8	Portion of Marcus Jimison Interview	97
9	Affidavit of Marcus Jimison	98
10	Portion of Amos Tyndall Interview	99
11	Affidavit of Amos Tyndall	100
12	Affidavit of Cart Stewart	101
13	Affidavit of David Irvine	103
14	Affidavit of Chris Mumma	104
15	NCSCCL 2015 Latent Print Report	122
16	Marty Ludas CV	134
17	Ludas Report #1	138
18	Ludas Report #2	149
19	Ludas Report #3	149
21	Comparison List	159
22	Meghan Clement CV	160
23	DNA Testing Chart	167

1 PROCEEDINGS OF MONDAY, OCTOBER 1, 2018:

2 (Proceedings began at approximately 10:06
3 a.m.)

4 JUDGE WAGONER: Good morning. My name is Anna
5 Mills Wagoner. I am the chairman -- chairperson of this
6 Commission.

7 This hearing is open to the public, according to
8 N.C. General Statute 15A-1468(a). Although the hearing is
9 open to the public, I'm going to ask that distraction be
10 kept to a minimum. The door will be closed during the
11 hearing. With the exception of Commission staff, no one
12 should go in or out unless we're on break. If there are any
13 disruptions, you will be asked to leave the hearing.

14 At this time we'll go around the table and let the
15 commissioners and Commission staff who are at the table
16 state their names and spell their names for the court
17 reporter.

18 If you're serving as a commissioner during today's
19 hearing, please so indicate when you say your name. And if
20 you're attending as an alternate, please state that as well
21 when we go around the room.

22 Do you want to start with y'all down here?

23 MS. MATOIAN: Catherine Matoian,
24 C-a-t-h-e-r-i-n-e, M-a-t-o-i-a-n.

25 MS. TANNER: Beth Tanner. B-e-t-h, T-a-n-n-e-r.

1 MS. GUICE SMITH: Lindsey Guice Smith,
2 L-i-n-d-s-e-y, G-u-i-c-e, S-m-i-t-h. I'm the Director.

3 ALT. COMMISSIONER NEWTON: Deborrah Newton.
4 D-e-b-o-r-r-a-h, N-e-w-t-o-n. I'm attending as an
5 alternate.

6 ALT. COMMISSIONER COVER: Camilla Cover.
7 C-a-m-i-l-l-a, C-o-v-e-r. And I'm an alternate to today's
8 hearing, serving.

9 COMMISSIONER BRITT: I'm Johnson Britt.
10 J-o-h-n-s-o-n, B-r-i-t-t. I'm a commissioner to today's
11 hearing. I represent the district attorneys.

12 JUDGE WAGONER: Anna Mills Wagoner, chairperson.
13 I'm a Superior Court Judge from 19C.

14 COMMISSIONER GRACE: Mike Grace. G-r-a-c-e,
15 defense attorney, and I'm a commissioner.

16 COMMISSIONER FRYE: Kevin Frye. K-e-v-i-n,
17 F-r-y-e. I represent the sheriffs.

18 COMMISSIONER BOSWELL: I'm John Boswell. J-o-h-n,
19 B-o-s-w-e-l-l, and I'm a commissioner.

20 COMMISSIONER BARROW: Nigle Barrow. I'm a
21 commissioner.

22 ALT. COMMISSIONER THOMPSON: Jennifer Thompson,
23 J-e-n-n-i-f-e-r, T-h-o-m-p-s-o-n. I'm an alternate but
24 serving as a commissioner today.

25 JUDGE WAGONER: All right. Thank you all.

1 For the record, we do have eight voting members of
2 the Commission present, as required by law. At this time I
3 will make a formal inquiry as to any commissioner who needs
4 to recuse himself or herself pursuant to Rule 7C as one of
5 our Rules of Procedures.

6 And the Rule reads, that, quote:

7 "A commissioner shall recuse himself or
8 herself if he or she has had any involvement in
9 the case during the original trial or any post-
10 conviction motions. A commissioner shall recuse
11 himself or herself if some event has caused him or
12 her to become biased about a case and unable to
13 participate in the hearing in a fair and impartial
14 manner."

15 Are there any commissioners who need to recuse
16 himself or herself based on this Rule?

17 (No response.)

18 JUDGE WAGONER: Seeing none, we will move on.

19 Rule 7C.3 prohibits commissioners from conducting
20 any independent investigation of the case. Have any
21 commissioners conducted any independent investigations of
22 the case?

23 (No response.)

24 JUDGE WAGONER: No. All right. To those -- to
25 you, attending as an alternate, I'll remind you that 7D --

1 Article 7D in the Commission Rules and Procedures states,
2 quote,

3 "If an alternate commissioner is not
4 fulfilling full Commission duties, he or she may
5 attend hearings of the Commission but may not
6 participate in deliberations and may not vote.
7 During the questions during the hearing, alternate
8 commissioners may ask questions of the witnesses.
9 Alternate commissioners will be asked to leave
10 prior to deliberations."

11 Now, at this time, if there is no other business
12 for me, I'm going to turn over the hearing to our director,
13 Lindsey Guice Smith, for presentation of the case.

14 MS. GUICE SMITH: Good morning, Commissioners.

15 COMMISSIONER BOSWELL: Good morning.

16 COMMISSIONER BARROW: Good morning.

17 MS. GUICE SMITH: This case involves the 1993
18 homicide and robbery of William Frank Swain in Plymouth,
19 North Carolina.

20 JUDGE WAGONER: Lindsey, could you speak up a
21 little bit, maybe?

22 MS. GUICE SMITH: Sure.

23 Leroy Spruiell and Wallace Brandon Jones were both
24 convicted of first-degree murder and robbery with a
25 dangerous weapon in this case.

1 Dana Maybin, a co-defendant, was also convicted of
2 accessory to first-degree murder, common law robbery, and
3 breaking and entering. Ms. Maybin has not applied to the
4 Commission.

5 On November 2nd, 2009, Mr. Spruiell and Mr. Jones
6 applied to the Commission after referral -- after a referral
7 from the North Carolina Center on Actual Innocence. Both
8 submitted a questionnaire and consent form to the
9 Commission. Both asserted their complete factual innocence
10 related to the homicide and robbery of Frank Swain.

11 Throughout the Commission's inquiry, both
12 Mr. Spruiell and Mr. Jones have cooperated with the
13 Commission staff in accordance with North Carolina General
14 Statute 15A-1467(g).

15 Pursuant to North Carolina General Statute 15A-
16 1460, a claim of factual innocence means a claim on behalf
17 of a living person convicted of a felony in the General
18 Court of Justice of the State of North Carolina asserting
19 the complete innocence of any criminal responsibility for
20 the felony for which the person was convicted and for any
21 other reduced level of criminal responsibility relating to
22 the crime and for which there is some credible, verifiable
23 evidence of innocence that has not previously been presented
24 at trial or considered at a hearing granted through post-
25 conviction relief.

1 As a reminder, pursuant to the Commission's Rules
2 and Procedures, for the purposes of claimants who pled
3 guilty, new evidence is evidence that wasn't reasonably
4 available at the time of the claimant's plea.

5 In this case Mr. Jones was convicted after a
6 trial, and Mr. Spruiell was convicted after he pled guilty
7 pursuant to State versus Alford. Pursuant to Commission
8 Rules and Procedures, Alford pleas are treated as guilty
9 pleas.

10 The new evidence will be presented at this
11 hearing. You have all been provided with an 854-page brief
12 that describes the law enforcement investigation, the trial
13 of Mr. Jones, and post-conviction activity and
14 investigations in the case. For the most part during this
15 hearing, we will not review the material covered in your
16 brief in detail but will be presenting the Commission's
17 investigation. I will refer you to page numbers in your
18 brief as it relates to topics for which the Commission staff
19 is testifying, but typically we will not go into great
20 detail about that information that was in your brief.

21 Staff Attorney Catherine Matoian and former
22 Associate Director Sharon Stellato were the assigned
23 investigators on this case. Throughout the hearing, I will
24 be calling Ms. Matoian to testify about the Commission's
25 investigation.

1 Several witnesses have also been subpoenaed to
2 testify, including a latent print expert as well as a DNA
3 expert.

4 The claimants, Leroy Spruiell and Wallace Brandon
5 Jones, are currently incarcerated in the North Carolina
6 Department of Public Safety. Judge Wagoner issued a writ
7 for their presence, and they will testify during this
8 hearing.

9 Commission staff has interviewed numerous other
10 individuals who will not be called to testify. Instead,
11 Commission staff will testify about these interviews.
12 Commission staff will testify whether the interviews were
13 recorded and transcribed. Although I do not intend to hand
14 out the transcripts of those interviews, with the exception
15 of a few, for any interviews that commissioners wish to
16 review in full, you may request the transcript, and we'll
17 certainly provide it to you with the caveat that you may be
18 asked to read that on a break or overnight.

19 The Attorney General's Office represents the State
20 in this case, as the District Attorney's Office is recused.
21 Assistant Attorney General Boz Zellinger has been assigned
22 to the case by the A.G.'s Office. He is not here today, but
23 I understand we do have a representative of the A.G.'s
24 Office present.

25 Mr. Jones is represented by Ms. Chris Mumma, who

1 is here today. And Mr. Spruiell is represented by Mr. Tommy
2 Routten, who is here today.

3 As required under our Rules, the Commission held a
4 prehearing conference on September 17th of this year. At
5 that prehearing conference, Mr. Zellinger expressed that he
6 wished to exercise his right to inspect the evidence that
7 would be presented to the Commission. The Commission let
8 Mr. Zellinger know that he was welcome to do so and review
9 any materials that he wished.

10 Pursuant to North Carolina General Statute 15A-
11 1468(a2), the Attorney General's Office has the right to
12 inspect any evidence that may be presented to the Commission
13 that has not previously been presented to any judicial
14 officer or body, and any information that they deem
15 necessary -- I'm sorry -- deem relevant to the proceedings.

16 On September 24th, Mr. Zellinger requested to
17 review the brief that you-all have been provided. And on
18 September 27th, he requested to review the handouts that
19 were in your notebooks that were ready at that time.
20 Commission staff accommodated Mr. Zellinger's requests.

21 Pursuant also to 15A-1468(a2), Mr. Zellinger has
22 provided a written statement which will become part of the
23 record. Commissioners, this will be designated as Handout
24 78, I believe, in your Hearing Handout notebooks. In
25 addition, his statement has -- in addition to his statement,

1 he also attached the 32-page Attorney General Memorandum,
2 which was provided on pages 559 to 590 of your brief. The
3 handout will be provided to you later in this hearing, and
4 you'll have an opportunity to review his statement prior to
5 the conclusion of the hearing.

6 At the end of the hearing, you will be asked to
7 determine whether there is sufficient evidence of factual
8 innocence to merit judicial review. Because Mr. Spruiell
9 pled guilty, his case will only move forward if all eight
10 voting members of the Commission vote that there is
11 sufficient evidence of factual innocence to merit judicial
12 review. If the vote is not unanimous, Mr. Spruiell's case
13 will be closed with the Commission, and no appeal is
14 available.

15 Because while Mr. Brandon Jones was convicted
16 after a trial, his case will only move forward if at least
17 five of the eight voting commissioners vote that there is
18 sufficient evidence of factual innocence to merit judicial
19 review. If less than five commissioners vote for further
20 review, Mr. Jones's case will be closed to the Commission,
21 and no appeal is available.

22 Do commissioners have any questions before we get
23 started?

24 (No response.)

25 MS. GUICE SMITH: Okay. Thank you.

1 At this time the Commission would call staff
2 attorney Catherine Matoian.

3 CATHERINE MATOIAN,
4 having been called as a witness for the Commission, was
5 sworn by Judge Wagoner and testified as follows:

6 EXAMINATION BY MS. GUICE SMITH:

7 Q. Will you please state your full name for the
8 record?

9 A. Catherine Matoian.

10 Q. And how are you employed?

11 A. I'm a grant staff attorney with the North Carolina
12 Innocence Inquiry Commission.

13 Q. How long have you been employed at the Commission?

14 A. Almost six years.

15 Q. Were you assigned to the Leroy Spruiell and Wallace
16 Brandon Jones case?

17 A. I was.

18 Q. And in the course of your investigation, did you
19 obtain and review files from other agencies?

20 A. I did.

21 Q. Can you tell the commissioners what files you
22 reviewed?

23 A. I can. We reviewed the N.C. State Crime Lab file;
24 the State Bureau of Investigation investigative file; court
25 files from the Washington County Clerk of Court for all

1 three co-defendants; the Washington County Sheriff's Office
2 file, which also included the documents from the post-
3 conviction Plymouth Police Department investigation into
4 this case; the Washington County District Attorney's file;
5 the Attorney General's Office file; and Department of Public
6 Safety records for Mr. Spruiell, Mr. Jones, Ms. Maybin, and
7 Wyatt Spruiell -- these records included education,
8 probation, Parole Commission, substance abuse treatment,
9 combined records, and medical and mental health records for
10 all those individuals; the Department of Public Safety
11 Movement Records for an individual named Edward Hudson and
12 clemency files for both Mr. Spruiell and Mr. Jones.

13 Q. And were there any other files that you reviewed?

14 A. We did. We obtained and reviewed a partial file
15 from Mr. Spruiell's trial attorney, Seth Edwards. We also
16 did a search of Mr. Jones's trial attorney, John Skinner's
17 office, and located a small file which was also reviewed by
18 Commission staff.

19 We contacted two private investigators used by
20 defense attorneys directly, and neither of them retained a
21 file. However, at least a portion of their files were found
22 in other sources that we reviewed.

23 We received a file from Constance Widenhouse, who
24 is Mr. Jones's appellate attorney. And we also received a
25 file from Amos Tyndall -- Tyndall, who worked on Mr. Jones's

1 clemency petition, and that also included a portion of
2 Mr. Jones's trial transcript.

3 Q. Were there attorneys for whom no files could be
4 located?

5 A. There were. Mr. Spruill's other trial attorney,
6 Maynard Harrell, had no file. Mr. Spruill's clemency
7 attorney, Carl Stewart, had no file. Mr. Spruill's post-
8 conviction attorney, David Irvine, had no file. And the
9 Commission had sent two letters to Mr. Jones's trial
10 attorney, James Vosburgh, in 2011. He did not respond to
11 those letters, and he passed away in 2013. So we do not
12 have a file for him.

13 Q. Did you also obtain and review files from North
14 Carolina Prisoner Legal Services?

15 A. We did. We originally requested files from P.L.S.
16 for both Mr. Spruill and Mr. Jones in 2017. At that time
17 P.L.S. provided a file for Mr. Jones and an affidavit
18 related to Mr. Spruill's file. It indicated that the file
19 clerk had searched the file room that P.L.S. maintained on
20 their premises and checked the inventory file list for the
21 files stored off premises and had not located a file for
22 Mr. Spruill.

23 They later contacted the Commission indicating
24 they had located a file for him, and it was provided to the
25 Commission. P.L.S. had filed an M.A.R. on behalf of

1 Mr. Jones, but nothing was filed by P.L.S. in Mr. Spruiell's
2 case.

3 MS. GUICE SMITH: Commissioners, the affidavit
4 related to that search for Mr. Spruiell's file by P.L.S. is
5 not being provided to you since P.L.S. ultimately did locate
6 the file. It is available if any of you want to look at it.

7 BY MS. GUICE SMITH:

8 Q. Did you obtain and review files from the North
9 Carolina Center on Actual Innocence?

10 A. We did. We obtained and reviewed the North
11 Carolina Center on Actual Innocence's file for both Spruiell
12 and Jones subsequent to the referral of both of their cases
13 to the Commission. This file also included a portion of
14 Mr. Jones's trial transcript. Between the two partial
15 transcripts received by the Commission in those two defense
16 attorney files, the Commission has received a full copy of
17 Mr. Jones's trial transcript.

18 And the Center file also included portions of the
19 private investigator files.

20 Q. Did the Center's file also have any information
21 about DNA tested -- testing that they had had conducted?

22 A. It did. The Center had DNA testing conducted at
23 LabCorp in 2007, and the Commission requested and received
24 that file related to the testing.

25 Q. And did that file come from LabCorp?

1 A. It did.

2 MS. GUICE SMITH: Commissioners, do you have any
3 questions for Ms. Matoian about this material?

4 (No response.)

5 MS. GUICE SMITH: Okay. Commissioners, throughout
6 the hearing, several locations of Plymouth, North Carolina,
7 are going to be mentioned. I'm going to put a map of
8 Plymouth on the screen as well as on an easel.

9 The easel, please.

10 You can refer to the copy in your Hearing Handout
11 notebook. It's Handout Number 1. It may be easier for you
12 to see --

13 JUDGE WAGONER: It's the new handout that was here
14 today, correct?

15 MS. GUICE SMITH: That's correct.

16 (Handout Number 1 was identified for the
17 record.)

18 MS. GUICE SMITH: If at any point you want me to
19 put it back on the screen because the copy in your notebook
20 is not working for you, please let me know, and we'll do
21 that. We'll give you a minute to orient yourself to that
22 handout.

23 BY MS. GUICE SMITH:

24 Q. All right. Ms. Matoian, if you can please point
25 out on the screen, to the best of your ability, the various

1 areas on the map.

2 A. Sure. Some of it might be a bit out of my reach.
3 Right here, this is the victim's trailer in Freeman's
4 Trailer Park off of Folly Road in Plymouth.

5 Down here is the residence of Ed Champ, Sr., where
6 Jones was living during the time he was living in Plymouth.

7 Here is the residence of Jack Spruiell, who is
8 Mr. Spruiell's father.

9 Right here where Plume Street is, is the residence
10 of Leroy Spruiell where he was living at the time of the
11 murder.

12 And in the top corner is Big Ed's Bar, which is
13 where Mr. Spruiell and Mr. Jones say they were the night of
14 the murder.

15 And in between Plume -- right on Plume Street near
16 64 is where the Red Apple was where Ms. Maybin said they
17 stopped at one point that night.

18 Q. Thank you. Ms. Matoian, did you interview law
19 enforcement that had worked on this case?

20 A. We did. We interviewed law enforcement officers
21 who were involved in the original investigations as well as
22 the post-conviction investigations.

23 Q. I'm going to turn your attention now to Janice
24 Spruiell. What was Detective Spruiell's role in the
25 investigation?

1 A. She was the lead detective assigned to the case by
2 the Washington County Sheriff's Office.

3 Q. And is she still employed by the Washington County
4 Sheriff's Office?

5 A. No, she's not.

6 Q. Did you interview Detective Spruiell?

7 A. Yes. We interviewed her in person on June 15th,
8 2011.

9 Q. Was this interview recorded and transcribed?

10 A. It was.

11 Q. Did she recall her involvement in the case?

12 A. She did.

13 Q. What did she say?

14 A. She stated that she did not feel she was qualified
15 to be the lead investigator on the case because she did not
16 have the training it took to solve murders, and she would
17 always reach out to the S.B.I. for their assistance.

18 She said that she had known Mr. Spruiell and his
19 family for pretty much all of Mr. Spruiell's life and
20 indicated she had only met Mr. Jones one time when she had
21 given him and Dana Maybin a ride sometime prior to the
22 murder when the car they were driving broke down on the side
23 of the road. She said that she knew the victim because
24 informants around town had come to her about the victim's
25 drug business.

1 Q. What did she say about the night of the crime?

2 A. She stated that she was at the Sheriff's Christmas
3 party when she received a call about the murder and that
4 when she arrived on the scene, that Detective Jimmy Peal was
5 already there and that a large crowd had formed.

6 She asked dispatch to call the S.B.I. in, and the
7 first thing she did upon arrival was talk to Wyatt Spruiell.
8 She stated that the people in the crowd that had formed were
9 saying that Wyatt Spruiell was the one who had killed the
10 victim.

11 She said that she herself was suspicious of Wyatt
12 Spruiell to begin with because he had been with the victim
13 all day, had a criminal record, and was a drug user. She
14 also knew him to steal items to support his drug habit,
15 including from his parents. And she stated she was also
16 suspicious because he was the last person seen with the
17 victim and the person who found the victim dead. And she
18 wanted to tighten down everything she could get off of
19 Mr. Wyatt Spruiell.

20 Prior to the S.B.I.'s arrival, she also called
21 Sonja Day, who was the victim's girlfriend and Wyatt
22 Spruiell's sister -- she was in prison in Raleigh at the time
23 -- to see if she knew anything about the victim's death.

24 When the S.B.I. arrived, Special Agent Dennis
25 Honeycutt began processing the crime scene. And she stated

1 that she also had an officer go to the laundromat to see if
2 anyone was washing clothes because the medical examiner told
3 her that whoever had killed the victim was going to have
4 bloody clothes. They did not ultimately locate anyone at
5 the laundromat.

6 Q. Was that information about law enforcement
7 checking out the laundromat in the law enforcement file that
8 was provided to the Commission by the sheriff's office?

9 A. No, it was not.

10 Q. What did Detective Spruiell say about the day after
11 the crime?

12 A. Detective Spruiell stated that on the morning of
13 December 20th, 1993, Linda Hinson, who is Mr. Spruiell's
14 sister and was an employee of the sheriff's office at that
15 time, called Janice Spruiell crying and wanting to know if
16 they had Leroy Spruiell in jail.

17 According to Janice Spruiell, Linda Hinson told her
18 she had received a phone call indicating that Leroy Spruiell
19 had killed the victim.

20 Detective Spruiell also stated that Ray Price, who
21 was Mr. Spruiell's brother-in-law, also called and told her
22 that Leroy Spruiell's mom had been receiving calls from
23 people who said that Mr. Spruiell had killed the victim. Ray
24 Price also asked whether Leroy Spruiell was already in jail.

25 Q. Was the information about the phone calls from

1 Linda Hinson and Ray Price in the law enforcement file that
2 was provided to the Commission by the sheriff's office?

3 A. No, it was not.

4 Q. Did Detective Spruiell indicate what she did in
5 response to the calls by Linda Hinson and Ray Price?

6 A. She stated that she went out and picked up Leroy
7 Spruiell and interviewed him.

8 Q. Did Detective Spruiell state when this interview of
9 Leroy Spruiell occurred?

10 A. No, she did not.

11 Q. Does the Washington County Sheriff's Office file
12 provide any information as to the date of the interview?

13 A. Yes. It indicates that the date of that first
14 interview was December 24th, 1993.

15 Q. And what did Detective Spruiell tell you about that
16 interview?

17 A. She said that Mr. Spruiell told her he had been at
18 Big Ed's Bar that night, and he had also told her that he
19 had seen the victim at the Winn-Dixie the morning of the
20 murder.

21 Leroy told her he had been driving his brother's
22 truck. And Detective Spruiell then informed Commission staff
23 that she recalled Leroy's father testifying at trial that
24 the truck was not drivable that day.

25 Q. Did she say whether she did anything in response

1 to the interview with Leroy?

2 A. She did. She stated that she went and interviewed
3 Ed Champ, Sr., who was the owner of Big Ed's Bar, and he
4 confirmed that Mr. Spruiell was at the bar the entire night.
5 But she later found out from Lynn Rogers that that was not
6 true.

7 Q. Was Detective Spruiell asked about Maurice Wilkins?

8 A. She was.

9 Q. And can you remind the commissioners who Maurice
10 Wilkins is?

11 A. Maurice Wilkins told law enforcement he was with
12 two men named Joseph Lynn and Lee McPhatter that --

13 JUDGE WAGONER: When did she interview Maurice
14 Wilkins?

15 THE WITNESS: I can double-check. I believe he
16 was interviewed the next day, or on the 20th.

17 A. Mr. Wilkins was a suspect in the crime because he
18 was seen near the victim's house on the night of the murder,
19 and law enforcement also received information the day after
20 the murder that Mr. Wilkins had a cut on his hand that he
21 had sewed up himself.

22 Mr. Wilkins also told law enforcement he was at
23 Lee McPhatter's aunt's house, which was near the victim's
24 house, the night of the crime and that he had cut himself
25 while cutting an orange and that he had, in fact, sewed that

1 cut up himself.

2 He also testified to seeing Leroy Spruiell driving
3 towards the victim's house at about 8:40 p.m. on the night
4 of the crime.

5 MS. GUICE SMITH: Commissioners, you can refer to
6 page 60 of your brief for a summary of all of the statements
7 that Maurice Wilkins made about the blue truck.

8 BY MS. GUICE SMITH:

9 Q. What did Detective Spruiell tell you about Maurice
10 Wilkins?

11 A. Detective Spruiell said that Wilkins was a dead end
12 because he had an alibi of going to the Golden Skillet to
13 see his girlfriend at about 9:00 p.m. the night of the
14 murder. Detective Spruiell was asked to reconcile her
15 statement of Mr. Wilkins' alibi with Mr. Wilkins putting
16 Mr. Spruiell in a truck going to the crime scene around the
17 time of the murder. Detective Spruiell stated that Wilkins
18 had an alibi and wasn't in the area between the time that
19 Wyatt Spruiell left the victim and when Wyatt Spruiell later
20 found the victim.

21 Q. Can you remind the commissioners what time Wyatt
22 Spruiell said he left the victim?

23 A. I can. Mr. Wyatt Spruiell said he left the victim
24 around 7:30 p.m. and returned around 10:00 p.m.

25 Q. Did Detective Spruiell provide any additional

1 information as to what led law enforcement to Mr. Spruiell
2 and Mr. Jones as suspects?

3 A. She did. She stated that a man named Robert
4 Spruiell, who was dating Sherry Honea, started calling her,
5 and said that Sherry Honea knew who killed the victim and
6 that Sherry Honea and Dana Maybin were running from the law
7 in South Carolina.

8 Janice Spruiell sent someone to go talk to
9 Ms. Maybin and Ms. Honea, but they had already left town.
10 Janice Spruiell eventually located Sherry Honea, and Sherry
11 Honea told them that Ms. Maybin told her that she was with
12 Spruiell and Jones at the time of the murder and that she had
13 been wearing -- that Ms. Maybin had been wearing Ms. Honea's
14 shoes that evening and that they had burned all of their
15 clothes up in the heater.

16 So after talking with Ms. Honea, Janice Spruiell
17 began looking for Mr. Jones. After they started looking for
18 Mr. Jones, Kevin Furlough drove Mr. Jones out of town. The
19 sheriff's office also began looking for Dana Maybin. And
20 although Janice Spruiell was not present for the first
21 interview with Ms. Maybin, she recalled that after that
22 interview, based on Ms. Maybin placing Curtis Furlough as
23 leaving the bar with Mr. Spruiell and Mr. Jones the night of
24 the murder, they followed up on that lead.

25 While following up on that, they located a video

1 of Mr. Furlough at the hospital for his child's birth and
2 indicated that based on that, they knew that Ms. Maybin had
3 lied to them.

4 Janice Spruiell went down for the second interview
5 of Ms. Maybin in South Carolina. And during that interview,
6 Maybin was continuing to deny any involvement in the crime.

7 They then did a polygraph examination and took a
8 lunch break. And upon coming back, Ms. Maybin began giving
9 statements about her involvement in the crime. Sometime
10 before the warrant was issued for Ms. Maybin, they went
11 back. Special Agent Donnie Varnell interviewed her on the
12 drive back, and Ms. Maybin then gave a full statement.

13 Q. What did Janice Spruiell tell the Commission staff
14 about the time elapsed between the murder and when other
15 witnesses from the bar were interviewed?

16 A. She stated that either Ms. Honea or Ms. Maybin had
17 directed her to Lynn Rogers, who one of them said could
18 confirm that Mr. Spruiell, Mr. Jones, and Ms. Maybin had all
19 three changed their clothes and can -- could confirm that
20 none of them had any money before they left but were buying
21 drinks for people when they came back.

22 When they went to speak with Lynn Rogers, she told
23 them she had heard Spruiell on the night of the crime say he
24 had killed an N-word and that he was spending a lot of money
25 and that he had changed his clothes.

1 She spoke with other witnesses from the bar who
2 had seen them leave the bar and come back. One witness said
3 they saw a spot of blood on the cuff of his pants.

4 When asked how the witnesses could remember the
5 night of the crime given that it had been several months
6 since then, Janice Spruiell said she didn't know how they
7 remembered but guessed it was because it was out of the
8 ordinary and everyone knew about the murder.

9 Q. Was Janice Spruiell asked about Ray Hurst?

10 A. She was. She was asked if he was ever a suspect,
11 and she indicated that he was and stated that he was
12 interviewed.

13 She said that Ray Hurst also told her that Leroy
14 Spruiell told Ray Hurst that he was there and that he was
15 scared that his fingerprints might be there and that the
16 victim had been arguing with Sonja Day and that he was
17 trying to break up the argument and that Sonja had killed
18 the victim.

19 Q. Ms. Matoian, where was Sonja Day on the day of the
20 murder?

21 A. She was in Women's Prison in Raleigh, North
22 Carolina.

23 MS. GUICE SMITH: Commissioners, you can refer to
24 page 50 and 60 to 61 in your brief for more information on
25 this statement by Ray Hurst.

1 COMMISSIONER BOSWELL: Did the detective say she
2 called Sonja in the Women's Prison?

3 THE WITNESS: She did. She said she called her
4 the night of the murder.

5 COMMISSIONER BOSWELL: And she knew she was in the
6 Women's Prison?

7 THE WITNESS: Yes.

8 JUDGE WAGONER: And what was the purpose of her
9 calling, she said?

10 THE WITNESS: She called to see if he -- if she
11 knew anything about the victim's death. Janice Spruiell had
12 been told by Wyatt Spruiell in his first interview that they
13 had gotten some items to take to Ms. Day and they were
14 planning to visit her in prison the next day.

15 COMMISSIONER BOSWELL: How long after the murder
16 did she call Ms. Day in Women's Prison?

17 THE WITNESS: She said in this interview that it
18 was that night. I -- I know it was soon after the murder,
19 but we can check on an exact date.

20 COMMISSIONER GRACE: Did -- did anyone verify that
21 phone call with -- with phone records or phone logs at the
22 prison?

23 THE WITNESS: The phone call from Janice Spruiell
24 to Sonja Day?

25 COMMISSIONER GRACE: Yes.

1 THE WITNESS: We do have the prison records from
2 when Ms. Day called the victim's house earlier in that
3 night. We can check those to see if there's any record of
4 the call from Janice Spruiell to Sonja Day.

5 COMMISSIONER GRACE: Thank you.

6 BY MS. GUICE SMITH:

7 Q. Was the Commission made aware --

8 JUDGE WAGONER: I -- I have another question.

9 How would Janice Spruiell call her in the Women's
10 Prison?

11 COMMISSIONER GRACE: That's exactly what I was
12 getting at. You don't --

13 THE WITNESS: I do not -- I do not know.

14 BY MS. GUICE SMITH:

15 Q. Ms. Matoian, the records that the Commission has
16 show outgoing calls from the prison. Is that correct?

17 A. It is.

18 Q. So they wouldn't show whether someone was able to
19 call and speak with Ms. Day. Is that correct?

20 A. That's correct.

21 JUDGE WAGONER: They do not show that.

22 THE WITNESS: No.

23 JUDGE WAGONER: They cannot show that.

24 THE WITNESS: No.

25 COMMISSIONER BRITT: May I ask a question, please?

1 THE WITNESS: Of course.

2 COMMISSIONER BRITT: Was Detective Spruiell related
3 to the victim or to the defendant?

4 THE WITNESS: She's not related to the victim.
5 She is not related to Leroy Spruiell. My understanding is
6 that there are two different sets of Spruells. And Leroy
7 Spruiell and Wyatt Spruiell are of one set, and Janice Spruiell
8 is of another. But their families do know each other.

9 COMMISSIONER BRITT: Okay.

10 BY MS. GUICE SMITH:

11 Q. Ms. Matoian, was the Commission made aware of any
12 rumors regarding Janice Spruiell during its investigation?

13 A. Yes, we were. The Commission received information
14 from several individuals that Janice Spruiell was a drug user
15 who had been in a relationship with a drug dealer named
16 Alton Clagon, who also went by the name BoJack. The rumor
17 was also that Janice Spruiell had used her position at the
18 sheriff's office to prevent BoJack from being arrested, and
19 that Janice Spruiell had taken off -- taken suspicion off of
20 Maurice Wilkins in this case because of Mr. Wilkins'
21 association with BoJack.

22 Q. Was she asked by Commission staff about those
23 rumors?

24 A. She was. She stated that she was aware of the
25 rumors and denied being on drugs or ever going to rehab.

1 She denied having any relationship with BoJack and said that
2 she was passing along information about BoJack to a man
3 named Greg Hassell, who was the commander of a drug task
4 force in the area.

5 She stated that she believed these rumors started
6 because people were upset with her for arresting individuals
7 in Washington County, and further stated that she believed
8 the rumors started with Leroy Spruiell and his sister Linda
9 Hinson. She believes that they were trying to make her look
10 bad to discredit her.

11 And she also stated she found out later that
12 Hinson was providing reports to attorney Maynard Harrell
13 because Agent Donnie Varnell and District Attorney Mitchell
14 Norton came to her and told her that Maynard Harrell had
15 come to them with information he shouldn't have had.

16 Q. Did the Commission do anything further to follow
17 up on the rumors?

18 JUDGE WAGONER: I have a question about --

19 When did she -- Janice Spruiell indicate when she
20 became aware of these rumors that she thought Leroy Spruiell
21 was spreading?

22 THE WITNESS: I don't -- she did not indicate --

23 JUDGE WAGONER: Before --

24 THE WITNESS: -- in her interview.

25 JUDGE WAGONER: Was it before this homicide or

1 after the homicide?

2 THE WITNESS: I'm not sure. She didn't say in her
3 interview when she became aware of these rumors.

4 JUDGE WAGONER: She did deny ever going to rehab.
5 Is that correct?

6 THE WITNESS: Yes.

7 JUDGE WAGONER: And did the Commission staff have
8 an opportunity to talk to the drug task force individual to
9 see if Janice Spruiell --

10 THE WITNESS: We did talk to Mr. Hassell, yes.

11 JUDGE WAGONER: And did he confirm or deny that he
12 had spoken with her at this time?

13 THE WITNESS: Give me one second. So the
14 Commission interviewed Greg Hassell. He said that BoJack
15 had told him that he and Janice Spruiell had a sexual
16 relationship and that he could get any information he wanted
17 out of her.

18 Mr. Hassell indicated that they were concerned
19 about leaks from law enforcement for arrests they were
20 trying to make as part of the task force.

21 BY MS. GUICE SMITH:

22 Q. What else did the Commission do with respect to
23 these rumors?

24 A. The Commission deposed Mr. Clagon. He denied
25 being in a relationship with Janice Spruiell and said that

1 she had tried to arrest him many times.

2 We also interviewed Willie Williams, who was also
3 the other detective assigned to this case and Janice
4 Spruiell's partner, and he said that he was aware of those
5 rumors, but he didn't think that Janice Spruiell was involved
6 with Mr. Clagon and that he believed that these were just
7 rumors.

8 COMMISSIONER BOSWELL: Are BoJack and Mr. Clagon
9 the same person?

10 THE WITNESS: They are. I'm sorry.

11 BY MS. GUICE SMITH:

12 Q. Was the Commission aware of a post-conviction
13 investigation by John Floyd of the Plymouth -- Plymouth
14 Police Department?

15 A. Yes.

16 MS. GUICE SMITH: Commissioners, information about
17 that investigation was provided in your briefs on page 512
18 to 517.

19 BY MS. GUICE SMITH:

20 Q. Did we ask Janice Spruiell about that post-
21 conviction investigation?

22 A. We did. She said that Willie Williams had moved
23 from the sheriff's office to the Plymouth Police Department.
24 He called her and said that Jack Spruiell, who is
25 Mr. Spruiell's father, and District Attorney Seth Edwards

1 were coming in to have meetings with Mr. Floyd -- or with
2 Chief Floyd.

3 Joseph Lynn's mother also approached Janice
4 Spruiell and told her that John Floyd and Preston Ward had
5 been confronting her son in prison and accusing her [sic] of
6 Frank Swain's murder.

7 Janice Spruiell then stated that Willie Williams
8 called her one day and told her to meet him at a rest area.
9 When they met, he showed her the fake S.B.I. report that was
10 provided in your briefs. Janice Spruiell made a copy of the
11 report and called the S.B.I..

12 She and Mr. Williams then met with the S.B.I. and
13 provided the lab report to the S.B.I.. The S -- and then
14 the S.B.I. told them that the report had been falsified.

15 Q. Ms. Matoian, a moment ago I believe you said
16 Joseph Lynn's mother approached Janice Spruiell, told her
17 that John Floyd and Preston Ward had been confronting her
18 son in prison and accusing her of murder. Did you mean to
19 say "him"?

20 A. I did mean to say "him."

21 MS. GUICE SMITH: Commissioners, do you have any
22 questions of Ms. Matoian about Janice Spruiell?

23 JUDGE WAGONER: Perhaps I missed something. This
24 fake S.B.I. report came from where? I didn't -- I couldn't
25 understand that in reading the brief.

1 THE WITNESS: John Floyd was interviewing several
2 people he believed to be suspects during his investigation.
3 He created this S.B.I. report indicating that there were
4 fingerprint matches to several individuals, and from the
5 information we had, had apparently shown it to them during
6 his interviews.

7 So our understanding is that that report came from
8 Chief Floyd himself.

9 COMMISSIONER BARROW: Was -- it's not clear to me.
10 Was -- was the entire report fake, or did he just run prints
11 through using dummy names?

12 THE WITNESS: The entire report was fake. I
13 believe the S.B.I. agent that Janice Spruill and Willie
14 Williams showed that lab report to stated that the analyst's
15 name on it was not a fingerprint analyst for the Crime Lab
16 at all.

17 COMMISSIONER BARROW: Did he, in fact, send
18 fingerprints through?

19 THE WITNESS: Not that we're aware of, no.

20 COMMISSIONER BARROW: Okay.

21 COMMISSIONER BOSWELL: Was this -- the idea is to
22 try to get people to confess to the crime by showing that he
23 had their fingerprints at the place? Is that --

24 THE WITNESS: I don't know what Chief Floyd was
25 intending to do with that. We just know that he was showing

1 it to individuals while he was interviewing them.

2 COMMISSIONER FRYE: Was the district attorney who
3 met with Chief Floyd or the S.B.I., were they aware that
4 Chief Floyd had made this false S.B.I. report to use to
5 interview witnesses?

6 THE WITNESS: District Attorney Edwards has
7 indicated to the Commission that he was not -- he was aware
8 of John Floyd's investigation, but was not aware of the
9 falsified report until after Janice Spruiell and Willie
10 Williams had provided it to the S.B.I..

11 COMMISSIONER BRITT: Were you ever able to
12 determine what his motivation was in conducting this
13 independent investigation?

14 THE WITNESS: I believe we get into our interview
15 with John Floyd in just a few minutes.

16 JUDGE WAGONER: Did you have anymore interviews
17 with Janice Spruiell, or was that it?

18 THE WITNESS: That was the only one.

19 JUDGE WAGONER: Was she ever asked about
20 fingerprints or DNA or anything?

21 THE WITNESS: (Reviewing documents.)

22 JUDGE WAGONER: If you need to look, you can
23 answer a bit later if you need to.

24 THE WITNESS: We can look at her transcript and
25 let you know.

1 JUDGE WAGONER: Again, I was not clear from
2 reading this. When -- when did she solely focus on Leroy
3 Spruiell? Was it based on Sherry -- the call -- and Sherry
4 Honea, whatever her name was -- Honea -- in the course of --
5 what -- what drew her attention to Leroy Spruiell?

6 THE WITNESS: The focus changed exclusively to
7 Mr. Spruiell and Mr. Jones and Ms. Maybin after she started
8 receiving those phone calls from Robert Spruiell, and then
9 after the interview with Sherry Honea where she said that
10 Dana Maybin had told her that she was there when Spruiell and
11 Jones had committed the murder.

12 COMMISSIONER BRITT: What was her overall demeanor
13 when you talked with her?

14 THE WITNESS: She was -- she was overall
15 cooperative. She --

16 COMMISSIONER BRITT: And when you asked her about
17 the investigation, did she in any way become defensive?

18 THE WITNESS: I have not listened to the audio of
19 that interview in a long time. I can't recall.

20 JUDGE WAGONER: How -- how long -- how long is
21 that? Do y'all just have the audio? You don't have a --

22 THE WITNESS: It's -- it's quite a lengthy
23 interview. It's -- the transcript is 96 pages. I think it
24 lasted almost an hour, if not more.

25 MS. GUICE SMITH: Would you-all like a copy of

1 that?

2 JUDGE WAGONER: We'll see.

3 MS. GUICE SMITH: Okay. Think about it. You can
4 let us know. We can also play the audio if you prefer to
5 hear the audio.

6 Any other questions related to Janice Spruiell?

7 (No response.)

8 MS. GUICE SMITH: Okay.

9 BY MS. GUICE SMITH:

10 Q. Ms. Matoian, let me turn your attention to
11 Detective Willie Williams. What was Detective Williams'
12 role in the investigation?

13 A. He was partners with Janice Spruiell and was also
14 assigned to investigate this case.

15 Q. And is he still employed by the Washington County
16 Sheriff's Office?

17 A. No. He's currently the chief of the Plymouth
18 Police Department.

19 Q. And did Commission staff interview him?

20 A. We did, on May 11th, 2011.

21 Q. And was that interview recorded and transcribed?

22 A. No, it was not.

23 Q. Did he recall his involvement in the case?

24 A. He did.

25 Q. What did he recall?

1 A. He stated that Janice Spruiell was the lead
2 detective on the case because she had more experience than
3 him. And he also admitting -- admitted to removing the
4 forged S.B.I. lab report from John Floyd's investigation and
5 giving it to Janice Spruiell. He was curious as to why Floyd
6 was reviewing the case since it was a sheriff's office case.

7 He feels confident that Mr. Spruiell and Mr. Jones
8 committed this murder. And he had heard other rumors about
9 other individuals being involved but didn't believe follow-
10 up was necessary because those individuals had been
11 interviewed during the initial investigation.

12 He also stated that he remembered Mr. Spruiell's
13 father, Jack Spruiell, coming to talk to John Floyd and that
14 Mr. Floyd never spoke to Mr. Williams about the case except
15 to ask him to speak to a reporter about it.

16 Q. And Ms. Matoian, when you say that Detective
17 Williams became aware of John Floyd's investigation, is that
18 because he was then also working at the Plymouth Police
19 Department?

20 A. It was.

21 Q. Was he chief at that time or just employed there?

22 A. No, he was not. He was employed.

23 Q. Who was the chief?

24 A. John Floyd.

25 Q. I'm going to turn your attention to Special Agent

1 Donnie Varnell of the North Carolina State Bureau of
2 Investigation. What was his role in the original
3 investigation?

4 A. He was the S.B.I. agent assigned to this case.

5 Q. And is he still employed by the S.B.I.?

6 A. No. He retired in 2015.

7 Q. Did Commission staff interview Special Agent
8 Varnell?

9 A. We deposed Special Agent Varnell on September
10 25th, 2017. He initially declined to be voluntarily
11 interviewed by the Commission. Although after his
12 deposition, he stated that he had declined our initial
13 request for an interview because he thought the Commission
14 was a different agency that had contacted his elderly mother
15 years ago looking for him.

16 He stated that they had upset his mother by
17 calling her repeatedly when she was suffering from dementia,
18 and he indicated that he now understood the Commission was
19 not the agency that had contacted his mother, and
20 apologized.

21 Q. Was that deposition recorded and transcribed?

22 A. It was.

23 Q. Did Agent Varnell recall the crime scene in the
24 case?

25 A. He did. He recalled the victim's trailer was off

1 of Folly Road and that it was in disarray and had blood on
2 the walls. He did not recall touching anything himself at
3 the crime scene and that he stated without reviewing the
4 crime scene report, he could not recall anything else.

5 Q. Did you provide him a copy with [sic] the crime
6 scene report?

7 A. We did.

8 Q. Was that report drafted by Agent Varnell?

9 A. No. It was drafted by Special Agent Dennis
10 Honeycutt, who was also with the S.B.I..

11 Q. Did Agent Varnell review that report?

12 A. He did.

13 Q. What else did you ask him about?

14 A. I specifically asked if he remembered why the car
15 mats on the victim's porch that were reported to have blood
16 spots on them were not collected, and he could not recall.

17 I also asked him what he recalled about the case
18 and any interviews. He recalled interviewing the next-door
19 neighbor who stated she had heard a struggle at some point
20 that evening, but also stated that she was pretty
21 noncommittal.

22 With respect to the evidence against Mr. Spruiell
23 and Mr. Jones, he recalled that -- a young white woman who
24 gave a statement that she was present when they killed the
25 victim and that she pled guilty. He did not recall what Ied

1 them to her.

2 He also remembered the bartender saying that
3 Mr. Spruiell had wet hair and a wad of \$20 bills and making a
4 comment that they had just killed a black man.

5 He recalled a black male saying he saw who he
6 identified as maybe being Mr. Spruiell and Mr. Jones on the
7 road leading up to the victim's trailer at the right time.
8 He did not recall that that individual was a suspect
9 himself.

10 Q. Did you ask him about any other suspects?

11 A. I did. He remembered questioning other
12 individuals that said the investigation focused on Spruiell
13 and Jones after Ms. Maybin gave her statement.

14 Q. What else did you ask him about?

15 A. I asked him about Ms. Maybin's changing statements
16 leading up to the trial. He recalled that Ms. Maybin had
17 changed her story to defense attorneys in a recorded
18 interview.

19 He stated that law enforcement went back to
20 interview Maybin after that, and she stated that the defense
21 attorney told her that if she changed her story, there would
22 be no case, and they would all go free.

23 He also recalled the defense attorney's client
24 giving Maybin a notepad while she was in jail and then
25 giving that notepad back to the defense attorneys.

1 And I asked him if he felt confident that the
2 story that Ms. Maybin ended up testifying to was the truth,
3 and he said he felt that Ms. Maybin had described what had
4 happened accurately without anyone from law enforcement
5 giving her information.

6 Q. I'm going to turn your attention now to Special
7 Agent Dennis Honeycutt. What was Agent Honeycutt's role in
8 the investigation?

9 A. He was the crime scene analyst for this case.

10 Q. Is he still employed by the S.B.I.?

11 A. No. He's currently employed with the Colorado
12 Bureau of Investigation.

13 Q. Did you interview Agent Honeycutt?

14 A. We did. We interviewed him over the phone on
15 February 11, 2018.

16 Q. Was that interview recorded and transcribed?

17 A. It was.

18 Q. Did he recall his involvement in the case?

19 A. He did. He stated he barely remembered the names
20 but did recall that it was a case out of Plymouth, North
21 Carolina. He did not independently recall anything about
22 the crime scene. I specifically asked if he recalled
23 wearing gloves, and he stated that he always made a point to
24 wear gloves but could not say whether he would have changed
25 them -- those between items that he collected at a crime

1 scene.

2 Q. Has anyone else the Commission interviewed or
3 deposed discussed Agent Honeycutt's use of gloves at crime
4 scenes?

5 A. Yes. Agent Varnell, in his deposition, said that
6 he had never seen Agent Honeycutt at a crime scene without
7 gloves on.

8 Q. Did you provide Agent Honeycutt with a copy of the
9 crime scene report and the transcript of his trial
10 testimony?

11 A. I did. I e-mailed that information to Agent
12 Honeycutt and asked if they refreshed his recollection about
13 the case. I followed up with him a few minute -- a few
14 weeks later and asked if he had received them. He responded
15 that he had but hadn't had time to glance at them.

16 After not receiving a response, approximately a
17 month later I sent him three follow-up questions. The first
18 was generally to determine whether a review of the documents
19 had refreshed his recollection about the case.

20 The second, I directed him to the page in his
21 report where he described the victim's pocket -- pants
22 pockets as having money in them -- in the right and left
23 front pockets -- but does not describe them as being pulled
24 out.

25 I also directed him to his trial testimony where

1 he testified that the victim's left front pocket was
2 partially pulled out. I asked him what he recalled about
3 the victim's pocket and that if he did recall a pocket being
4 pulled out, how far was it pulled out.

5 And finally, I directed him to his trial testimony
6 where he testified that he did not collect the floor mats
7 with what appeared to be blood on them because the blood was
8 diluted.

9 I asked him if he could explain more what he meant
10 about the blood being diluted and why the blood being
11 diluted would mean they would not collect a particular item.

12 I asked him what his personal or S.B.I. policy was
13 about collecting items with wet blood on them.

14 And I also asked him if there was any specific
15 discussion about those floor mats and why they weren't
16 collected.

17 Q. Did you receive a response to that e-mail?

18 A. I received a response that day that indicated he
19 was sorry for the delay but did not address the questions I
20 asked.

21 Q. And did you make any attempts to follow up with
22 Agent Honeycutt?

23 A. We did. We followed up by e-mail approximately
24 three weeks later and also requested at that time that he
25 provide a voluntary DNA swab so that we could exclude him as

1 a contributor to any DNA found at the crime scene.

2 We also sent the request by mail with a buccal
3 swab kit for him to use if he was going to agree to provide
4 his swab. This was never returned to the Commission as
5 undeliverable. And we also followed up with him by e-mail
6 again after this.

7 Q. And did he ever return the buccal swab kit?

8 A. He did not.

9 Q. Did you receive any further response from Agent
10 Honeycutt?

11 A. We did not.

12 Q. I'm going to turn your attention now to Special
13 Agent Ken Inscoe. What was Agent Inscoe's role in the
14 investigation?

15 A. Agent Inscoe's involvement in the investigation
16 came at Agent Varnell's request. He had asked Agent Inscoe
17 to review the case prior to the trial. And Agent Inscoe
18 went with Agent Varnell to discuss the case with District
19 Attorney Norton.

20 Q. Is he still employed by the S.B.I.?

21 A. No. He is retired.

22 Q. Did you interview Agent Inscoe?

23 A. We did. We interviewed him by phone on July 13th,
24 2017.

25 Q. And was that interview recorded and transcribed?

1 A. It was.

2 Q. Did he recall his involvement in the case?

3 A. He did. He said that during a meeting with D.A.
4 Norton that he said he told D.A. Norton that the case may
5 not be the best case, but that there was too much there not
6 to charge Mr. Spruiell and Mr. Jones.

7 He stated that he knew Spruiell from a previous
8 arrest, and he also recalled preparing Dana Maybin prior to
9 the trial. And he stated that Ms. Maybin did not want to
10 testify, and they told her to tell the truth, and that he
11 thought that Ms. Maybin had made a good witness.

12 Q. Did you ask him about Ms. Maybin's story changing
13 prior to the trial?

14 A. I did. I asked him if Ms. Maybin was going back
15 and forth, or if she was consistent leading up to the trial.
16 He stated that she was consistent when you got her to talk,
17 but that she didn't provide several stories and that they
18 had to pull a lot of things out of her.

19 He further stated that they harped on her to tell
20 the truth, and he thought that she had, in fact, told the
21 truth. He did not recall Ms. Maybin being interviewed by
22 the defense attorneys.

23 Q. Turn your attention now to Deputy Jimmy Peal of
24 the Washington County Sheriff's Office. What was Deputy
25 Peal's role in the investigation?

1 A. He was the first officer to arrive on the scene.

2 Q. And is he still employed by the Washington County
3 Sheriff's Office?

4 A. No, he's not. He's retired from law enforcement.

5 Q. Did you interview Deputy Peal?

6 A. Yes. I interviewed him over the phone on July
7 18th, 2017.

8 Q. Was that interview recorded and transcribed?

9 A. It was.

10 Q. Did he recall his involvement in the case?

11 A. He did. He remembered being one of the first
12 people to arrive at the crime scene. He remembered that the
13 victim was on the floor, and he recalled immediately making
14 contact with investigators and that the case was handed over
15 to law enforcement after that. He could not recall if you
16 could see the victim immediately as you walked in the front
17 door or not.

18 Q. Other than his involvement in the case, were there
19 other reasons that you interviewed Deputy Peal?

20 A. Yes. During the Commission's review of the files,
21 there was some indication that Mr. Spruiell and Mr. Jones
22 believed that Jimmy Peal believed in their innocence.

23 Q. Did you ask Deputy Peal if he believes in Spruiell
24 and Jones's innocence?

25 A. Yes, I did.

1 Q. And what did he say?

2 A. He said, "No, ma'am."

3 I then asked if he knew why they may think or say
4 that, and he responded that he wouldn't.

5 MS. GUICE SMITH: Commissioners, do you have any
6 questions for Ms. Matoian related to her testimony about the
7 various officers and S.B.I. agents that were -- participated
8 in the original investigation of the crime?

9 JUDGE WAGONER: I do. Were any of these officers,
10 any of the S.B.I. agents involved in the investigation of
11 the Sonja Day murder?

12 THE WITNESS: I know the lead investigator on the
13 Sonja Day murder is a different person, but I could double-
14 check the file and see if there was any crossover between
15 the two.

16 MS. GUICE SMITH: Anything else?

17 COMMISSIONER BOSWELL: What was the reason for
18 asking about the gloves for the S.B.I. investigator -- crime
19 scene investigator?

20 THE WITNESS: The Commission has conducted DNA
21 testing in this case. And since he was the crime scene
22 analyst and had indicated that he had located money in the
23 victim's pocket and also collected other items at the crime
24 scene, the Commission wanted to determine what, if any,
25 possibility of contamination there was. And since it was

1 1993, we weren't sure what the policies would have been
2 then.

3 COMMISSIONER BOSWELL: Right.

4 MS. GUICE SMITH: Anything else?

5 (No response.)

6 MS. GUICE SMITH: Okay.

7 BY MS. GUICE SMITH:

8 Q. Ms. Matoian, I'm going to turn your attention now
9 to John Floyd. Who is John Floyd?

10 A. John Floyd is the former chief of the Plymouth
11 Police Department, and he began his own independent
12 investigation into the Frank Swain murder in 2002.

13 MS. GUICE SMITH: Commissioners, as I mentioned
14 before, there is a summary of Mr. Floyd's investigation on
15 pages 512 to 517 of your brief.

16 BY MS. GUICE SMITH:

17 Q. Is John Floyd still employed by the Plymouth
18 Police Department?

19 A. No, he is not.

20 Q. Did Commission staff interview John Floyd?

21 A. We did. He was interviewed over the phone on
22 March 2nd, 2011.

23 Q. Was this interview recorded and transcribed?

24 A. It was.

25 Q. And what did he say?

1 A. He remembered interviewing Avis Lashawn Arnold and
2 Joseph Lynn. And he said that based on his first interview
3 with Joseph Lynn, that Mr. Lynn -- that Mr. Floyd believes
4 that Mr. Lynn was in the house when the victim had his
5 throat slit.

6 He stated that at the second interview with Joseph
7 Lynn, he told Joseph Lynn that the first person who didn't
8 have any hands-on involvement in this thing but was just the
9 observer was going to be the one to catch the deal.

10 He stated that during the second interview, Joseph
11 Lynn came so close to opening up and telling him what
12 happened, but then he just didn't.

13 He also stated that he met with Seth Edwards,
14 Maynard Harrell, and James Bosford, that during the meeting
15 he told them that his gut instinct was that Joseph McNair
16 had committed the murder.

17 He stated that he told Seth Edwards that they
18 should offer to let Joseph McNair plead guilty to second
19 degree murder and let the sentence run concurrent to his
20 current sentence to roll on the others involved.

21 MS. GUICE SMITH: Commissioners, there's a memo
22 that summarizes that meeting on pages 515 to 516 of your
23 brief.

24 BY MS. GUICE SMITH:

25 Q. Did Mr. Floyd say anything else?

1 A. He stated that he caused an uproar by getting
2 involved in this case and then stated that he had ruined a
3 23-year law enforcement career doing it.

4 Q. Do you know what he meant by that?

5 A. Mr. Floyd was eventually charged with misconduct
6 in another case unrelated to this one. From our interview
7 with him, he seemed to indicate that his involvement in the
8 Spruill and Jones case had made him a target.

9 Q. Did he say anything else?

10 A. He stated that two S.B.I. agents came to visit him
11 about his investigation. And then when he went to pull the
12 file out for them, it was gone. He stated that he got a
13 funny feeling that Willie Williams, who was working at the
14 Plymouth Police Department at the time, had taken the files.

15 Q. And it's consistent with your interview with
16 Willie Williams that Mr. Williams did, in fact, take the
17 files?

18 A. It is.

19 Q. I'm going to turn your attention now to Special
20 Agent Mac Warner. What was Special --

21 COMMISSIONER BOSWELL: Let me ask a question about
22 Floyd. Did he admit to falsifying the S.B.I. report?

23 THE WITNESS: Umm.

24 COMMISSIONER BOSWELL: Did you ask him about that?
25 I know it was 2011.

1 THE WITNESS: I did not conduct this interview.
2 Let me check. If we did not, we can have someone contact
3 him, if you'd like.

4 COMMISSIONER FRYE: I believe I can answer it,
5 that I think he did, if I'm reading -- if I'm reading on
6 page 512 correctly.

7 THE WITNESS: 512 of the brief?

8 COMMISSIONER FRYE: Yes.

9 COMMISSIONER BOSWELL: He admitted --

10 COMMISSIONER FRYE: Yes.

11 COMMISSIONER BOSWELL: -- doing it? Okay. I
12 didn't remember that. Okay.

13 MS. GUICE SMITH: Any other questions about John
14 Floyd?

15 (No response.)

16 MS. GUICE SMITH: Okay.

17 BY MS. GUICE SMITH:

18 Q. Turn your attention to Mac Warner. What was
19 Special Agent Warner's role in the case?

20 A. Special Agent Warner worked on the S.B.I.
21 reinvestigation of the case in 2001.

22 Q. Is Agent Warner still employed by the S.B.I.?

23 A. He's actually retired and now working for a
24 sheriff's office.

25 Q. Would that be the Brunswick County Sheriff's

1 Office?

2 A. You're correct.

3 Q. Did Commission staff interview Agent Warner?

4 A. We did. He was interviewed on -- in person on
5 September 27th, 2017.

6 Q. Was that interview recorded and transcribed?

7 A. It was.

8 Q. What did he say?

9 A. He said that he had assistant -- assisted Agent
10 Jay Tilley with the reinvestigation, and he said that one of
11 the first things that they did was interview Mr. Spruiell and
12 Mr. Jones. He stated that Mr. Spruiell laid out some
13 accusations and told the S.B.I. that he was not involved in
14 this. He stated that his girlfriend had information that
15 would help the S.B.I. get to the bottom of the case, but
16 that she was never able to produce those items.

17 I asked him if he had looked into any alternate
18 suspects. He said they had looked into whether there was
19 any connection between the Frank Swain murder and the Sonja
20 Day murder and never found any connection.

21 He recalled the names of Avis Arnold, Joseph Lynn,
22 Joseph McNair, Billy McNair, and Maurice Wilkins, and
23 remembered looking into them but did not remember how they
24 had received those names.

25 Q. Did he talk to you about his interview with Dana

1 Maybin?

2 A. He did.

3 MS. GUICE SMITH: Commissioners, this interview
4 was provided on pages 523 to 525 of your brief.

5 BY MS. GUICE SMITH:

6 Q. What did he say about that interview with
7 Ms. Maybin?

8 A. He said that Ms. Maybin admitted to them that she
9 was present in the house when Frank Swain was killed by
10 Mr. Spruiell and Mr. Jones.

11 Q. Did he say anything else?

12 A. He stated that they didn't find anything that led
13 them to believe that anyone other than Mr. Spruiell and
14 Mr. Jones and Ms. Maybin committed the murder, so they
15 closed the case.

16 MS. GUICE SMITH: Commissioners, you were provided
17 a 32-page memo summarizing the S.B.I. reinvestigation on
18 pages 559 to 590 of your brief.

19 Do you-all have any questions for Ms. Matoian
20 about her testimony related to the officers and S.B.I.
21 agents involved in the post-conviction investigations in
22 this crime?

23 (No response.)

24

25 MS. GUICE SMITH: Okay.

1 BY MS. GUICE SMITH:

2 Q. Ms. Matoian, did the Commission staff interview
3 the elected district attorney from the time of the original
4 prosecution of Mr. Spruiell and Mr. Jones?

5 A. We did. We interviewed Mitchell Norton on
6 December 11th, 2017.

7 Q. And was this interview recorded and transcribed?

8 A. It was.

9 Q. Can you tell the commissioners what role
10 Mr. Norton played in the original prosecution of Mr. Spruiell
11 and Mr. Jones?

12 A. Yes. He was the lead prosecutor on the case.

13 Q. Can you tell the commissioners about your
14 interview with Mr. Norton?

15 A. Mr. Norton recalled Mr. Spruiell, Mr. Jones, and
16 Ms. Maybin going to the bar and talking about robbing the
17 victim. He stated that they went to the victim's house
18 under the pretext of buying drugs as the victim was a drug
19 dealer. He recalled that Maybin was in the car but went
20 into the victim's house after she heard a noise, and that he
21 thought that Mr Spruiell had the victim in a chair and that
22 Mr. Spruiell and Mr. Jones then cut his throat.

23 He recalled that the first time the three co-
24 defendants were at the bar on the night of the crime, they
25 didn't have money. But when they came back, they did.

1 Q. Did District Attorney Norton provide any
2 additional information about Dana Maybin?

3 A. He did. He stated that Dana Maybin was consistent
4 when she spoke to him but stated that she would flip-flop
5 stories during the initial hearings. He stated that this
6 was because the gypsies were sitting in the back of the
7 courtroom making faces and gestures and frightening her, and
8 she would back off her story after that.

9 Q. Ms. Matoian, you mentioned "the gypsies." Can you
10 just clarify that?

11 A. The -- the Champ family and others in Plymouth are
12 referred to as "the gypsies." Janice Spruiell indicated in
13 her interview with the Commission that the gypsies flimflam
14 people.

15 JUDGE WAGONER: Gypsies do what? Flimflam?

16 THE WITNESS: Flimflam people and scam people and
17 they -- they go around paving driveways and other activities
18 like that.

19 JUDGE WAGONER: But they're not from Romania, are
20 they?

21 (Laughter.)

22 THE WITNESS: I don't believe so.

23 BY MS. GUICE SMITH:

24 Q. Do you have any other indication that they were,
25 in fact, gypsies?

1 COMMISSIONER GRACE: So we've accepted the fact
2 that gypsies exist?

3 (Laughter.)

4 A. Gail -- Gail Champ and Ed Champ, Jr., and their
5 son appeared on an episode of the TV show My Big Fat
6 American Gypsy Wedding.

7 JUDGE WAGONER: Oh, my goodness. I'd like to see
8 that.

9 THE WITNESS: It is on YouTube.

10 MS. GUICE SMITH: It is on YouTube. We can cue it
11 for you later.

12 BY MS. GUICE SMITH:

13 Q. Did -- did District Attorney Norton provide any
14 additional information about Ms. Maybin?

15 A. He did. He said he recalled giving Investigator
16 Willie Williams a piece of paper and telling him to make a
17 timeline. And from that, they determined that every time
18 Ms. Maybin changed her story, Big Ed or some of his family
19 was there, and she was afraid of them.

20 Mr. Norton could not recall specifically asking
21 Maybin if she was afraid of anyone, and he indicated that he
22 believed Ms. Maybin told the truth at trial. He stated that
23 he didn't see any reason for Ms. Maybin to make this up and
24 serve prison time for something that she didn't do. He
25 further stated that her statement was consistent with the

1 crime scene.

2 He said that Ms. Maybin was the key to the case,
3 but also key were the corroborative efforts of Mr. Jones's
4 flight to Tennessee. And he said that he didn't think
5 Ms. Maybin or Mr. Spruill were the type of people to take
6 pleas to crimes they hadn't committed.

7 Q. Did District Attorney Norton say anything else?

8 A. I asked if he remembered anything about Nichole
9 Mills or Jackie Craddock, and he stated that some of the
10 lawyers talked to Mills and Craddock in an attempt to steal
11 Ms. Maybin's diary and intimidate her.

12 Q. Did he recall anything about alternate suspects in
13 the case?

14 A. He did. He described a tall boy with a cut on his
15 finger that he had sewn up himself. He stated that there
16 was nothing really to connect him or anyone else to the
17 crime.

18 Q. Is that description consistent with anyone who was
19 identified as being potentially involved during that
20 original investigation?

21 A. Yes. It's consistent with Maurice Wilkins.

22 Q. Did District Attorney Norton say anything else
23 about other theories of the crime?

24 A. He recalled the Sonja Day murder, though he didn't
25 call it by name. He indicated that he didn't think they had

1 ever arrested anyone for that crime. He only recalled a
2 familial connection -- a familiar relationship between the
3 cases, but no other connection between the two.

4 Q. And has that crime ever been solved?

5 A. It has not.

6 Q. Did the Commission staff interview Assistant
7 District Attorney Tom Anglim?

8 A. We did. He was interviewed August 25th, 2017.

9 Q. And was that interview recorded and transcribed?

10 A. It was.

11 Q. How is Assistant D.A. Anglim related or connected
12 to this case?

13 A. He was an assistant district attorney at the time
14 and assisted with the prosecution of the case more so in the
15 preparation phase. He is still an assistant district
16 attorney in that district.

17 Q. Can you please tell the commissioners about your
18 interview with A.D.A. Anglim?

19 A. I asked him what he remembered about the case, and
20 he stated that the victim was well-known to be selling crack
21 or dope. He further stated that he believed that
22 Mr. Spruiell and Mr. Jones had the idea to go to the victim's
23 house -- to the victim's house to get money and dope if he
24 had some.

25 He stated that they took Maybin along in

1 Mr. Spruiell's dad's truck and left her in the truck.
2 Ms. Maybin saw lights or shadows. That motivated her to go
3 up to the trailer. She opened the door and described a
4 wreck of a place with things everywhere. She witnessed the
5 victim's throat getting slit and freaked out.

6 They grabbed what they thought they could, left,
7 cleaned up, then went out to Big Ed's Bar where they made
8 some statements that were heard by the barkeep regarding, "I
9 can't believe we got away with offing an N-word."

10 He stated that the trial prep focused on
11 Ms. Maybin. There was no physical evidence linking them to
12 this crime, and this didn't surprise them. He recalled the
13 blood being high up on the wall as well.

14 MS. GUICE SMITH: Commissioners and Judge Wagoner,
15 specifically --

16 COMMISSIONER BRITT: I do. When he said -- you
17 said he was involved in the preparation of the case?

18 THE WITNESS: Uh-huh.

19 COMMISSIONER BRITT: Describe what you're talking
20 about.

21 THE WITNESS: He --

22 COMMISSIONER BRITT: Or what he talked about.

23 THE WITNESS: He -- he was involved -- what he
24 specifically remembered doing was handling the discovery
25 with the defense attorneys and also being involved in the

1 preparation of Ms. Maybin for her testimony.

2 COMMISSIONER BRITT: Did he go into his
3 conversations with Ms. Maybin? Was her attorney present?
4 Did Ms. Maybin continue to flip-flop?

5 THE WITNESS: Give me one second. (Reviewing
6 documents.) Let's see. I asked him about Ms. Maybin's
7 statements and whether or not they changed, and he said that
8 she changed her story a couple of times, he thought, and
9 they had discovered this when they started prepping for the
10 trial. He did recall Maynard Harrell visiting her in prison
11 and recording their conversation.

12 He said, quote:

13 "I think we figured out that -- and I think
14 Dana testified that there was always some
15 motivating factor for her to change her -- to say
16 it didn't happen, and I think the motivating
17 factor was I think somebody was able to convince
18 her that if she said it didn't happen, that
19 everything would go away and that she would be
20 able to leave and go back wherever she was from --
21 South Carolina, maybe.

22 "And -- and then her attorney, I think,
23 finally convinced her that it wasn't going to go
24 away, and the only way she was going to get a
25 benefit was that if she cooperated. And I think

1 from that point forward, she never wavered," end
2 quote.

3 COMMISSIONER BRITT: Did you ask him if he was
4 concerned about her inconsistencies?

5 THE WITNESS: I did not.

6 JUDGE WAGONER: I have a question. I believe you
7 indicated that the A.D.A. said that he was not surprised
8 there was no physical evidence. Did he indicate why he was
9 not surprised?

10 THE WITNESS: (Reviewing documents.) He said,
11 quote:

12 "None of the physical evidence -- by the time
13 he was found, the blood had separated. I think
14 there was a crowbar located there at the scene, I
15 think. It's been a long time -- been a long time
16 since I've looked at the case. So there was
17 nothing, evidentiary speaking, from DNA or
18 fingerprints or anything like that. Again, that
19 didn't surprise us, considering the position."

20 JUDGE WAGONER: All right.

21 COMMISSIONER GRACE: Did -- did the district
22 attorney indicate whether or not he recorded those
23 inconsistent statements and what he did with those
24 inconsistent statements?

25 THE WITNESS: He did not.

1 COMMISSIONER GRACE: Was there anything in the
2 record to indicate that he, in fact, made a record of that
3 and turned it over to the defense attorney?

4 THE WITNESS: The defense attorneys were provided
5 information from Dana Maybin and some of her writings about
6 a meeting that she had had with the District Attorney's
7 Office. And I believe there's a record in the sheriff's
8 office file, but I'm not sure if that was turned over to the
9 district attorneys. We can look into that and double-check.

10 JUDGE WAGONER: So we don't know for sure if the
11 district attorney, pursuant to discovery, turned over all of
12 these inconsistent statements to the defense?

13 COMMISSIONER BRITT: In the brief it said that the
14 -- at the trial of Mr. Jones, that the statements were
15 provided to the defense -- well, statements were provided --
16 witness statements were provided to the defense attorneys
17 after the individual had testified, which was consistent
18 with, quote, discovery law at the time.

19 JUDGE WAGONER: At that time.

20 THE WITNESS: Correct.

21 COMMISSIONER BRITT: But it -- it's not clear in
22 the brief as to whether or not Ms. Maybin's inconsistent
23 statements were part of that -- I'm going to call it a
24 package -- that they were given. Do you know?

25 THE WITNESS: The trial transcript just indicates

1 that they were asked to hand over Ms. Maybin's statements, I
2 believe, after her direct examination.

3 We do have that chart in the brief of the
4 documents that we have file-stamped from the Clerk's Office
5 that were in the district attorney's file that were turned
6 over. I believe that includes some writings of Ms. Maybin's
7 journal entries and I think correspondence between her and
8 Nichole Mills.

9 JUDGE WAGONER: And did the Assistant District
10 Attorney or the elected district attorney -- I assume I've
11 read too much; I guess my mind's gone crazy. Did they ever
12 see the letters and things that she had written, the entries
13 in her diary?

14 THE WITNESS: It appears that they are the ones
15 who collected that correspondence and those items as they're
16 the ones who handed them over to the district attorney -- or
17 the defense attorneys, I'm sorry.

18 JUDGE WAGONER: But did he give a reason why they
19 didn't believe anything, why they sort of pooh-poohed what
20 was in her diaries? And I understand she said somebody was
21 threatening her or making her write these things, but --

22 THE WITNESS: Both Mr. Norton and Mr. Anglim have
23 indicated that they attributed Dana Maybin's inconsistent
24 statements to outside influences.

25 JUDGE WAGONER: Okay.

1 MS. GUICE SMITH: Any other questions about that?

2 (No response.)

3 BY MS. GUICE SMITH:

4 Q. Did Mr. Anglim say anything else?

5 A. He said that Nichole Mills had played the defense
6 attorneys and that Ms. Mills had been looking for an angle
7 to help herself by getting involved in Ms. Maybin's case.

8 COMMISSIONER BOSWELL: What was Ms. Mills doing?
9 What was she trying to get help with?

10 THE WITNESS: No documentation I have in the file
11 has indicated that she ever asked for anything in connection
12 with her involvement with Ms. Maybin.

13 She was a client of Mr. Bosford's and was in the
14 same jail as Dana Maybin and had told Mr. Bosford about
15 statements Dana Maybin was making in prison and writing --
16 she was making -- or in jail -- writings she was making in
17 jail regarding her involvement in the crime. And that was
18 her involvement with the defense attorneys.

19 She was interviewed by law enforcement after the
20 defense attorneys had notified the D.A. But that law
21 enforcement interview does not indicate that she had asked
22 for anything for herself.

23 BY MS. GUICE SMITH:

24 Q. I apologize if I've already asked you this, but
25 did you talk with him or ask him about Ms. Maybin's

1 statements specifically?

2 A. We did.

3 Q. Okay. And have we covered all of the things that
4 he said about that?

5 A. Yes.

6 Q. Okay.

7 MS. GUICE SMITH: Do you-all have any other
8 questions for Ms. Matoian about her testimony regarding the
9 prosecutors in this case?

10 (No response.)

11 BY MS. GUICE SMITH:

12 Q. Did Commission staff speak with former Senior
13 Deputy Attorney General James Coman?

14 A. We did not formally interview Mr. Coman, but we
15 did speak with him on the phone, as he was representing the
16 State during the Commission's formal inquiry for a period of
17 time.

18 Q. And was that call recorded and transcribed?

19 A. It was not.

20 Q. During the call, did Mr. Coman provide any
21 information about the Attorney General and S.B.I.
22 reinvestigation of this case?

23 A. He did. He stated that they had chased down many
24 leads at the request of Mr. Spruill and Mr. Jones and their
25 supporters. He stated that Mr. Spruill and Mr. Jones tried

1 to scam them and provided false information and that they
2 ran down every lead and chased every rabbit hole. He stated
3 that at some point they had to stop.

4 He also stated that the S.B.I. went and
5 interviewed Ms. Maybin, and she was clean and her statement
6 was consistent with her trial testimony. He stated that
7 Chris Mumma later interviewed Ms. Maybin in a trailer park
8 when Ms. Maybin was on drugs, and that Ms. Mumma called Mr.
9 Coman asking him to send agents down to hear her
10 recantation.

11 He said that they talked to the Arnold guy and
12 that he had nothing to say about this case.

13 Q. Do you know who he was referring to by "the Arnold
14 guy"?

15 A. He's referring to Avis Arnold.

16 Q. Did he provide any additional information about
17 that reinvestigation?

18 A. He did. He said that they talked to another guy
19 who had information about the case but said that that man
20 didn't grow a conscience and come forward with all of this
21 but only came forward because he was in prison with
22 Mr. Spruiell, and Mr. Spruiell gave him the information.

23 Q. Are you aware of who Mr. Coman was referring to?

24 A. Based on the description provided by Mr. Coman,
25 it's consistent with the information we have about Edward

1 Hudson.

2 Q. And is it your understanding that Mr. Coman passed
3 away recently?

4 A. It is.

5 Q. I'm going to turn your attention now to the
6 attorneys who represented Mr. Spruiell and Mr. Jones. Did
7 the Commission interview Mr. Jones' trial attorney Jim
8 Vosburgh?

9 A. No. The Commission staff sent Mr. Vosburgh two
10 letters in 2011. He never responded to either letter, and
11 we later learned that he died in 2013.

12 Q. Let me turn your attention now to Mr. Jones' other
13 trial attorney, John Skinner. What did the Commission staff
14 do with respect to Mr. Skinner?

15 A. Commission staff requested Mr. Skinner's file. He
16 then requested that someone from the Commission come and
17 search for the file in his office. The Commission then
18 searched the office and located a small file consisting of
19 about four pages, and we made a copy of it.

20 Q. Did the Commission staff later interview
21 Mr. Skinner?

22 A. We did. We interviewed him by phone on June 30th,
23 2017.

24 Q. And was that interview recorded and transcribed?

25 A. It was.

1 Q. What did Mr. Skinner say during the interview?

2 A. Mr. Skinner recalled his client, Wallace Jones,
3 telling him that while at the bar, Mr. Jones had said, "I
4 can't believe they think we offered an N-word." He also
5 recalled that during the D.A.'s closing argument, the D.A.
6 said that Mr. Jones had said, "We offered an N-word."

7 Q. Ms. Matoian, I believe those were quotes that you
8 offered there?

9 A. They were.

10 Q. Have you omitted the actual N-word --

11 A. I have.

12 Q. -- from the quote?

13 MS. GUICE SMITH: Judge Wagoner, we're just
14 requesting, out of respectfulness, that we be able to use
15 the term "N-word" instead of the actual phrase.

16 JUDGE WAGONER: That's fine.

17 A. Mr. Skinner also recalled that Mr. Spruiell said
18 that he wasn't guilty, but that when the jury gave Mr. Jones
19 a life sentence, that Mr. Spruiell pled right after that.

20 BY MS. GUICE SMITH:

21 Q. Did you ask Mr. Skinner what statements Mr. Jones
22 made to him regarding his guilt or innocence?

23 A. Yes, we did.

24 MS. GUICE SMITH: Commissioners, if you will refer
25 to Handout 2 in your Hearing Handout notebooks. This is an

1 excerpt from the recorded and transcribed phone interview
2 that Ms. Matoian conducted of Mr. Skinner on June 30th,
3 2017.

4 (Handout Number 2 was identified for the
5 record.)

6 MS. GUICE SMITH: If you'll turn your attention to
7 page 3, line 24, and read through page 4, line 7. Just take
8 a moment to review that portion of the transcript.

9 (Pause in proceedings.)

10 BY MS. GUICE SMITH:

11 Q. Ms. Matoian, did the Commission obtain an
12 affidavit for Mr. Skinner?

13 A. We did.

14 MS. GUICE SMITH: Commissioners, if you will refer
15 to Handout 3 in your Hearing Handout notebooks. This is the
16 affidavit of Attorney John Skinner. Please take a moment to
17 review that.

18 (Handout Number 3 was identified for the
19 record.)

20 (Pause in proceedings.)

21 JUDGE WAGONER: I think everybody's ready.

22 MS. GUICE SMITH: Okay. Before we move on,
23 Commissioners, I am handing Ms. Mataoian a portion of the
24 Motion for Appropriate Relief transcript for Mr. Jones.

25 I believe that District Attorney Britt had a

1 question about what was provided in discovery related to
2 Dana Maybin's changing stories. I don't know that we have a
3 full answer, but I believe we can give you what we know.

4 MS. TANNER: We can also make a copy of the
5 M.A.R., of this portion, if they want to read it.

6 BY MS. GUICE SMITH:

7 Q. Ms. Matoian, if you will read that portion of
8 Mr. Vosburgh's testimony to the commissioners.

9 JUDGE WAGONER: And this was Mr. -- whose Motion
10 for Appropriate Relief?

11 THE WITNESS: This is Mr. Jones's Motion for
12 Appropriate Relief.

13 A. Mr. Vosburgh was asked, quote:

14 "So you didn't know that Dana Maybin was going
15 to get up and testify that she had recanted her
16 written diary entries" --

17 Sorry. There is a hole punch there.

18 -- "as she was told to."

19 The answer is:

20 "No. I did not know that she was going to do
21 that. I thought that Dana Maybin was going to
22 testify in the manner in which she spoke to me and
23 Maynard Harrell in the Women's Prison and in the
24 manner in which Mr. Harrell recorded her
25 conversation when he went back up there."

1 Mr. Vosburgh was then asked, quote:

2 "So you were aware through the pretrial
3 discovery that you got that there was going to be
4 problems with Dana Maybin's testimony as well as
5 the Nichole Mills information that you were
6 provided. Is that right?"

7 The answer is, "I don't recall receiving those
8 things until right before the trial.

9 The question: "Yes, sir."

10 The answer:

11 "And I did not have time to read those things
12 and also talk with him about the conflict and the
13 other things, and so we proceeded immediately to
14 jury selection. And I don't know that I became
15 familiar with those statements until actually
16 during her testimony."

17 BY MS. GUICE SMITH:

18 Q. Ms. Matoian, let me turn your attention now to
19 Mr. Spruiell's trial attorney, Maynard Harrell.

20 COMMISSIONER GRACE: Madam -- Madam Director, I'm
21 sorry. Let me interrupt.

22 MS. GUICE SMITH: Absolutely.

23 COMMISSIONER GRACE: I have one question about
24 that. Is Mr. Vosburgh indicating that he did not receive
25 any report that she had changed her statement, or was he

1 referring to her diary logs, that -- that there may be a
2 problem with? I'm not quite clear in what you read what he
3 was referring to.

4 THE WITNESS: So he was being asked if he had any
5 idea how Ms. Maybin was going to testify, how she ultimately
6 ended up testifying, and he said he did not have any idea
7 what Ms. Maybin was going to say, period.

8 And he's asked if he knew that she was going to go
9 up and recant her written diary entries.

10 And then the question he was asked was if he knew
11 there were going to be problems with Dana Maybin's testimony
12 and the Nichole Mills information. He said he did not
13 recall receiving that information about Maybin's testimony
14 and the Nichole Mills information until right before the
15 trial.

16 COMMISSIONER GRACE: So it really doesn't address
17 the question of whether or not he received from the district
18 attorney some report indicating that Maybin had changed her
19 story in the -- in her interview with the D.A.

20 THE WITNESS: Correct.

21 MS. GUICE SMITH: Commissioners, also be
22 considering whether you would like a copy of the full M.A.R.
23 testimony to review on a -- overnight. It is a little under
24 a hundred pages.

25 COMMISSIONER BOSWELL: Is a lot of what's in there

1 a duplication of what we've already been provided, or is it
2 all different?

3 MS. GUICE SMITH: We provided a summary of the
4 Motion for Appropriate Relief, did not provide the full
5 testimony from that hearing. Like I said, it's a little
6 under a hundred pages, and it's available to you if you'd
7 like it.

8 COMMISSIONER GRACE: Do we have any indication
9 what the change of story was by Ms. Maybin? I keep hearing
10 about change of story generally, but no specifics about what
11 it is she changed it to.

12 THE WITNESS: I'll try to give as brief a time
13 line as I can.

14 Ms. Maybin initially tells law enforcement that
15 she has no involvement in the murder, but that Mr. Spruill,
16 Mr. Jones, and Curtis Furlough had left the bar that night
17 and came back wearing different clothes.

18 In her second interview, she, in the beginning,
19 says a similar -- gives a similar statement. She is taken
20 and given two polygraph exams. One, the polygraph examiner
21 tells her she failed. The second is inconclusive. And then
22 in that afternoon, she then says that she was present when
23 Mr. Spruill and Mr. Jones committed the murder, and that
24 they had gone back to Mr. Spruill's house after the murder
25 and stayed there -- or she stayed there.

1 And then in December gives a similar story, but
2 then says they also went back to the bar. And then
3 according to Nichole Mills, sometime around New Year's women
4 from church come to the jail and that after the talk, Ms.
5 Maybin became upset and wrote down information about the
6 crime.

7 COMMISSIONER GRACE: Let me interrupt you. I'm
8 familiar with that in reading the brief, but we have yet to
9 hear when the D.A. indicates, "She's all over the place, she
10 changed her story," what she changed it to.

11 THE WITNESS: So --

12 COMMISSIONER GRACE: During -- during those
13 conversations, not -- I'm not so much concerned with those
14 conversations with investigators, but with the conversations
15 with the district attorney. I'm -- I'm really interested in
16 what "being all over the place" meant and "she changed her
17 story in an interview with the D.A."

18 THE WITNESS: I don't believe the D.A. has said
19 that Ms. Maybin ever changed her story to him. He became
20 aware that she was changing her story to other people. And
21 then when he would ask her about it or they would meet with
22 her, she would again say that she was involved in the
23 murder. But then when she would be speaking to other
24 individuals, she would say something different.

25 So he did not indicate that she ever changed her

1 story with him, but that he was aware she was changing it
2 with other people.

3 COMMISSIONER BRITT: In -- in the brief, wasn't
4 there a reference to an encounter that occurred in a -- in a
5 -- in the back room or a conference room at the courthouse
6 where Mitchell Norton, presumably right before the probable
7 cause hearing, got angry and told her lawyer in her -- in
8 Ms. Maybin's presence that she needed to get her stuff
9 together?

10 THE WITNESS: That's correct. And I believe that
11 that was after the probable cause hearing where the letter
12 she wrote to Mitchell Nowarah was brought up where she was
13 saying that she was not involved in the murder, and her
14 attorney requested a continuance on her probable cause
15 hearing.

16 MS. GUICE SMITH: Commissioners, another thing
17 that you were not provided in your brief -- because at 850
18 pages, we had to make some decisions -- we summarized Dana
19 Maybin's testimony. My understanding is it's about 150
20 pages. That is also available to you if you would like to
21 review that in full.

22 JUDGE WAGONER: And that is -- was she cross-
23 examined by the defense attorneys --

24 THE WITNESS: She was.

25 JUDGE WAGONER: -- about her inconsistent

1 statements?

2 THE WITNESS: Yes.

3 JUDGE WAGONER: I might like to see that.

4 MS. GUICE SMITH: Okay. We will have that ready
5 for you-all, and we'll provide it before the end of the day.

6 JUDGE WAGONER: Anybody else besides me?

7 COMMISSIONER GRACE: I'd like to read it.

8 COMMISSIONER BRITT: I would like to read it.

9 MS. GUICE SMITH: You all get it. If one of you
10 wants it, you all get it.

11 (Laughter.)

12 JUDGE WAGONER: Thank you.

13 MS. GUICE SMITH: If we could take a break, I
14 think now would be a great time to take a 15-minute break.

15 JUDGE WAGONER: Okay. What time are you planning
16 to break for lunch, 12:30-ish?

17 MS. GUICE SMITH: Probably 12:30 would be great.

18 JUDGE WAGONER: 15-minute break, slash, recess.

19 MS. GUICE SMITH: Thank you.

20 (Off the record at 11:37 a.m.)

21 (A brief recess was taken.)

22 (Back on the record at 11:55 a.m.)

23 (The witness, Catherine Matoian, resumed the
24 stand.)

25 MS. GUICE SMITH: All right. Before we move

1 forward, we're going to try to clean up a few things that
2 you-all had questions about before our break.

3 CONTINUATION OF EXAMINATION BY MS. GUICE SMITH:

4 Q. Ms. Matoian, with respect to Janice Spruiell, did
5 she say anything about fingerprints or DNA when the
6 Commission staff spoke with her?

7 A. No, she did not.

8 Q. And is that because she informed Commission staff
9 that she had very little involvement in the investigation
10 because it was her first murder and she allowed the S.B.I.
11 to do the bulk of the investigation?

12 A. That's correct.

13 Q. Okay.

14 MS. GUICE SMITH: Mr. Grace, I'm going to try to
15 make sure that I understand your question related to
16 discovery. Is your question what was the discovery related
17 to Dana Maybin that was provided?

18 COMMISSIONER GRACE: No. It's more specific.
19 What was provided by District Attorney Anglim from his
20 interview with --

21 MS. GUICE SMITH: Okay.

22 COMMISSIONER GRACE: -- Ms. Maybin? I think I
23 heard you say that -- that in that interview, she changed
24 her story and that she was all over the place. But I -- I
25 have yet to see where he recorded that and what the change

1 was and where he supplied that to -- to the defense counsel.

2 MS. GUICE SMITH: Okay. So we're going to walk
3 through what we know now.

4 BY MS. GUICE SMITH:

5 Q. Ms. Matoian, with respect to any statements that
6 Ms. Maybin may have made to the District Attorney's Office,
7 do we have a record of that in our file?

8 A. No, we do not. We have some indication from other
9 sources that there were meetings between Ms. Maybin and the
10 District Attorney's Office, but nothing from the district
11 attorney.

12 Q. Is it correct that any statements -- that
13 statements were provided to defense attorneys before
14 Ms. Maybin's cross-examination at trial?

15 A. The trial transcript indicates that statements
16 were turned over to the defense attorneys but do not
17 enumerate exactly what was provided.

18 Q. And do we have any indication in the file provided
19 either by defense attorneys or by the District Attorney's
20 Office what exactly those statements were that were provided
21 prior to the cross-examination?

22 A. We do not for the statements provided prior to
23 cross-examination.

24 Q. Okay.

25 MS. GUICE SMITH: Further, there was a chart on

1 page 231 to 232 of your brief that describes what we do know
2 about the discovery that was provided between the parties.

3 By way of example, there were letters turned over
4 the day that the trial started, 9/20/1995. We've enumerated
5 that in that part of the brief. We do have copies of those
6 letters. But outside of law enforcement statements, as
7 Ms. Matoian just testified, we don't have other statements.

8 MR. GRACE: Thank you. Well, that -- that's the
9 answer to the question.

10 MS. GUICE SMITH: Okay, thank you. Great.

11 BY MS. GUICE SMITH:

12 Q. I'm going to turn your attention now to
13 Mr. Spruiell's trial attorney, Maynard Harrell. What did
14 Commission staff do with respect to Mr. Harrell?

15 A. Commission staff requested Mr. Harrell's file. He
16 indicated that he searched his office in all areas. He
17 could recall storing files and could not locate a file for
18 this case.

19 Q. Did Commission staff interview Mr. Harrell?

20 A. We did by phone on June 19th, 2017.

21 Q. And was that interview recorded and transcribed?

22 A. It was.

23 Q. Did you ask Mr. Harrell what statements
24 Mr. Spruiell made to him regarding his guilt or innocence?

25 A. Yes. He stated that, as he recalled, Mr. Spruiell

1 always denied involvement.

2 Q. And was this the substance of the interview you
3 had with Mr. Harrell?

4 A. It was.

5 Q. Did you later speak with Mr. Harrell again?

6 A. We did. On December 12th, 2017, we met with
7 Mr. Harrell in person in the courtroom in the -- in
8 Washington County.

9 Q. Was that interview recorded and transcribed?

10 A. No. Since we spoke to him in the courtroom, we
11 weren't able to record in there.

12 Q. And what was the substance of that second
13 interview?

14 A. We wanted to speak with Mr. Harrell because there
15 was a memo in the North Carolina Center on Actual Innocence
16 file from November 2003 that indicates that Mr. Harrell told
17 students at the Center that he had spoken to Dana Maybin
18 recently and she had recanted her testimony and agreed to
19 speak out in order to clear Mr. Spruiell and Mr. Jones.

20 Q. And did you show that memo to Mr. Harrell?

21 A. I did.

22 Q. What did he say?

23 A. He stated that he didn't remember the conversation
24 with Dana Maybin happening but stated that he was not saying
25 that it didn't happen.

1 I also asked him if he recalled speaking to
2 Ms. Maybin anytime after Mr. Spruiell and Mr. Jones were
3 convicted, and he said that if that happened, he didn't
4 remember it.

5 Q. Did the Commission obtain an affidavit from
6 Mr. Harrell?

7 A. We did.

8 MS. GUICE SMITH: Commissioners, if you will refer
9 to Handout 4 in your Hearing Handout notebooks. This is the
10 affidavit of Attorney Maynard Harrell.

11 (Handout Number 4 was identified for the
12 record.)

13 MS. GUICE SMITH: Please take a moment to review
14 Mr. Harrell's affidavit.

15 JUDGE WAGONER: Okay.

16 BY MS. GUICE SMITH:

17 Q. All right. Let me turn your attention now to
18 Mr. Spruiell's other trial attorney, Seth Edwards.

19 MS. GUICE SMITH: Commissioners, Seth Edwards
20 represented Leroy Spruiell at the trial stage. He is
21 currently the elected district attorney for Judicial
22 District 2, which includes Washington County, where this
23 case took place.

24 And as you-all are aware, he also serves as an
25 Alternate on this Commission. He has been recused in his

1 role both as commissioner for this case and as the district
2 attorney for this post-conviction matter.

3 BY MS. GUICE SMITH:

4 Q. What did Commission staff do with respect to
5 Mr. Edwards?

6 A. Commission staff obtained a partial file from
7 Mr. Edwards.

8 Q. Did the Commission later interview Mr. Edwards?

9 A. We did. We interviewed him on October 9th, 2017.

10 Q. Was that interview recorded and transcribed?

11 A. It was.

12 Q. And what did he say during the interview?

13 A. Mr. Edwards stated that he was the second chair to
14 Maynard Harrell and that he assisted with trial prep and
15 legal research. He said that modern technology did not
16 exist back then, and he recalled that there were a lot of
17 rumors about who had committed the crime and he didn't
18 believe that there was any DNA evidence.

19 He also recalled that Ms. Maybin was the key
20 witness. He stated that he knows what -- knows that Dana
21 Maybin changed her story over time and recalled that she had
22 gone back to the original or close to the original version
23 at trial.

24 He recalled that Dana Maybin testified that when
25 Maynard Harrell came to speak with her, Harrell told her to

1 change her story prior to cutting on the recorder.

2 Mr. Edwards indicated that he wasn't present
3 during that interview but was shocked to hear that and
4 doesn't believe that Maynard Harrell would have done that.
5 Mr. Edwards also stated that Mr. Harrell denied doing that
6 to Mr. Edwards.

7 He recalled representing a woman named Jackie
8 Craddock on unrelated charges but did not recall her
9 involvement in this case, and he did not recall Nichole
10 Mills' involvement in this case.

11 He did remember watching Mr. Jones's trial and
12 meeting with Spruiell following the trial and stated that
13 ultimately it resulted in Mr. Spruiell taking a plea.

14 Q. Did you ask Mr. Edwards what statements
15 Mr. Spruiell made to him regarding his guilt or innocence?

16 A. We did. He stated that he did not recall
17 Mr. Spruiell ever admitting guilt in this case.

18 Q. Did you ask Mr. Edwards about his role in the case
19 after he became district attorney?

20 A. We did. He remembered -- I asked Mr. Edwards what
21 he remembered about John Floyd's involvement in the case,
22 and he recalled that Mr. Floyd falsified a lab report and
23 took it to someone in prison to try and get them to confess.

24 Q. Did you provide Mr. Edwards with anything related
25 to that Floyd investigation when you interviewed him?

1 A. I did. I provided him with a memo dated May 12th,
2 2003, from a meeting between Mr. Edwards, Mr. Vosburgh,
3 Mr. Harrell, Chief Floyd, and Preston Ward. The memo
4 indicates that during that meeting Chief Floyd suggested
5 talking to another attorney in Washington County about
6 offering Joseph Lynn a deal.

7 MS. GUICE SMITH: Commissioners, that memo was,
8 again, provided to you on pages 515 of -- to 516 of your
9 brief.

10 BY MS. GUICE SMITH:

11 Q. Ms. Matoian, did Mr. Edwards recall that meeting
12 that was referenced in his memo?

13 A. He stated that he did not recall the meeting. And
14 I asked him if he remembered what changed his mind about
15 moving forward with offering Joseph Lynn a deal, and he
16 stated that he did not.

17 I asked him if anything happened in the case after
18 he became aware of the lab report that was falsified by
19 Floyd. He stated not that he could recall, that he had
20 turned the case over to the Attorney General's Office at
21 some point.

22 Q. And did the Commission obtain an affidavit from
23 Mr. Edwards?

24 A. We did.

25 MS. GUICE SMITH: Commissioners, if you will refer

1 to Handout 5 in your Hearing Handout notebook. This is the
2 affidavit of Attorney Seth Edwards.

3 (Handout Number 5 was identified for the
4 record.)

5 MS. GUICE SMITH: Please take a moment to review
6 it.

7 (Pause in proceedings.)

8 MS. GUICE SMITH: Commissioners, do you have any
9 questions of Ms. Matoian related to her testimony about the
10 defense attorneys in this case?

11 (No response.)

12 MS. GUICE SMITH: Okay. Mr. Harrell, Mr. Skinner,
13 and Mr. Edwards are all subpoenaed and available to testify
14 via video conference tomorrow morning. I will just need to
15 know now whether you-all want to hear from any of the three
16 of them, and if so, we'll have them ready to go first thing
17 in the morning.

18 JUDGE WAGONER: Anybody?

19 (No response.)

20 MS. GUICE SMITH: Okay.

21 JUDGE WAGONER: It looks like no takers.

22 MS. GUICE SMITH: Okay. Can I release them from
23 their subpoenas?

24 JUDGE WAGONER: Hmm?

25 MS. GUICE SMITH: Can I release them from their

1 subpoenas?

2 COMMISSIONER BARROW: Could you hang on --

3 MS. GUICE SMITH: Sure.

4 COMMISSIONER BARROW: -- with that release a
5 minute?

6 MS. GUICE SMITH: Absolutely.

7 COMMISSIONER BARROW: Let me -- let me think about
8 Mr. Harrell, in particular.

9 MS. GUICE SMITH: Absolutely. They're on video --

10 JUDGE WAGONER: How about after lunch or
11 something?

12 MS. GUICE SMITH: -- so we can -- we can give you
13 all the day to think about it. We were just going to let
14 them know something by the end of the business day.

15 JUDGE WAGONER: Okay.

16 BY MS. GUICE SMITH:

17 Q. Let me turn your attention now, Ms. Matoian, to
18 the private investigators in this case. Who were the
19 private investigators?

20 A. The private investigators were Joe Boston and
21 Clifton "Cliff" Hardison.

22 Q. With respect to Mr. Boston, was the Commission
23 able to obtain Mr. Boston's file?

24 A. Mr. Boston -- Boston no longer had his file.
25 However, the Commission received at least a portion of his

1 file with the North Carolina Center on Actual Innocence and
2 Prisoner Legal Services' files. But we don't know if this
3 is Mr. Boston's full file.

4 Q. Did you interview Mr. Boston?

5 A. We did. We interviewed him by phone on July 18th,
6 2017.

7 Q. And was that interview recorded and transcribed?

8 A. It was.

9 Q. And what did he recall?

10 A. He recalled the case was in Plymouth and occurred
11 on Folly Road, but that was all.

12 Q. With respect to Mr. Hardison, was the Commission
13 able to obtain Mr. Hardison's file?

14 A. Mr. Hardison no longer had his file and indicated
15 that he had previously destroyed all of his files from both
16 his time in law enforcement and his time as a private
17 investigator. The Commission received at least a portion of
18 Mr. Hardison's file with the Center files and P.L.S. files,
19 but we don't know if this is the complete file.

20 Q. And did you interview Mr. Hardison?

21 A. We did. We interviewed him in person on September
22 8th, 2017.

23 Q. And was that interview recorded and transcribed?

24 A. It was.

25 Q. What did Mr. Hardison recall?

1 A. He remembered doing some interviews in the case
2 and running out a few leads and then faxing everything to
3 the attorneys. He said that he was only getting one side of
4 the story from the interviews he was doing, but that as he
5 was faxing it, he was thinking how there might be reasonable
6 doubt in this case.

7 He stated that he was surprised that they were
8 found guilty but could not recall why he felt surprised and
9 said he thought it may have been based off the people he
10 interviewed.

11 Q. Did you ask Mr. Hardison about his interview
12 process?

13 A. Yes. I asked him if he was recording his
14 interviews as some reports looked like transcripts. He said
15 that he was not recording and that he would take notes on a
16 notepad and then dictate them to his secretary.

17 He said that he didn't recall an angle that he was
18 looking for in the interviews but saw them as more of a
19 fact-finding mission.

20 MS. GUICE SMITH: Commissioners, do you have any
21 questions for Ms. Matoian related to the work of the private
22 investigators?

23 (No response.)

24 BY MS. GUICE SMITH:

25 Q. Ms. Matoian, I'm going to turn your attention now

1 to the attorneys who represented Mr. Spruiell and Mr. Jones
2 post-conviction. Who was Constant -- Constance Widenhouse?

3 A. Ms. Widenhouse was Mr. Jones's appellate attorney.

4 Q. Did the Commission obtain a file from
5 Ms. Widenhouse?

6 A. We did. It was a partial file.

7 Q. And did the Commission interview Ms. Widenhouse?

8 A. We did. We spoke to her over the phone on March
9 30th, 2011.

10 Q. Was that interview recorded and transcribed?

11 A. It was not.

12 Q. What did Ms. Widenhouse say during that call?

13 A. She remembered the case well and indicated that
14 while representing Mr. Jones on his appeal, she had also
15 interviewed Mr. Spruiell. She stated that neither
16 Mr. Spruiell nor Mr. Jones ever admitted guilt and recalls
17 them both adamantly denying any involvement in this crime.

18 Q. And did the Commission obtain an affidavit from
19 Ms. Widenhouse?

20 A. We did.

21 MS. GUICE SMITH: Commissioners, if you'll refer
22 to Handout 6 in your Hearing Handout notebooks. This is the
23 affidavit of Constance Widenhouse.

24 (Handout Number 6 was identified for the
25 record.)

1 MS. GUICE SMITH: Take a moment to review it.

2 JUDGE WAGONER: I think we're done with that one.

3 (Pause in proceedings.)

4 BY MS. GUICE SMITH:

5 Q. Who is Leticia Echols?

6 A. Ms. Echols was an attorney at Prisoner Legal
7 Services who represented Mr. Jones on his post-conviction
8 Motion for Appropriate Relief.

9 Q. Did the Commission obtain the Prisoner Legal
10 Services file related to Ms. Echols' representation of
11 Mr. Jones?

12 A. We did.

13 Q. Did the Commission also interview Ms. Echols?

14 A. We did. We interviewed her by phone on August
15 3rd, 2017.

16 Q. Was that interview recorded and transcribed?

17 A. It was recorded. However, only the Commission
18 staff can be heard on this recording, so it was not
19 transcribed.

20 Q. What did Ms. Echols say during the interview?

21 A. Ms. Echols provided some information about the
22 case from her recollection. However, a lot of that was not
23 accurate. For example, she stated that Mr. Jones's attorney
24 didn't ask for a second attorney and that she didn't
25 understand why Mr. Spruiell and Mr. Jones were tried

1 together.

2 Q. And why was that inaccurate?

3 A. Mr. Jones did have two trial attorneys, and
4 Mr. Spruiell and Mr. Jones were not tried together.
5 Mr. Jones was tried first.

6 Q. And then did Mr. Jones have a trial, or did he
7 take a plea?

8 A. Mr. Spruiell took a plea.

9 Q. I'm sorry, Mr. Spruiell.

10 Did you ask Ms. Echols what statements Mr. Jones
11 made to her regarding his guilt or innocence?

12 A. We did. Ms. Echols stated that Mr. Jones said
13 that he didn't do this. She then said that Mr. Jones said
14 that he went there in a truck. And I asked what she meant
15 by "there," and Ms. Echols says that -- said that Jones
16 didn't go to the victim's house and was trying to go home.

17 Ms. Echols also stated that Spruiell said he did
18 not do it, and both were adamant that they had not committed
19 this crime.

20 Q. And did the Commission obtain an affidavit from
21 Ms. Echols?

22 A. We did.

23 MS. GUICE SMITH: Commissioners, if you'll refer
24 to Hearing Handout 7 in your Hearing Handout notebooks.
25 This is the affidavit of Attorney Leticia Echols.

1 (Handout Number 7 was identified for the
2 record.)

3 MS. GUICE SMITH: Please take a moment to review
4 it.

5 (Pause in proceedings.)

6 BY MS. GUICE SMITH:

7 Q. Who is Marcus Jimison?

8 COMMISSIONER FRYE: Excuse me. Can I ask a
9 question?

10 MS. GUICE SMITH: Absolutely.

11 COMMISSIONER FRYE: So she said that Mr. Jones
12 said they were there in a truck.

13 THE WITNESS: She said -- yes. And I asked what
14 she meant by "there" to clarify, and she said that he was
15 not saying that he went to the victim's house, but that he
16 was trying to go home.

17 COMMISSIONER FRYE: But they went in a truck.

18 THE WITNESS: Yes.

19 COMMISSIONER FRYE: Okay.

20 BY MS. GUICE SMITH:

21 Q. Who was Marcus Jimison?

22 A. Marcus Jimison was also an attorney with P.L.S.
23 that was assigned to Mr. Jones's case. The case was then
24 transferred to Leticia Echols when Mr. Jimison left P.L.S.

25 Q. And did the Commission interview Mr. Jimison?

1 A. We did, by phone, on July 5th, 2017.

2 Q. And was that interview recorded and transcribed?

3 A. It was.

4 Q. What did Mr. Jimison say during that interview?

5 A. Mr. Jimison remembered interviewing a bunch of
6 folks but didn't actually recall filing anything in the
7 case. He also recalled interviewing Mr. Spruiell and meeting
8 with the defense attorneys.

9 He said that the lawyers were so adamant that the
10 wrong person had been convicted that they indicated that if
11 something could be found, they would concede ineffective
12 assistance of counsel.

13 He recalled going to visit a big-time drug dealer
14 in Central Prison about a relationship the drug dealer had
15 with a female police officer.

16 Q. Does that description match anything that the
17 Commission looked into?

18 A. It does. It matches the description of the rumors
19 regarding Alton "BoJack" Clagon and Investigator Janice
20 Spruiell.

21 MS. GUICE SMITH: Commissioners, if you will refer
22 to Handout 8 in your Hearing Handout notebooks. This is an
23 excerpt from the recorded and transcribed phone interview
24 that Ms. Matoian conducted of Mr. Jimison on July 5th, 2017.

25 (Handout Number 8 was identified for the

1 record.)

2 MS. GUICE SMITH: If you'll turn your attention to
3 page 8, line 8, and read through page 11, line 9.

4 (Pause in proceedings.)

5 JUDGE WAGONER: Was this BoJack that he
6 interviewed?

7 THE WITNESS: I don't believe he recalled him --

8 JUDGE WAGONER: He didn't say a name.

9 THE WITNESS: -- by name as "BoJack," but the
10 description matches what we know about BoJack.

11 BY MS. GUICE SMITH:

12 Q. Ms. Matoian, is there anything in the file that
13 was provided to the Commission by Prisoner Legal Services
14 that relates to an interview with Mr. Clagon by Mr. Jimison
15 and Ms. Echols?

16 A. No, there isn't.

17 Q. Anything matching this description even if it
18 doesn't provide the name Mr. Clagon?

19 A. No.

20 Q. Did you ask Mr. Jimison what statements Mr. Jones
21 made to him regarding his guilt or innocence?

22 A. We did. Mr. Jimison stated that Mr. Jones always
23 said he was innocent.

24 Q. Did the Commission obtain an affidavit from
25 Mr. Jimison?

1 A. We did.

2 MS. GUICE SMITH: Commissioners, if you'll refer
3 to Handout 9 in your Hearing Handout notebooks. This is the
4 affidavit of Attorney Marcus Jimison.

5 (Handout Number 9 was identified for the
6 record.)

7 MS. GUICE SMITH: Please take a moment to review
8 it.

9 (Pause in proceedings.)

10 BY MS. GUICE SMITH:

11 Q. Who is Amos Tyndall?

12 A. Amos Tyndall was an attorney who worked on
13 Mr. Jones's clemency petition.

14 Q. Did the Commission obtain a file from Mr. Tyndall?

15 A. We did. We obtained his file in 2011.

16 Q. And did we later interview Mr. Tyndall?

17 A. We did. We interviewed him by phone on June 15th,
18 2017.

19 Q. Was that interview recorded and transcribed?

20 A. It was.

21 Q. What did Mr. Tyndall say during the interview?

22 A. Mr. Tyndall could not recall whether Mr. Jones had
23 actually been a client of his. I informed Mr. Tyndall that
24 the Commission had previously received a box of documents
25 from his office, and he stated that he believed someone had

1 given him the documents to see if something -- if there was
2 something he could do to help. He believes that they were
3 students from U.N.C.

4 Q. Did you ask Mr. Tyndall what statements Mr. Jones
5 made to him regarding his guilt or innocence?

6 A. I did.

7 MS. GUICE SMITH: Commissioners, if you will refer
8 to Handout 10 in your Hearing Handout notebooks. This is an
9 excerpt from the recorded and transcribed phone interview
10 that Ms. Matoian conducted of Mr. Tyndall on June 15th,
11 2017.

12 (Handout Number 10 was identified for the
13 record.)

14 MS. GUICE SMITH: If you'll turn attention -- your
15 attention to page 3, line 22, and read through page 4, line
16 19.

17 (Pause in proceedings.)

18 COMMISSIONER BOSWELL: What does that last line
19 -- "But I do remember Vosburgh might have been involved."
20 What's he referring to there?

21 THE WITNESS: He's referring to Jim -- James
22 Vosburgh --

23 COMMISSIONER BOSWELL: The lawyer?

24 THE WITNESS: -- being involved in the case, yes.

25 COMMISSIONER BOSWELL: Okay.

1 (Pause in proceedings.)

2 BY MS. GUICE SMITH:

3 Q. Did you do anything further with respect to
4 Mr. Tyndall?

5 A. I did. I e-mailed him a copy of his fee agreement
6 with Mr. Jones and notes from a meeting that he had with
7 Mr. Jones and asked whether those jogged his memory as to
8 his involvement in the case.

9 He responded that he didn't really remember what
10 he had done on the case, but that he did recall meeting with
11 Mr. Jones at Hyde Correctional and having interaction with
12 Mr. Jones's family. He thought that the family may have
13 been unable to afford his representation.

14 Q. And did the Commission obtain an affidavit from
15 Mr. Tyndall?

16 A. We did.

17 MS. GUICE SMITH: Commissioners, if you'll refer
18 to Handout 11 in your Hearing Handout notebooks. That is
19 the affidavit of Amos Tyndall.

20 (Handout Number 11 was identified for the
21 record.)

22 MS. GUICE SMITH: Please take a moment to review
23 it.

24 (Pause in proceedings.)

25 BY MS. GUICE SMITH:

1 Q. Who is Carl Stewart?

2 A. Carl Stewart was Mr. Spruiell's attorney for his
3 petition for commutation.

4 Q. Did the Commission obtain a file from Mr. Stewart?

5 A. We did not.

6 Q. Did the Commission interview Mr. Stewart?

7 A. We did not.

8 Q. Did we -- did the Commission obtain an affidavit
9 from Mr. Stewart?

10 A. We did.

11 Q. Generally, what does that affidavit indicate?

12 A. It indicates that he does not have a file as he
13 purges all of his files after seven years of inactivity, and
14 he also said that Mr. Spruiell always maintained that he was
15 innocent of this crime during the course of his
16 representation.

17 MS. GUICE SMITH: Commissioners, if you will refer
18 to Handout 12 in your Hearing Handout notebooks. This is
19 the affidavit of Carl Stewart.

20 (Handout Number 12 was identified for the
21 record.)

22 MS. GUICE SMITH: Please take a moment to review
23 it.

24 BY MS. GUICE SMITH:

25 Q. Who is David Irvine?

1 A. David Irvine was retained by Mr. Spruiell's family
2 to look into any post-conviction claims Mr. Spruiell may
3 have.

4 Q. And did the Commission obtain a file from
5 Mr. Irvine?

6 A. We did not.

7 Q. Did the Commission interview Mr. Irvine?

8 A. We did. We interviewed him by phone on May 17th,
9 2017.

10 Q. Was that interview recorded and transcribed?

11 A. It was not.

12 Q. What did Mr. Irvine say?

13 A. He said that he had no recollection of
14 representing Mr. Spruiell but thought he may have done some
15 work for him post-conviction.

16 Q. How did the Commission know of Mr. Irvine's
17 representation of Mr. Spruiell?

18 A. Correspondence in the Prisoner -- Prisoner Legal
19 Services file for Mr. Spruiell between Mr. Irvine and Susan
20 Pollitt, who was an attorney at P.L.S. assigned to
21 Mr. Spruiell's case, indicate that Mr. Irvine had been
22 retained by Mr. Spruiell's family to look into any post-
23 conviction claims regarding his plea.

24 Q. And did Mr. Irvine provide an affidavit to the
25 Commission?

1 A. He did.

2 MS. GUICE SMITH: Commissioners, if you will refer
3 to Handout 13 in your Hearing Handout notebooks. This is
4 the affidavit of Attorney David Irvine.

5 (Handout Number 13 was identified for the
6 record.)

7 MS. GUICE SMITH: Please take a moment to review
8 that.

9 (Pause in proceedings.)

10 BY MS. GUICE SMITH:

11 Q. Did anyone else provide an affidavit related to
12 Mr. Irvine's file?

13 A. Yes. Mr. Irvine's former law firm provided an
14 affidavit related to their inability to locate a file for
15 Mr. Spruiell's case as well.

16 MS. GUICE SMITH: Commissioners, I am not
17 providing that affidavit of that firm, Pritchett & Birch,
18 but it is available if you would like to review it.

19 BY MS. GUICE SMITH:

20 Q. Ms. Matoian, who is Chris Mumma?

21 A. Ms. Mumma is the executive director of the North
22 Carolina Center on Actual Innocence. She referred
23 Mr. Spruiell and Mr. Jones's cases to the Commission and
24 currently represents Mr. Jones for the Commission's formal
25 inquiry.

1 Q. Did the Commission obtain and review the Center's
2 file?

3 A. We did. We obtained the Center's file upon
4 referral and reviewed it.

5 Q. And did we obtain an affidavit from Ms. Mumma?

6 A. We did.

7 MS. GUICE SMITH: Commissioners, if you will refer
8 to Handout 14 in your Hearing Handout notebooks. This is
9 the affidavit of attorney Chris Mumma.

10 (Handout Number 14 was identified for the
11 record.)

12 MS. GUICE SMITH: Please take a moment to review
13 it.

14 (Pause in proceedings.)

15 MS. GUICE SMITH: Commissioners, do you have any
16 questions of Ms. Matoian related to her testimony regarding
17 the post-conviction attorneys for Mr. Spruiell and Mr. Jones
18 in this case?

19 (No response.)

20 MS. GUICE SMITH: Ms. Matoian, you may step down.

21 (The witness left the stand.)

22 MS. GUICE SMITH: The Commission will call
23 Associate Director Beth Tanner.

24 JUDGE WAGONER: Need to be sworn?

25 MS. GUICE SMITH: Yes, please.

1 JUDGE WAGONER: Left hand on the Bible, please.
2 Raise your right.

3 BETH TANNER,
4 having been called as a witness for the Commission, was
5 sworn by Judge Wagoner and testified as follows:

6 EXAMINATION BY MS. GUICE SMITH:

7 Q. Ms. Tanner, as we've been sitting here, there were
8 some questions by commissioners regarding phone -- a phone
9 call that Ms. Jan -- Detective Janice Spruiell may have made
10 to Women's Prison in Raleigh --

11 A. Yes.

12 Q. -- to Sonja Day on the night of the crime. Can
13 you tell the commissioners what you've learned over the last
14 few hours about that?

15 A. Sure. I confirmed with Prison's Deputy Director
16 Carlton Joyner that it is not the practice that inmates can
17 receive phone calls on the Inmate Phone Call System.
18 However, at Women's Prison, there is a practice and has been
19 historically that they could set up a call for a detective
20 or law enforcement to call into the prison. That would not
21 be on the Inmate Phone Call System, so there would not be a
22 recording of that call.

23 Nonetheless, I double-checked with the General
24 Counsel's Office for the Department of Public Safety to
25 ensure that Women's Prison did not have records dating back

1 to 1993 -- just general phone records -- and they confirmed
2 that they do not.

3 JUDGE WAGONER: There was no indication to set up
4 an appointment. You have to set up an appointment?

5 THE WITNESS: Yes.

6 JUDGE WAGONER: It's hard to do if you don't know
7 somebody's going to be murdered, I would think. All right.

8 THE WITNESS: Thank you.

9 MS. GUICE SMITH: Is there no questions of
10 Ms. Tanner?

11 (No response.)

12 MS. GUICE SMITH: Okay. You may step down.

13 (The witness left the stand.)

14 MS. GUICE SMITH: I would say that this is a good
15 time to break for lunch.

16 Your Honor, how much time would you like for
17 lunch?

18 JUDGE WAGONER: Is an hour long enough for
19 you-all? 45 minutes? 40 Minutes?

20 COMMISSIONER BOSWELL: Before we break, can I --
21 can I ask one clarification?

22 JUDGE WAGONER: Sure.

23 COMMISSIONER BOSWELL: So it was Detective
24 Spruiell's testimony that you understand that she called that
25 same night?

1 COMMISSIONER GRACE: Couldn't have.

2 COMMISSIONER BOSWELL: I just was wondering if --
3 if it was the same night or if it wasn't maybe sometime
4 shortly thereafter.

5 MS. GUICE SMITH: If you'll give us one moment.

6 COMMISSIONER BOSWELL: Yeah.

7 COMMISSIONER GRACE: Yeah.

8 MS. GUICE SMITH: While she's looking that up, we
9 are going to prepare and provide for you the Dana Maybin
10 testimony to review overnight.

11 The other two that you-all had mentioned during
12 this morning's session were the Janice Spruiell Commission
13 transcript. Does anyone want that?

14 JUDGE WAGONER: I do.

15 MS. GUICE SMITH: Okay. We will make that
16 available.

17 The other one that there was some discussion of
18 was the Motion for Appropriate Relief transcript from
19 Jones's Motion for Appropriate Relief hearing. That was
20 related essentially to the Brady violation for -- correct me
21 if I'm wrong, Beth -- the Brady violation for the discovery,
22 the M. A. R.?

23 MS. TANNER: Yes.

24 MS. GUICE SMITH: Yeah. Does anyone want that?

25 COMMISSIONER GRACE: Please.

1 MS. GUICE SMITH: Okay. We will have those
2 prepared and ready before the end of the day.

3 Ms. Matoian is pulling -- pulling an answer to
4 your question right now, and we will answer that before we
5 break.

6 COMMISSIONER BOSWELL: Thank you.

7 JUDGE WAGONER: 45 minutes. Is that long enough?

8 COMMISSIONER BOSWELL: Sure.

9 MS. GUICE SMITH: Can we do 45 just to give the
10 staff --

11 JUDGE WAGONER: Okay, 45.

12 MS. GUICE SMITH: -- some time to pull all the
13 things together?

14 All right. Ms. Matoian's going to go up real
15 quick and answer Mr. Boswell's question.

16 CATHERINE MATOIAN,
17 having been re-called as a witness for the Commission and
18 having been previously sworn by Judge Wagoner, testified as
19 follows:

20 EXAMINATION BY MS. GUICE SMITH:

21 Q. Okay. Ms. Matoian, can you please answer
22 Mr. Boswell's question?

23 A. We can. The officer's notes from the sheriff's
24 office file, which is kind of a running narrative of their
25 investigation, indicate that at 1:30 a.m., Janice Spruiell

1 called Sonja Day at Women's Prison.

2 The copy of the report for the interview of Sonja
3 Day says, quote:

4 "Contacted D.O.C. in regards to talking with
5 Ms. Day. Spoke with a Sergeant Henderson. Needed
6 to verify the death. Gave her the hospital
7 telephone number for verification purposes."

8 And then goes into Janice Spruiell's interview of
9 Ms. Day.

10 COMMISSIONER BRITT: So that was on the morning
11 after he was discovered.

12 THE WITNESS: It was --

13 JUDGE WAGONER: 1:45 a.m.?

14 THE WITNESS: Yes. It was December 19th, 1993, at
15 1:30 a.m. The murder was reported at 10:15 on December
16 18th, 1993.

17 COMMISSIONER BOSWELL: So that -- just to clarify,
18 that suggests that she called somebody at Women's Prison and
19 said, "Go get her out of the cell; I need to talk to her,"
20 and they did.

21 THE WITNESS: It indicates that the sergeant
22 needed to verify that the death had actually happened. So
23 Ms. Spruiell provided the hospital number for them to verify
24 that Mr. Swain had been killed and was apparently then able
25 to speak with Ms. Day.

1 COMMISSIONER BOSWELL: Okay.

2 JUDGE WAGONER: Okay. Thank you.

3 COMMISSIONER BOSWELL: Thank you.

4 MS. GUICE SMITH: 1:15?

5 COMMISSIONER GRACE: A notification call?

6 MS. GUICE SMITH: I'm sorry?

7 COMMISSIONER GRACE: Just talking among ourselves.

8 There's no question.

9 JUDGE WAGONER: To himself. 1:15.

10 (Off the record at 12:31 p.m.)

11 (A lunch recess was taken.)

12 (Back on the record at 1:23 p.m.)

13 JUDGE WAGONER: We're ready. Okay.

14 MS. GUICE SMITH: Ms. Matoian?

15 (The witness, Catherine Matoian, resumed the
16 stand.)

17 CONTINUATION OF EXAMINATION BY MS. GUICE SMITH:

18 Q. Ms. Matoian, can you please tell the commissioners
19 about the Commission's efforts to collect evidence in this
20 case.

21 A. I can. The Commission collected all of the
22 evidence in the custody of the Washington County Clerk's
23 Office and the Washington County Sheriff's Office in 2011,
24 pursuant to a court order issued by the Commission then
25 chairman, the Honorable Quentin T. Sumner.

1 Q. And did this collection by the Commission account
2 for all of the evidence that was originally collected during
3 the initial investigation of the case?

4 A. No, it did not.

5 Q. What was missing?

6 A. Included in the items that were missing were all
7 of the items that were tested in 2007 by the North Carolina
8 State Crime Laboratory, including the tire iron, the
9 fingerprints from the crime scene, the scrapings from the
10 exterior of the victim's front door, the top sheet from
11 Mr. Spruiell's home, the curtains from the victim's home, the
12 standards for -- and the standards for the victim and the
13 co-defendants, Mr. Spruiell, Mr. Jones, and Ms. Maybin.

14 Q. And what did the Commission do in response to the
15 missing items?

16 A. Commission staff conducted a search of the
17 Washington County Sheriff's Office evidence room and a
18 separate storage facility that's also maintained by the
19 sheriff's office.

20 Q. And was anything located during that search?

21 A. No.

22 Q. What else did the Commission do in an effort to
23 locate the missing evidence?

24 A. In 2011 we also contacted the Plymouth Police
25 Department because they had also had testing conducted in

1 2007 at the Crime Lab in the Sonja Day case, so -- which
2 occurred at the same time as the post-conviction testing
3 done in this case. So we wanted to make sure that the
4 evidence hadn't been returned to them inadvertently.

5 Q. And did they notify the Commission whether or not
6 they had evidence?

7 A. They did. On May 13th, 2011, Plymouth Police
8 Chief Steve O'Neill notified the Commission that they had no
9 evidence for this case.

10 Q. Did the Commission do anything else in an effort
11 to locate evidence in this case?

12 A. We did. On June 15th, 2011, the Commission
13 conducted a search of two rooms behind the courtroom at the
14 Washington County Courthouse that contained evidence and
15 also searched a room in the Strayder Building in Plymouth
16 that also contained evidence. We didn't locate any evidence
17 related to this case during those searches.

18 Q. What else did the Commission do related to the
19 missing evidence?

20 A. On July 28th, 2011, Commission staff e-mailed John
21 Watters, then counsel for the N.C. State Crime Laboratory,
22 informing him that the Crime Lab was the last known location
23 of the missing evidence.

24 And on August 4th, 2011, the Commission was
25 contacted by Special Agent Mac Warner, who was involved in

1 the S.B.I. reinvestigation, and he indicated he had located
2 the items from the 2007 testing in the S.B.I. field office
3 to which he was assigned.

4 Q. Did the Commission ultimately collect any of the
5 evidence?

6 A. We did. We collected the tire iron, the scrapings
7 from the exterior of the victim's front door, the top sheet
8 from Mr. Spruiell's house, the curtains from the victim's
9 house, and standards for the victim and the co-defendants.

10 Q. And what happened to the latent prints from the
11 crime scene which were also located by Mac Warner?

12 A. Those were submitted by the S.B.I. directly to the
13 Crime Lab for analysis, which was requested by the
14 Commission. And in 2015 the Commission collected the latent
15 lifts from the crime scene from the Crime Lab after the
16 completion of their analysis.

17 COMMISSIONER BOSWELL: What are standards?

18 THE WITNESS: Standards would be for an
19 individual. They're a known individual's fingerprints that
20 you compare --

21 COMMISSIONER BOSWELL: Oh.

22 THE WITNESS: -- to the latents that you get from
23 the crime scene.

24 COMMISSIONER BOSWELL: I gotcha.

25 BY MS. GUICE SMITH:

1 Q. Did the Commission receive any further
2 correspondence from Mac Warner related to evidence in this
3 case?

4 A. We did. In 2017 Mac Warner contacted the
5 Commission and indicated he had located bloodstains and
6 extracts for Mr. Spruill, Mr. Jones, Ms. Maybin, the victim,
7 Maurice Wilkins, Lee McPhatter, a swab from the tire iron,
8 and DNA extracts from the tire iron and the sheet. So we --
9 he notified us that we had received byproducts of testing.

10 Q. And what did we do with respect to those items?

11 A. We collected those items from Mac Warner and then
12 confirmed in our interview with Mac Warner that we now had
13 all of the evidence related to this case that was previously
14 in his custody.

15 Q. Are there any --

16 JUDGE WAGONER: Excuse me. The latest stuff that
17 you got from him had or had not been tested previously?

18 THE WITNESS: So the bloodstains and extracts came
19 from previous DNA testing that was done. So, for example,
20 if you had a bloodstain -- a blood vial from somebody and
21 you conducted DNA testing on that, you would then have DNA
22 extracts from that testing. So although we had previously
23 collected the standards and the tire iron, we were now
24 receiving bloodstains and extracts from those items that had
25 been tested.

1 JUDGE WAGONER: Okay.

2 BY MS. GUICE SMITH:

3 Q. Are there any items that were collected during the
4 initial investigation that are still unaccounted for?

5 A. Yes, there are. These include money that was
6 collected from the victim's pocket; a sock that was
7 collected from Mr. Spruiell's woodpile; a venetian blind from
8 the victim's house; three items of clothing that Mr. Spruiell
9 provided to the sheriff's office which Mr. Spruiell said
10 belonged to Ms. Maybin, which included a pair of pink high-
11 heeled shoes, a pair of ladies' jeans, and a black and white
12 blouse; an 18-inch gold-colored necklace that was given to
13 the sheriff's office by Alan Hassell, who said Dana Maybin
14 had left it at his house. He also told law enforcement that
15 Ms. Maybin told him it came from the victim's house.

16 Q. And was there anything else?

17 A. A pair of ladies' tennis shoes, a blouse, and a
18 letter that were given to the sheriff's office by Cottie
19 Oliver who said they belonged to Ms. Maybin.

20 Q. And is it your understanding that of those items
21 that are unaccounted for, there was no initial testing on
22 them as well?

23 A. That's correct.

24 MS. GUICE SMITH: Commissioners, do you have any
25 additional questions for Ms. Matoian about the Commission's

1 search for evidence in the case?

2 (No response.)

3 MS. GUICE SMITH: Okay. We are going to turn our
4 attention now to the latent lifts in this case.

5 Commissioners, the latent lifts were discussed on pages 100
6 and 103 in your briefs. You may wish to refer to that --
7 those pages during this testimony.

8 ALT. COMMISSIONER NEWTON: Could I ask a quick
9 question? Sorry.

10 MS. GUICE SMITH: Yes, ma'am.

11 ALT. COMMISSIONER NEWTON: Just going back --
12 according to the reports, there were knife wounds. Nobody
13 recovered what appeared to be the murder weapon?

14 THE WITNESS: No. The murder weapon or anything
15 believed to be the murder weapon was never recovered. They
16 did collect a few knives from Mr. Spruiell's house and
17 Mr. Jones's house or a bag that belonged to Mr. Jones that,
18 in initial analysis, tested negative for human blood.

19 ALT. COMMISSIONER NEWTON: Thank you.

20 BY MS. GUICE SMITH:

21 Q. And Ms. Matoian, when you say that no murder
22 weapon was collected, you're referring just to a knife?

23 A. That's correct.

24 Q. It is correct, though, that a tire iron was
25 collected from the crime scene?

1 A. That's correct.

2 Q. And there's testimony in the trial transcript of
3 the medical examiner that the tire tool or tire iron was
4 consistent with what could have caused the blunt force
5 trauma to the victim, correct?

6 A. That is correct.

7 ALT. COMMISSIONER NEWTON: May I ask a follow-up?
8 So we have the blunt force injury from the -- I think it's
9 the kitchen floor under the bagged weapon. That tire iron,
10 you do have that, correct?

11 THE WITNESS: We did. We collected the tire iron.

12 ALT. COMMISSIONER NEWTON: So there would no -- be
13 no suggestion that the tire iron could actually inflict the
14 stabbing wounds? Like, there's no -- on the tire iron, is
15 there any -- a sharp end to the tire iron, anything that
16 would make it possible to inflict the stabbing-type wounds?

17 THE WITNESS: Not that I'm aware of from my review
18 of the medical examiner's testimony and reviewing -- or in
19 looking at pictures of the tire iron.

20 ALT. COMMISSIONER NEWTON: Okay. There was a --
21 part of the reports there indicated that the victim actually
22 had a -- I guess it's described as a switchblade-type knife
23 normally. Was that knife located?

24 THE WITNESS: It was not.

25 ALT. COMMISSIONER NEWTON: Okay.

1 BY MS. GUICE SMITH:

2 Q. Okay. How many latent lifts were collected at the
3 crime scene?

4 A. 18.

5 Q. And can you remind the commissioners what analysis
6 was conducted on the latent lifts from the crime scene
7 during the original investigation?

8 A. We can. The first report that's dated January
9 18th, 1994, indicated that analysis of the 18 latent lifts
10 from the crime scene revealed two identifiable latent
11 fingerprints and three identifiable latent impressions.
12 These came from the exterior of the victim's front door, the
13 telephone, and a plastic cup on the den floor.

14 The five total identifiable latent lifts were
15 compared to the inked impressions of the victim, Lee
16 McPhatter, and Maurice Wilkins. But the standards that they
17 had for those three individuals were insufficient -- of
18 insufficient detail for comparison purposes.

19 And the report indicated that they needed major
20 case inked impressions of those three individuals with
21 emphasis on certain areas of the hand. One of those latent
22 prints from the telephone was determined to be of AFIS
23 value, and it was searched in the AFIS system with no
24 identifications being made at that time.

25 Q. And tell the commissioners what a "major case

1 inked impression" is.

2 A. Major case inked impressions are recordings of all
3 the friction ridge detail present on the hand to include the
4 extreme tips, sides, and joints of all the fingers and the
5 entire palm surface, as opposed to known inked impressions
6 which are the recording of the friction ridge detail present
7 on the distal joint of the fingers and palms.

8 Q. And can you tell the commissioners what AFIS is?

9 A. It's the Automated Fingerprint Identification
10 System.

11 Q. What other analysis was conducted on the latent
12 lifts from the crime scene during that original
13 investigation?

14 A. A report dated February 22nd, 1995, indicates that
15 major case inked impressions were obtained for Mr. Spruiell,
16 Mr. Jones, and Ms. Maybin and compared to those five
17 identifiable latent lifts. No identifications were made.

18 I'm sorry. Let me correct that. Major case inked
19 impressions were obtained for Mr. Spruiell. Mr. Jones and
20 Ms. Maybin just had known inked impressions, and the report
21 stated that those impressions were of insufficient detail
22 for comparison purposes.

23 A second report dated August 29th, 1995, indicates
24 that they had then obtained major case inked impressions for
25 Mr. Spruiell, Mr. Jones, and Ms. Maybin and compared those to

1 the five identifiable latent prints with no identifications
2 being made.

3 Based on the item numbers of the submitted major
4 case inked impressions, it appears that these are new sets
5 of major case inked impressions from those from the February
6 22nd, 1995 report.

7 Q. And was any additional analysis conducted on the
8 latent lifts prior to the Commission's involvement in the
9 case?

10 A. There was. In 2006, as part of the S.B.I.'s
11 reinvestigation into the case, the latent lifts from the
12 Swain crime scene and the latent lifts from the Sonja Day
13 crime scene were submitted to the Crime Lab. And the
14 identifiable latent prints from the Day crime scene were
15 compared to the ones from the Swain crime scene, but there
16 was no latent print to latent print identification effected
17 between those two sets.

18 Q. So what does that mean?

19 A. It means that there were no fingerprint matches
20 between the latent lifts from both scenes.

21 Q. Did the Commission have anything done with the
22 latent prints from the crime scene in this case?

23 A. We did. In 2013, the Commission entered into a
24 consent order with the Attorney General's Office for the
25 collection of major case inked impressions by the State

1 Bureau -- by -- for the collection of major case inked
2 impressions by the State Bureau of Investigation.

3 This order collected -- covered the collection of
4 those major case inked impressions for Lee McPhatter and
5 Maurice Wilkins, who were considered suspects during the
6 initial law enforcement investigation, and it also covered
7 collection of major case inked impressions for individuals
8 who were alternate suspects or who provided alibis for
9 McPhatter and Wilkins on the night of the crime.

10 Q. And who are those individuals?

11 A. Those were Avis Arnold, David Armstrong, Joseph
12 Lynn, JoJo McNair, Billy McNair, and Dennis McNair.

13 Q. And were the major case inked impressions for
14 those individuals collected by the S.B.I.?

15 A. They were for all of those individuals with the
16 exception of Maurice Wilkins, who now lives in Connecticut.
17 The State of Connecticut could not collect major case inked
18 impressions from Wilkins but did provide inked impressions
19 they have on file for him.

20 Q. Did the North Carolina State Crime Lab ultimately
21 compare the five latent lifts from the crime scene to the
22 major case inked impressions that the S.B.I. had collected?

23 A. They did. The S.B.I. submitted the major case
24 inked impressions to the Crime Lab on February 7th, 2014.
25 And Mac Warner submitted the latent lifts from the crime

1 scene to the Crime Lab on February 26th, 2014. And the
2 Crime Lab's report was issued on March 2nd, 2015.

3 MS. GUICE SMITH: Commissioners, if you will refer
4 to Handout 15 in your Hearing Handout notebooks. This is
5 the North Carolina Crime Lab Report dated March 2nd, 2015.

6 (Handout Number 15 was identified for the
7 record.)

8 MS. GUICE SMITH: Please take some time to review
9 that report.

10 (Pause in proceedings.)

11 BY MS. GUICE SMITH:

12 Q. Ms. Matoian, what were the results of the Crime
13 Lab's analysis?

14 A. Two of the identifiable latent prints were entered
15 into the AFIS system and hit to the left thumb of Wyatt
16 Spruiell. And both of those prints came from the plastic cup
17 that was found on the floor of the victim's home.

18 Q. And can you remind the Commissioners who Wyatt
19 Spruiell is?

20 A. Wyatt Spruiell was the friend -- was a friend of
21 the victim. He was with the victim on the day of the crime
22 and in the victim's home last day, and was the last known
23 person to see the victim alive and the person to discover
24 his body. He is also the brother of Sonja Day.

25 Q. What other results did the Crime Lab obtain during

1 that analysis?

2 A. After the AFIS hits to Wyatt Spruiell, the Crime
3 Lab conducted a direct comparison of Wyatt Spruiell's prints
4 to the other three identifiable latent prints and identified
5 a third print from the cup as being the left middle finger
6 of Wyatt Spruiell.

7 The Crime Lab also compared the remaining two
8 identifiable latent prints -- one from the exterior of the
9 victim's door to the front of his home and one from the
10 telephone in the victim's living room to the individuals for
11 whom major case inked impressions were obtained.

12 Avis Arnold, Joseph Lynn, and Maurice Wilkins were
13 excluded from the identifiable print on the phone. But the
14 Crime Lab indicated that the inked impressions for Lee
15 McPhatter, Billy McNair, JoJo McNair, and David Armstrong
16 were insufficient to conduct a conclusive comparison and
17 requested major case inked impressions.

18 Q. And what type of inked impressions had the S.B.I.
19 collected pursuant to the Commission's consent order?

20 A. Major case inked impressions.

21 Q. What other results did the Crime Lab report on the
22 identifiable print from the telephone?

23 A. The Crime Lab determined that this print was of
24 sufficient value for entry into AFIS, and it was entered
25 into AFIS with no identifications being effected.

1 Q. Did the Crime Lab ultimately exclude anyone else
2 from the identifiable print on the telephone?

3 A. Yes. The Crime Lab obtained latent lifts of Wyatt
4 Spruill as a result of the AFIS hit, and they used the
5 latent lifts on file for Wyatt Spruill to exclude him from
6 the print from the phone.

7 The Crime Lab also obtained a known set of inked
8 impressions for JoJo McNair from the Criminal Information
9 and Identification Section of the Division of Criminal
10 Information of the S.B.I.. And using that set of inked
11 impressions, the Crime Lab was able to exclude JoJo McNair
12 as having made the latent print from the phone.

13 Q. And was the Crime Lab able to draw any conclusions
14 about the identifiable print from the exterior front door of
15 the victim's home?

16 A. The Crime Lab's report indicates that Avis Arnold,
17 Lee McPhatter, Billy McNair, JoJo McNair, Joseph Lynn,
18 Dennis McNair, David Armstrong, Maurice Wilkins, Wyatt
19 Spruill, and the second set of inked impressions from JoJo
20 McNair that they got from the S.B.I. were compared with no
21 identifications effected.

22 However, the known inked impressions were of
23 insufficient detail to conduct a conclusive comparison, and
24 they also requested major case inked impressions with
25 emphasis on the joints before conducting a conclusive

1 comparison.

2 The Crime Lab determined that this print from the
3 door was also of sufficient value for entry into AFIS, and
4 it was entered into AFIS with no identifications effected.

5 Q. And does the report include any other analysis?

6 A. Yes. At the same time the Swain murder prints
7 were submitted, Agent Mac Warner also submitted the Sonja
8 Day latent prints at the Commission's request. This was
9 done because there was some rumor and suggestion throughout
10 the post -- post-conviction investigations and the
11 Commission's investigation that the two murders were
12 committed by the same person or persons.

13 Q. Can you tell us about that analysis?

14 A. There were 21 latent lifts from the Sonja Day
15 crime scene, and the Crime Lab had previously determined
16 that there was only one identifiable latent palm print and
17 one identifiable latent fingerprint.

18 The palm print was from the kitchen counter, and
19 that was compared to the individuals submitted by the
20 Commission. Avis Arnold, Lee McPhatter, Billy McNair,
21 Joseph McNair, Dennis McNair and Maurice Wilkins were
22 excluded from that print.

23 Major case inked impressions for Joseph Lynn,
24 David Armstrong, and Wyatt Spruiell were insufficient for
25 comparison. And they uploaded that palm print into AFIS

1 with no identifications being effected.

2 The identifiable latent fingerprint was from the
3 exterior sliding glass door of Sonja Day's apartment. And
4 it was identified as being from the left little finger of
5 JoJo McNair.

6 Q. And was there any significance to the location of
7 this fingerprint on Sonja Day's exterior sliding glass door?

8 A. The front door to Sonja Day's apartment was locked
9 and deadbolted. Law enforcement believe that the sliding
10 glass door was the point of exit for the perpetrator of the
11 crime.

12 Q. Did the Commission do anything further with the
13 information obtained from that analysis?

14 A. We did. Pursuant to our statute, N.C.G.S. 15A-
15 1468(d), we reported the results of this analysis as they
16 relate to the Sonja Day murder to District Attorney Seth
17 Edwards.

18 MS. GUICE SMITH: Commissioners, you may wish to
19 refer to page 229 of your brief for information about the
20 Sonja Day murder and the suspects developed by law
21 enforcement.

22 BY MS. GUICE SMITH:

23 Q. Has the Commission's investigation revealed any
24 connection between the Frank Swain and Sonja Day murders
25 outside of the circulating rumors?

1 A. Not at this time.

2 Q. Based on the assertion by the North Carolina Crime
3 Lab that some of the major case inked impressions collected
4 by the S.B.I. pursuant to that consent order from 2013 were
5 insufficient for comparison, did the Commission have
6 anything further regarding the latent lifts from the Swain
7 crime scene done?

8 A. Yes. Based on the amount of time it took the
9 S.B.I. and Crime Lab to obtain the major case inked
10 impressions and conduct that analysis from when the consent
11 order was issued in December 2013 and the report was issued
12 in March 2015, the Commission decided to hire an independent
13 latent print examiner to determine if he agreed with the
14 Crime Lab's assessment that additional major case inked
15 impressions were needed to conduct the remaining analysis.

16 Q. And who did the Commission hire for that analysis?

17 A. We hired Latent Print Examiner Marty Ludas.

18 Q. Was he able to conduct the analysis?

19 A. He did. He issued a first report on June 18th,
20 2018.

21 Q. And did he also issue supplemental reports at
22 later dates?

23 A. He did.

24 Q. At some time after Mr. Ludas's initial analysis,
25 did the Commission learn anything else from the Crime Lab

1 about the major case inked impressions?

2 A. On September 7th, 2018, the Commission received a
3 phone call from Assistant Attorney General Joy Strickland
4 with the State Bureau of Investigation, and she informed
5 Commission staff that at some point after the Crime Lab
6 issued its report in March 2015, the S.B.I. attempted to
7 obtain new major case inked impressions for three
8 individuals for whom new major case inked impressions were
9 needed. Two of those individuals -- David Armstrong and
10 Wyatt Spruiell -- provided major case inked impressions.
11 Joseph Lynn did not agree, and no major case inked
12 impressions were obtained from him.

13 Ms. Strickland also informed the Commission that
14 although these impressions had been obtained by Agent John
15 Taylor, no comparisons had ever been conducted with them.

16 Q. Were these major case inked impressions of David
17 Armstrong, Wyatt Spruiell, and Joseph Lynn sought at the
18 request of the Commission?

19 A. No, they weren't. After the Crime Lab had issued
20 its report, the Commission, again, sought a second opinion
21 from an independent latent examiner, Marty Ludas. And after
22 he indicated that he was able to conduct the comparisons
23 with the major case inked impressions he had, we didn't
24 request further collection of any major case inked
25 impressions or any additional analysis by the Crime Lab.

1 Q. Did the Commission have any knowledge that the
2 additional major case inked impressions had been obtained by
3 Agent Taylor?

4 A. Not until September 7th of this year.

5 Q. What did the Commission do once learning about the
6 latent print standards collected by the S.B.I.?

7 A. We took custody of them and submitted Wyatt
8 Spruill's latent lifts to Mr. Ludas for comparison as he had
9 already excluded David Armstrong from the identifiable
10 prints. We didn't resubmit those prints.

11 Q. Did the Commission do anything further with
12 respect to latent lifts?

13 A. Yes. The Commission followed up with the Crime
14 Lab on August 31st, 2018, and asked whether there had been
15 any hits in AFIS to the two prints that had been uploaded at
16 the Commission's request in 2015.

17 The Crime Lab informed the Commission at that time
18 that the prints are queried daily through the system, that
19 there had been no hits, and that the Commission would be
20 notified of any future hits.

21 After DNA results on the prints were determined to
22 be contamination, the Commission reevaluated whose prints
23 had not been compared to the prints from the crime scene and
24 submitted those individuals to Mr. Ludas in September of
25 2018. And he issued a report for those comparisons along

1 with the comparison to the new prints for Wyatt Spruiell on
2 September 28th, 2018.

3 MS. GUICE SMITH: Commissioners, I'm going to be
4 calling Mr. Ludas to the stand here in just a minute, but
5 before I do so, do you have any questions for Ms. Matoian
6 about the Crime Lab's analysis of the latent lifts?

7 COMMISSIONER BOSWELL: Is there any indication
8 that the lifts that were found on the cup happened before or
9 after the crime? Because we know that Spruiell was there.

10 THE WITNESS: I think Mr. Ludas is going to be
11 able to testify to that better than I can, but it's my
12 understanding that you cannot date fingerprints.

13 COMMISSIONER BOSWELL: Right. That's -- there
14 wasn't -- they didn't get any kind of blood -- bloody
15 fingerprint or anything like that.

16 THE WITNESS: No, not that I'm aware.

17 COMMISSIONER BOSWELL: Okay.

18 COMMISSIONER THOMPSON: Do you know where the cup
19 was found in relation to the body?

20 THE WITNESS: I can check the crime scene photos
21 and see if it's visible in those. I know it's found on the
22 den floor. But I can double-check the crime scene photos.

23 MS. GUICE SMITH: Any other questions?

24 ALT. COMMISSIONER NEWTON: From the 1995 testing
25 of the tire iron right at the time that I guess he pled,

1 Leroy Spruiell was eliminated. Is that correct -- from the
2 DNA?

3 THE WITNESS: That's correct.

4 ALT. COMMISSIONER NEWTON: There were no prints
5 for him. And Jones was not -- were there any prints off the
6 tire iron?

7 THE WITNESS: There were no latent prints
8 collected off the tire iron.

9 ALT. COMMISSIONER NEWTON: At all, okay. And so
10 Jones was not tested against that -- the DNA on the tire
11 iron. Is that accurate?

12 THE WITNESS: In 1995, that's correct.

13 ALT. COMMISSIONER NEWTON: So you're saying it was
14 later?

15 THE WITNESS: There has been additional testing
16 that we're going to get to, yeah, with the DNA expert this
17 afternoon.

18 ALT. COMMISSIONER NEWTON: Did there develop some
19 theory about the killing? In other words, and this is just
20 in order of events. We've got a tire iron. We've got
21 clearly he died, according to the M.E., from the jugular
22 being, you know, severed. So you assume -- I guess you
23 would assume he bled out unless he was unconscious from the
24 beating. But is there anything that you found that
25 differentiated between someone wielding the tire iron to

1 beat him maybe to unconsciousness and someone who was
2 holding or wielding a blade? Is there any kind of --

3 THE WITNESS: Do you mean a differentiation in
4 like someone's DNA on one --

5 ALT. COMMISSIONER NEWTON: Right.

6 THE WITNESS: -- and someone on the other?

7 Since no knife was ever found, we -- we do not
8 know whether or not the DNA that was found on the tire iron
9 is different from that. We just don't have that
10 information.

11 ALT. COMMISSIONER NEWTON: Other than that, blood
12 from one of the assailants, nobody identified any in or
13 around the body from an assailant?

14 THE WITNESS: The Commission did quite a bit of
15 DNA testing that we're going to get to this afternoon on
16 several -- several items that were in the house, including
17 items that were labeled as appearing to be blood scrapings
18 from the victim's front door. And the DNA expert is going
19 to testify about that this afternoon.

20 ALT. COMMISSIONER NEWTON: Okay. Thank you.

21 MS. GUICE SMITH: Any additional questions on the
22 latent lifts?

23 COMMISSIONER FRYE: Item Number 2 on the S.B.I.
24 report here is from the Sondra [sic] Day?

25 THE WITNESS: That's correct.

1 COMMISSIONER FRYE: Item Number 1 is from the one
2 that we're looking at?

3 THE WITNESS: Frank Swain, yes.

4 COMMISSIONER FRYE: Okay. I just wanted -- I just
5 wanted to get that clear in my head which one I'm --

6 MS. GUICE SMITH: Any other questions?

7 (No response.)

8 MS. GUICE SMITH: Okay. You may step down.

9 (The witness left the stand.)

10 MS. GUICE SMITH: The Commission is going to call
11 Marty Ludas. If you could please get Mr. Ludas.

12 (Pause in proceedings.)

13 MS. GUICE SMITH: Good afternoon. This is the
14 witness seat.

15 JUDGE WAGONER: Would you please -- left hand on
16 the Bible, raise your right hand.

17 JOSEPH M. LUDAS,
18 having been called as a witness for the Commission, was duly
19 sworn by Judge Wagoner and testified as follows:

20 JUDGE WAGONER: Have a seat there, sir.

21 THE WITNESS: Thank you.

22 EXAMINATION BY MS. GUICE SMITH:

23 Q. Good afternoon. Can you please state your name
24 for the Commission?

25 A. Yes. My name is Joseph M. Ludas, L-u-d-a-s.

1 Q. Did you recently provide the Commission with a
2 copy of your CV?

3 A. Yes.

4 Q. I'm handing you a copy of what I believe to be
5 your CV. If you'll take a look at that and let the -- let
6 us know if that is correct.

7 A. (Reviewing document.) Yes.

8 MS. GUICE SMITH: Okay. Commissioners, if you
9 will refer to Handout 16 in your Hearing Handout notebooks.
10 This is a C.V. of Mr. Ludas.

11 (Handout Number 16 was identified for the
12 record.)

13 BY MS. GUICE SMITH:

14 Q. Mr. Ludas, approximately how many times have you
15 testified as an expert in latent print analysis?

16 A. Approximately 350 times.

17 Q. And have you testified for both the prosecution
18 and defense?

19 A. Yes.

20 Q. And have you previously testified before the
21 Commission?

22 A. Yes.

23 Q. Can you tell the commissioners where you've worked
24 in the past?

25 A. Yes. When I was a junior in high school in 1971,

1 I applied for a job at the FBI, Identification Division.

2 And when I graduated, I began working there in 1972. I
3 worked at the FBI for two and a half years.

4 They taught me the science of fingerprints. And
5 at that time, of course, everything was manual. There was
6 about 400 to 600 fingerprint examiners that compared all the
7 -- all the inked prints that were submitted to the criminal
8 files at the FBI. We would classify and search them against
9 the FBI files.

10 I did that for about two and a half years, and
11 then I applied to the State Bureau of Investigation in 1975,
12 and I began employment there. And I was assigned to the
13 Latent Evidence Section. The Latent Section is where you
14 actually do the crime scene comparison from crime scene
15 prints -- latent prints from crime scenes. And during that
16 time, I completed their fingerprint or latent print training
17 program, which was 18 months, and I worked under the
18 supervision of experts and continued in that job.

19 Eventually I was promoted to Assistant Section
20 Supervisor. But in 1982, I went to the City-County Bureau
21 of Identification to do the same work, latent fingerprint
22 comparison.

23 I also attended North Carolina Wesleyan College
24 and obtained a degree in criminal justice at that time. And
25 I worked at the City-County Bureau from '82 to 2001. I

1 retired with 30 years of consecutive service in 2001.

2 In about 2002, I began doing small amounts of
3 defense work, and then that picked up, and I began working
4 with innocence project cases from colleges, and so in -- in
5 the last 18 years, I've done quite a bit of defense work.

6 So my original -- originally I worked for the --
7 on the prosecution side, and now I do defense work.

8 Q. And do you do that as an independent consultant
9 now?

10 A. Yes.

11 Q. Do you have any specific, outside of what you've
12 discussed already, training in the field of latent print
13 analysis?

14 A. Yes. The -- the training -- the original training
15 was at the FBI. That was a classroom instruction. That was
16 three months. I was in a classroom learning fingerprints
17 like a foreign language.

18 And then I further -- was further trained at the
19 S.B.I., and that was on-the-job training and classroom
20 training. That was approximately 18 months.

21 And then all of the -- all of the other studies
22 that I did throughout the years attending conferences and
23 submitting presentation lectures and creating videos on --
24 on fingerprint instruction -- and I continue to do that now.
25 I'm still developing a computer program to teach

1 fingerprints.

2 Q. Thank you.

3 MS. GUICE SMITH: Your Honor, at this time I would
4 request that Mr. Ludas be qualified as an expert in latent
5 print analysis.

6 JUDGE WAGONER: He may testify as an expert in
7 latent print analysis.

8 MS. GUICE SMITH: Thank you.

9 BY MS. GUICE SMITH:

10 Q. Mr. Ludas, how did you become involved with the
11 Commission in this particular case?

12 A. I had already done some cases for the Commission,
13 and then this one came along in 2015, I believe. And this
14 was one of numerous cases that I compared for you.

15 Q. Do you recall meeting with Commission staff on May
16 22nd of 2015 and being provided with information about this
17 case?

18 A. I don't remember the meeting, but I know we did.

19 Q. Okay. Did you understand that the Commission is
20 neutral and not seeking any specific outcome when you were
21 provided the case to look at?

22 A. Yes.

23 Q. And what were you asked to examine in this
24 particular case?

25 A. I was asked to examine all the latent prints that

1 had already been looked at and comparisons had been made. I
2 was given the latent prints. These are crime scene prints.
3 And then I compared them to inked fingerprints that you had
4 submitted, and those included people that had already been
5 compared. And then additional fingerprint cards
6 subsequently submitted to me for further comparison.

7 Q. I'm handing you your report dated June 18th, 2015.
8 Do you recognize this as the initial report that you
9 provided to the Commission on your analysis?

10 A. Yes, I do.

11 MS. GUICE SMITH: Commissioners, if you will refer
12 to Handout 17 in your Hearing Handout notebooks. This is
13 Mr. Ludas' report for his latent print examination in this
14 case. He's going to go through that in more detail in just
15 a few moments.

16 (Handout Number 17 was identified for the
17 record.)

18 BY MS. GUICE SMITH:

19 Q. Mr. Ludas, were you asked to compare the 18 latent
20 lifts from the Swain crime scene to the exemplars submitted?

21 A. Yes.

22 Q. And did you, in fact, determine that there were 13
23 identifiable prints from those 18?

24 A. Yes.

25 Q. I am handing you a report dated January 18th,

1 1994, that is from the North Carolina Crime Lab. At the
2 time it was the State Bureau of Investigation Crime Lab.
3 Have you seen that report before today?

4 A. I don't -- I don't remember seeing this report.
5 You may have given me a copy of it. I don't remember it
6 right now.

7 JUDGE WAGONER: What was the date of that report,
8 Lindsay?

9 MS. GUICE SMITH: It's January 18th, 1994.

10 JUDGE WAGONER: Okay.

11 BY MS. GUICE SMITH:

12 Q. Mr. Ludas, if you'll look at that report, do you
13 see there on page 2, paragraph 4, that the Crime Lab at the
14 time noted five identifiable latent lifts from Item Number
15 1, which was the prints from the crime scene?

16 A. Yes.

17 Q. Is it your testimony that you were able to
18 identify additional latent prints of value -- I believe
19 eight additional latent prints of value -- that were
20 sufficient for comparison?

21 A. Yes.

22 Q. And can you explain to the Commission why that
23 might be, why the Crime Lab was only seeing five then, and
24 why you saw 13 when you looked at it in 2015?

25 A. When I do work for the Commission, you ask me to

1 start all over and do it my way, and you make it clear that
2 you want to know about every single fingerprint, finger
3 mark, smudge, so I -- I try to create a directory and go
4 through each of them.

5 Sometimes there's -- for example, on a cup, you
6 pick up a cup, and you've got multiple finger depositions
7 when you touch the cup. The cup moves in your hand, and it
8 makes double taps or additional prints, side by side, close
9 together.

10 When I'm looking at an item of evidence that's
11 been processed, I'm looking to see maybe if one or two
12 people touched the cup. Even though the prints are close
13 together, sometimes an examiner will identify the -- the
14 more prominent prints that have better clarity and maybe the
15 ones next to them not identify them.

16 What I did in this case was try to break down
17 every finger mark, every latent fingerprint, and if there
18 was a palm print, and give it an identity through
19 documentation so that we have this directory.

20 I think the reason that I identified additional
21 prints was the original examiner may have been satisfied
22 with there was enough of these prints identified, and the
23 ones beside them weren't as clear, and the original
24 identifications were sufficient.

25 In the case with the Commission, they'll ask --

1 they'll look at the report, and I know that they look at the
2 fingerprints and ask me about a particular fingerprint.
3 And if -- if I can't explain it, then their -- they want to
4 know, Well, what is it? Is it a fingerprint of value? Is
5 it of no value?

6 So when I do this work, I have to be just a little
7 bit more clear and demonstrative about what is on there.
8 And so it -- it's a lot of fingers next to each other
9 overlapping, and primarily those were the additional
10 fingerprints.

11 Q. Okay. Thank you.

12 I'm going to ask you to walk the commissioners
13 through your first report there.

14 MS. GUICE SMITH: Commissioners, you can follow
15 along with Handout 17 as Mr. Ludas goes through that.

16 BY MS. GUICE SMITH:

17 Q. Just tell the commissioners about the prints that
18 you found and identified to anyone, if any, where they're
19 from.

20 A. Okay. I would -- I could probably quickly go
21 through each one, if that's okay, and they can follow along
22 in my report?

23 Q. Absolutely.

24 A. If you go to Spruill Report Number 3, page 3, on
25 the top left. 1-1, I have marked PP, question mark. That's

1 Palm Print. That's a question mark. I'm thinking it's a
2 palm print; not the second joint of a finger, but a palm
3 print. I determined that to have insufficient quality to
4 compare.

5 In this case I'm seeing a palm print, but there's
6 not sufficient ridge structure. There's not enough detail
7 in it for me to compare it. And this comports with what the
8 Commission likes to know about every fingerprint.

9 Go to -- Item Number 1-2 is an unidentified palm
10 print. And that print is a left palm print. It's from this
11 area region here. It's called the hypothener. This is the
12 palm print area or right here. And this was removed from
13 the door -- from a door. And that remains unidentified. I
14 have never identified that print to this day.

15 The next one is 1-3, two fingerprints of
16 insufficient quality. Again, there's ridges there, but I
17 don't see sufficient amount to -- to make a comparison.

18 If I go to Report Number 4, the next page, this is
19 the palm print that I mentioned in Exhibit 1-2 or marked 1-
20 2, and this shows the palm print with the points of
21 identification that I noted for a computer search if one
22 should be made on it. I submitted that to the Commission
23 also.

24 Now, page 5 is what I was talking about earlier,
25 the multiple fingerprints. And I went and marked each one

1 of them either as an identification. For example, 4A is the
2 left ring of Wyatt Leland Spruiell. The one right next to it
3 to the right, it's of insufficient quality to compare, yet
4 it is a fingerprint. It's where the finger touched. I just
5 don't have enough there to compare.

6 Moving over on top of it, there's a ridge overlay.
7 Again, that's another -- maybe a third touch of that area on
8 the cup. That is not identifiable.

9 4C is another finger mark. It's from a left hand.
10 I can determine it's from -- probably from the left hand,
11 but I can't identify it. There's simply not enough ridge
12 structure.

13 And what I mean is mainly ending ridges and
14 bifurcations that are in a collection on the -- on the
15 finger. And it's sort of like a constellation when you look
16 at the stars. The collection of the ending ridges and
17 bifurcations, they're -- they're distributed throughout. If
18 I don't see enough of them, I don't want to make an
19 identification, of course. I can't make anything
20 conclusive. But I can tell if it's a loop pattern, for
21 instance, or a whorl pattern sometimes.

22 The next one, 4D is the left index finger of Wyatt
23 Spruiell that I identified. To the right of that is ridge
24 overlay. That's -- again, it's another contact of the
25 finger.

1 And then 4E is a print of no value.

2 JUDGE WAGONER: And this is from the front door --
3 front door?

4 THE WITNESS: This is from ---

5 JUDGE WAGONER: Exterior front door.

6 THE WITNESS: (Reviewing document.) Yes.

7 JUDGE WAGONER: Okay.

8 THE WITNESS: Thank you.

9 JUDGE WAGONER: Thank you.

10 A. Okay. And so if I go to page 5, top left, it's
11 1-5.

12 JUDGE WAGONER: I think it's page 6, isn't it?

13 A. Or, I'm sorry, Page 6. 1-5. I have an "NV" on
14 there. That means no value. It's -- it's from -- I expect
15 it to be from the second joint of the finger. For some
16 reason, there was a finger that wrapped around, but it
17 didn't -- again, it didn't display enough detail for me to
18 -- to make any comparison.

19 Number 6 -- Number 6, I made the comment that it
20 looks like a -- to me it's a right thumbprint just based on
21 its width and size, but there is not enough structure there
22 for me to conclusively compare.

23 And Number 7, again, no value. It's ridge
24 structure again.

25 So if I can go to the report, page 7, there's

1 another print from the doorknob, and ridge structure
2 insufficient to compare.

3 Going to 1-9 on page 8, again, it's another latent
4 print of insufficient quality to conclusively compare.

5 And 1-10, this is a print -- I've got an arrow
6 drawn to it, and I was not able to eliminate the left little
7 finger of Wyatt Leland Spruiell on that. That was from a
8 telephone. A telephone. And so that print remains
9 unidentified.

10 And report -- or page 10 is my documentation of
11 the ridge events -- the ending ridges and bifurcations that
12 I noted. And I just made an enlargement to -- to show what
13 that finger looks like -- that latent print looks like from
14 the telephone.

15 And then now to page 11, 1-11 and 1-12, those are
16 no value. Again, fingerprint ridge structure but of no
17 value to compare.

18 And almost finished here, page 12. As a left
19 thumb print, one -- the one on the left is a left thumbprint
20 previously identified by the S.B.I., Wyatt Leland Spruiell.
21 The middle one, the one in the center, left thumb, this was
22 -- and I concurred with that identification. This is
23 another identification to Wyatt Leland Spruiell. And the
24 third one on the right is of insufficient ridge structure.
25 So on Numbers 1-13 and 1-14, I concurred with the S.B.I.

1 examination that it was an identification to Mr. Spruiell.

2 JUDGE WAGONER: Were these taken from the cup or
3 where are these -- these prints?

4 THE WITNESS: Good question. I'm going to answer
5 that.

6 JUDGE WAGONER: Okay. And the next page, I think,
7 is the cup.

8 THE WITNESS: Let me check my directory here.
9 (Reviewing documents.) Yes. It's from the cup, ma'am.
10 Okay?

11 JUDGE WAGONER: Thank you.

12 THE WITNESS: Thank you.

13 A. And now if I can go to another -- the last page of
14 the report. This is where I made the additional
15 identifications, and this is also from the plastic cup.

16 So where I put, like, on the -- the one on the
17 left, number 7WLS, that means left index finger of Wyatt
18 Leland Spruiell.

19 And then over in the -- above that there's 8-8.
20 That means left middle finger, and I also identified his
21 print. And that was a new identification.

22 And then go to the one to the -- the next one,
23 number 9. That's an indication of the left ring finger of
24 Wyatt Leland Spruiell. And then in the lower -- number 8,
25 again, is the left middle finger.

1 And going over to the last one, I've got his left
2 index finger of Wyatt Leland Spruiell. These -- these were
3 what I described as the double taps and the multiple prints.

4 When you -- when you have prints like that, you're
5 thinking how many people touched that cup. And so what I
6 tried to determine if there could have been maybe two people
7 touching that cup. And from -- from what I can tell, there
8 is only one person's print or one person handled the cup.

9 And I was able to reconcile just about all the --
10 all the individual finger marks on there to try to clear up
11 how many prints are left over.

12 And as it turns out, there was -- if I can get
13 into the telephone --

14 BY MS. GUICE SMITH:

15 Q. Yes. Well, let's -- let's hold on that for a
16 moment --

17 A. Okay, that's fine.

18 Q. -- and we're going to go to the next --

19 A. Okay.

20 Q. So based on the report, it appears that you've
21 identified two additional prints from the exterior front
22 door of the victim's home to Wyatt Spruiell?

23 A. Yes.

24 Q. And if I'm counting correctly, six additional
25 prints to Wyatt Spruiell from that plastic cup.

1 A. Right.

2 Q. Okay. Of the prints that you have determined were
3 identifiable, is it correct to say that as of this report,
4 there were two prints outstanding that were identifiable
5 that remain unidentified? That would be one from the phone
6 and one from the exterior front door of the victim's home,
7 as of the date of this report?

8 A. I'm going to explain it in a different way. I'm
9 going to explain for sure that the palm print, the one that
10 I said is the left palm print, that is definitely
11 unidentified. I don't know whose it is. It could still
12 be identified to somebody. There was a whole number of
13 people that were compared.

14 The telephone is a different situation. The --
15 the Commission submitted an additional set of inked
16 fingerprints on Wyatt Leland Spruill to me to compare to the
17 telephone because I requested better prints on him.

18 Even though they gave me a good set of prints, I
19 was unable to exclude Spruill as the source of that print.
20 I'm not saying it's an identification. I could not exclude
21 him. The pattern type is similar. But there's not
22 sufficient ridge structure. I was able to compare everybody
23 else and eliminate that print.

24 Every once in a while in latent print work, a
25 fingerprint comes along that you can't say yes or no. And

1 we can't say maybe. We don't say probably. So you have to
2 be real careful about not attributing a print in a probable
3 matter or -- and be vague and indecisive.

4 So there is indecision on my part, and -- but I've
5 made the decision that I've done everything I can to try to
6 identify that print, even with the extra exemplar. I just
7 can't eliminate him like I did everybody else.

8 Q. I'm going to hand you two additional reports. One
9 is dated May 2nd, 2017, and one is dated September 28th,
10 2018. Are these your two supplemental reports as provided
11 to the Commission?

12 A. Yes.

13 Q. And I'm actually going to hand you -- if you will
14 pass back the one that says September 28th, I believe you
15 submitted a corrected version on September 29th, which I
16 have right here, with just the minor edits.

17 A. Right. Okay.

18 Q. Okay.

19 MS. GUICE SMITH: Commissioners, these are
20 handouts 18 and 19 in your Commission Handout notebook.

21 (Handout Numbers 18 and 19 were identified for
22 the record.)

23 BY MS. GUICE SMITH:

24 Q. Mr. Ludas, is it your understanding from our
25 conversations that both the print from the phone and the

1 print from the exterior door have been uploaded into AFIS
2 with no hits?

3 A. I don't know about the print on the phone. But I
4 am under the impression that the palm print might have been
5 searched in a database.

6 Q. Okay. And these last two reports that I've handed
7 you, were you essentially asked to compare additional
8 standards to the prints you had already identified -- so
9 that being the phone and the one from the exterior door --
10 to various individuals in those reports?

11 A. Yes.

12 Q. And I think you've already testified, but just to
13 clarify, in those reports you were unable to make any
14 identification to the prints -- the palm print that's on the
15 exterior front door of the victim's home?

16 A. Yes.

17 Q. And that remains outstanding?

18 A. Right.

19 Q. And with respect to the print on the phone, you've
20 excluded everyone except for Mr. Wyatt Spruiell, but you're
21 not able to make a positive identification to Wyatt Spruiell.

22 A. No, I'm certainly not. I just can't exclude him.

23 Q. Okay. And if we can just go through briefly who
24 the individuals were that the Commission submitted standards
25 for. If you can just list those off.

1 A. Starting from my first report?

2 Q. Yes.

3 A. Okay. These are the names. I'm going to go
4 through them in the order of my report. Inked fingerprints
5 -- well, let me just say their names:

6 Avis Lashawn Arnold, Lee Demetrius McPhatter,
7 Billy McNair, Willie Joseph McNair, Joseph Martin Lynn,
8 Dennis McNair, Dennis Armstrong, Maurice Wilkins, Wyatt
9 Leland Spruiell, Willie Joseph McNair, Michael Lassiter,
10 Sherry Anita Honea, A.K. Gibson, AKA Carroll, Alfred
11 Armstrong, Edward Fields, Curtis Lane Furlough, Thomas Ed
12 Elwood Garrett, Irvine Ray Hurst, David Ashley Mixon, Frank
13 Swain, Timothy Lushane [phonetic] Swain, Wyatt L. Spruiell
14 again, Russell Buffy Knowles.

15 Q. Okay. And is that just from the first report, or
16 does that encompass everyone from all of the reports?

17 A. That's all the prints that my reports indicate
18 that I've compared.

19 Q. Okay.

20 MS. GUICE SMITH: Commissioners, I want to give
21 you an opportunity to -- before we turn to one other matter
22 with Mr. Ludas -- for you-all to ask him questions about his
23 latent print analysis here.

24 COMMISSIONER FRYE: When --

25 THE WITNESS: Yes, sir.

1 COMMISSIONER FRYE: and you can answer this way
2 better than I can. How many points does the S.B.I. require
3 to make positive identification?

4 THE WITNESS: The S.B.I., the FBI, where I worked
5 at City-County Bureau and personally, we don't have a
6 minimum number such as 12. A lot of people think it's 12
7 because it's been published on TV so often.

8 We don't really have a point number that we go to.
9 So most latent print identifications -- of course, they're
10 partial -- but they may only involve anywhere between six --
11 seven points on the low end to 15 or 20 on a higher end.

12 It's -- the identification is based more on a --
13 it -- it is based more than those single points because the
14 points don't account for the continuous ridges that also
15 exist that are in the same relationship on -- on both the
16 questioned and the known, and so that -- that number --
17 there's no quantification for continuous ridges and
18 intervening space.

19 COMMISSIONER FRYE: Okay.

20 COMMISSIONER BOSWELL: Where did you get all of
21 the prints that you compared with -- were they -- how were
22 those print -- could you tell how those prints were
23 collected?

24 The WITNESS: Yes. They were all processed with
25 magnetic or fingerprint powder dusting.

1 COMMISSIONER BOSWELL: How about the known ones?

2 THE WITNESS: The -- the known ones were in
3 various forms: Live scan and rolled ink impressions on
4 different cards.

5 COMMISSIONER BOSWELL: Would they have been
6 collected by law enforcement?

7 THE WITNESS: Yes.

8 JUDGE WAGONER: And the defendant -- Defendant
9 Spruiell or Defendant Jones did not show up in anything thus
10 far, correct?

11 MS. GUICE SMITH: Leroy Spruiell.

12 THE WITNESS: No. There are Spruiells.

13 JUDGE WAGONER: There are Spruiells. There are
14 lots of Spruiells.

15 MS. GUICE SMITH: Judge Wagoner, those were not
16 submitted to Mr. Ludas as those comparisons were already
17 done --

18 JUDGE WAGONER: And excluded.

19 MS. GUISE SMITH: -- at the -- by the Crime Lab.

20 Do you-all have any other questions for Mr. Ludas
21 about this analysis?

22 (No response.)

23 BY MS. GUICE SMITH:

24 Q. Okay. Mr. Ludas, I am going to hand you what is
25 the Commission's Fingerprint Analysis Request Form and see

1 if you recognize that as being the form that the Commission
2 provides to you when you start a review of a file for the
3 Commission.

4 A. Okay.

5 Q. Do you recognize it?

6 A. I recognize this form, yes.

7 Q. Okay. And was it your understanding in this case
8 that the Commission was considering DNA testing on latent
9 lifts?

10 A. Yes.

11 Q. And that we were submitting those latent lifts to
12 you first and wanted you to look at them --

13 A. Yes.

14 Q. -- with respect to that as well? Okay.

15 MS. GUICE SMITH: All right. I don't have any
16 further questions of Mr. Ludas, unless you-all do.

17 COMMISSIONER BOSWELL: Would you ask your last
18 question again?

19 MS. GUICE SMITH: Yes. My question for Mr. Ludas
20 was that it was his understanding that the Commission was
21 giving him the prints first but was considering prints for
22 DNA analysis after his review.

23 BY MS. GUICE SMITH:

24 Q. And your answer was?

25 A. Yes.

1 MS. GUICE SMITH: All right. I think we are done
2 with Mr. Ludas. If you-all don't have any additional
3 questions, I would ask that he be released from his
4 subpoena.

5 JUDGE WAGONER: You're free to go, sir. Thank
6 you.

7 THE WITNESS: Thank you.

8 JUDGE WAGONER: Thank you.

9 (The witness left the stand.)

10 MS. GUICE SMITH: All right, Commissioners, we are
11 going to move to DNA testing this afternoon. I do think we
12 have enough time this afternoon to get that in before 5:00.

13 JUDGE WAGONER: Okay.

14 MS. GUICE SMITH: If we could take a few minute
15 break, maybe ten minutes right now before we get started on
16 that --

17 JUDGE WAGONER: Okay. Ten minutes.

18 MS. GUICE SMITH: -- and then I may allow us
19 another break or ask for another break in the middle of that
20 just because it's a lot of information.

21 JUDGE WAGONER: Okay. Ten minutes. Thank you.

22 (Off the record at 2:32 p.m.)

23 (A brief recess was taken.)

24 (Back on the record at approximately 2:42
25 p.m.)

1 MS. GUICE SMITH: Prior to the break, one of the
2 commissioners had asked where the cup was located, if we
3 knew. So we have additional information about that.

4 CATHERINE MATOIAN,
5 having been re-called as a witness for the Commission and
6 having been previously sworn by Judge Wagoner, testified as
7 follows:

8 EXAMINATION BY MS. GUICE SMITH:

9 Q. Ms. Matoian, I am handing you the Crime Scene
10 Report by Special Agent Honeycutt.

11 MS. GUICE SMITH: Commissioners, if you will refer
12 to pages 25 to 33 on your brief. That report was provided
13 in full there.

14 BY MS. GUICE SMITH:

15 Q. Ms. Matoian, are you able to tell from that report
16 where the cup in the living room was located?

17 A. Yes. Page 5 going into page 6 of the report
18 indicates that that plastic cup was found underneath the
19 coffee table in the den of the victim's home.

20 Q. And would a photo help you illustrate that for the
21 commissioners?

22 A. It would, although there are no photos of the cup
23 itself.

24 Q. Okay. Can you please describe for the
25 commissioners what this is?

1 A. This is the victim's den. Here is the victim's
2 body. This is the overturned coffee table. The Crime Scene
3 Report indicates that the cup is found underneath this
4 table.

5 Q. Okay. All right.

6 MS. GUICE SMITH: Ms. Matoian, you may step down.

7 (The witness left the stand.)

8 COMMISSIONER FRYE: And there's no picture of the
9 cup itself?

10 THE WITNESS: No, there's not. I just checked
11 through the crime scene photos.

12 COMMISSIONER FRYE: How do you collect a piece of
13 evidence and not photo it?

14 MS. GUICE SMITH: Commissioners, we are --

15 JUDGE WAGONER: Did anybody ever see the cup,
16 like, at trial or something?

17 THE WITNESS: I'm sorry.

18 MS. GUICE SMITH: We can double-check --

19 THE WITNESS: My fault.

20 MS. GUICE SMITH: -- the trial transcript.

21 THE WITNESS: We can -- we can double-check on
22 that.

23 MS. GUICE SMITH: We are going to move on to the
24 DNA testing that the Commission had conducted in this case.
25 The Commission had DNA testing conducted at LabCorp,

1 Cellmark Forensics, Bode Cellmark Forensics, and DNA Labs
2 International.

3 We will have an expert testify in just a moment
4 about all of that testing. As you will recall from the
5 evidence chart on pages 704 to 709 of your brief, the North
6 Carolina State Crime Laboratory and LabCorp have also both
7 previously conducted DNA testing on several items in this
8 case.

9 The Commission was able to have testing conducted
10 on several items, including testing on additional swabs from
11 the tire iron, the bread bag that was found over the tire
12 iron, the Ziploc bag in which the bread bag was stored,
13 scrapings from the exterior of the front door of the
14 victim's trailer, the victim's jacket, the victim's shirt,
15 the victim's jean, the victim's jean pockets, the victim's
16 socks and shoes, hairs found on the jacket, hairs found on
17 the victim's clothing, tapings from near the front of the
18 victim's body, the latent prints, the curtains from the
19 victim's kitchen window, a piece of lace from Mr. Spruiell's
20 woodpile, and two knives found in Mr. Jones's duffle bag.

21 If you will refer to Handout 21 in your Hearing
22 Handout notebooks, this is a list of individuals to whom DNA
23 comparisons and latent print comparisons have been made from
24 both the testing prior to the Commission's involvement as
25 well as the testing conducted by the Commission or at the

1 request of the Commission.

2 (Handout Number 21 was identified for the
3 record.)

4 MS. GUICE SMITH: The list includes a brief
5 description of each person's role in the case, and you may
6 wish to just refer to that throughout the testimony about
7 the DNA testing conducted in the case.

8 I am going to now call Meghan Clement to testify
9 about the DNA testing conducted at the request of the
10 Commission. She's also going to provide testimony about the
11 testing conducted prior to the Commission's involvement,
12 where that testimony is going to fully assist and fully
13 explain the testing conducted and the results of the
14 testing.

15 JUDGE WAGONER: Left hand on the Bible, please,
16 ma'am, raise your right hand.

17 MEGHAN CLEMENT,
18 having been called as a witness for the Commission, was
19 sworn by Judge Wagoner and testified as follows:

20 JUDGE WAGONER: If you'd have a seat.

21 EXAMINATION BY MS. GUICE SMITH:

22 Q. Good afternoon.

23 A. Good afternoon.

24 Q. Can you please state your name for the Commission?

25 A. My name is Meghan Clement.

1 Q. And how are you employed?

2 A. I am self-employed as an independent forensic DNA
3 consultant.

4 Q. And Ms. Clement, did you recently provide the
5 Commission with a copy of your C.V.?

6 A. I did, yes.

7 Q. Ms. Clement, I am handing you a copy of that C.V.
8 If you will please review it and let me know if that is, in
9 fact, your C.V.

10 A. (Reviewing document.) Yes, it is.

11 MS. GUICE SMITH: Commissioners, if you will refer
12 to Handout 22 in your Hearing Handout notebooks. That is
13 Ms. Clement's C.V.

14 (Handout Number 22 was identified for the
15 record.)

16 BY MS. GUICE SMITH:

17 Q. Ms. Clement, can you tell us approximately how
18 many times you've testified as an expert?

19 A. I have testified approximately 374 or 375 times.

20 Q. Okay. And have you testified for both the
21 prosecution and for the defense?

22 A. Yes, I have.

23 Q. Have you previously testified for the Commission?

24 A. Yes, I have.

25 Q. Tell us about your educational background.

1 A. I have a Bachelor of Science in Biology from
2 Westfield State College in Massachusetts and a Master of
3 Science in Forensic Sciences from the University of New
4 Haven in Westhaven, Connecticut.

5 I have also attended graduate-level courses at the
6 University of -- excuse me -- the University of New Mexico
7 in Albuquerque as well as the University of Virginia through
8 courses that I actually took at the F.B.I. Academy in
9 Quantico, Virginia.

10 Q. And how long have you been working in the field of
11 forensic biology?

12 A. I have been working in this field since March of
13 1985, so a little over 33 years.

14 Q. And do you have any board certifications?

15 A. Yes. I am board-certified by the American Board
16 of Criminalistics as a diplomat in molecular biology.

17 MS. GUICE SMITH: Your Honor, at this time I would
18 request that Ms. Clement be qualified as an expert in
19 forensic biology.

20 JUDGE WAGONER: She is qualified as an expert in
21 the witness of -- in the witness -- in the area of --

22 MS. GUICE SMITH: Forensic biology?

23 JUDGE WAGONER: -- forensic testing.

24 BY MS. GUICE SMITH:

25 Q. Ms. Clement, have the North Carolina State Crime

1 Lab, LabCorp, Cellmark Forensics, Bode Cellmark Forensics,
2 and DNA Labs International conducted DNA testing in the case
3 of Mr. Spruiell and Mr. Jones?

4 A. Yes.

5 Q. Have you reviewed all of the testing done by these
6 labs?

7 A. Yes, I have.

8 Q. And are you comfortable testifying about all of
9 it?

10 A. Yes, I am.

11 Q. I am handing you a notebook that contains all of
12 the lab reports from all of the testing in this case. Just
13 take a minute to flip through those. Have you had an
14 opportunity to review those prior to today?

15 A. (Reviewing documents.) Yes, I have.

16 Q. Okay. Can you briefly describe for the
17 commissioners what STR testing is?

18 A. Yes. STR testing stands for Short Tandem Repeat
19 testing. It's the most common type of DNA testing that's
20 being performed today.

21 It is -- looks at the DNA that we inherit from
22 both our mothers and our fathers and is -- the STR testing
23 basically tests for what's called nuclear DNA.

24 If you think of a fried egg, the yolk portion is
25 the nucleus, and that's where the DNA would be found that we

1 inherit from both our mothers and our fathers. So the Short
2 Tandem Repeat Testing looks at that.

3 Q. Okay. And was STR testing conducted in this case?

4 A. It was, yes.

5 Q. Can you briefly describe for the commissioners
6 what mitochondrial DNA testing is?

7 A. Yes. Mitochondrial DNA testing looks at a
8 different kind of DNA than the DNA that you inherit from
9 both your mother and father.

10 If you picture that fried egg, as I described just
11 a moment ago, in the white portion of the egg or the
12 cytoplasm, there are organelles called mitochondria. These
13 mitochondria have their own type of DNA which is inherited
14 only from our mothers. And mitochondrial DNA looks at that
15 DNA, and that type of testing is actually followed through
16 the maternal lineage. And so everybody in the same maternal
17 lineage should have the same mitochondrial DNA type.

18 So it's not as unique as the type that we inherit
19 from both our mothers and our fathers, but it is -- does
20 differ between individuals and does allow you to
21 discriminate between people.

22 Q. And are there particular types of evidence that
23 are better for mitochondrial DNA?

24 A. Yes. Mitochondrial DNA is most useful in hairs
25 because in hairs, in order to test for the STR, you have to

1 have a root whereas the mitochondrial DNA is found in the
2 shaft of the hair. So if there's no root, mitochondrial DNA
3 is very useful.

4 Q. Was mitochondrial DNA testing conducted in this
5 case?

6 A. Yes, it was.

7 Q. Can you tell the commissioners a little bit about
8 how DNA might be left on an item?

9 A. Well, there's any number of ways that DNA can be
10 left on an item. The DNA can be left through somebody being
11 cut and blood being dripped onto an item. DNA could be left
12 on an item simply by talking over an item. There are
13 microscopic spill that could leave DNA when you're not even
14 touching it.

15 There is DNA that's left if you actually come into
16 contact with somebody. If your arm brushes somebody else's
17 and you're wearing short sleeves or a sleeveless shirt, you
18 could deposit your DNA on either their clothing or on their
19 arm if they don't have clothing on their arm. It can be
20 left virtually in any -- any number of ways.

21 Q. Is semen a way?

22 A. Yes.

23 Q. Other bodily fluids?

24 A. Yes. Semen, blood, saliva, skin cells.

25 Q. And you touched on this, but can you describe for

1 the commissioners what "touch DNA" means?

2 A. Certainly. Touch DNA is referred to as the type
3 of DNA which is left when something is touched. So if
4 you're driving a steering -- if you're driving a car, your
5 DNA could be left on the steering wheel by touching it. If
6 I touch the fabric on this table, my DNA could be left.
7 Usually it refers to small quantities of DNA that is
8 deposited through simply touching an item.

9 Q. What factors might affect the amount of DNA that's
10 left behind from a -- from touch DNA?

11 A. There are so many different factors. One of the
12 big factors is certain people will tend to shed cells more
13 readily than others. These people are called shedders. And
14 so somebody who sheds more cells is likely to leave more DNA
15 behind than somebody who is not as great of a shedder.

16 The amount of time that you touch something -- if
17 I briefly touch this, the chances of me leaving a lot of DNA
18 is very slim. But if I sit here and rub the fabric trying
19 to get a stain out or something, I'm more likely to leave my
20 DNA on the fabric.

21 How -- so how long you touch something, how much
22 force you touch it with will depend -- will determine how
23 much DNA is left behind.

24 The temperature. Oftentimes in hot, humid
25 environments, we tend to sweat more, and cells are sloughed

1 off more readily and left on an item than if it's a cool,
2 dry day. We don't usually shed as many cells in that
3 situation.

4 Q. Okay. What factors may affect whether DNA is
5 degraded?

6 A. Well, DNA starts to degrade as soon as it is
7 deposited outside its natural environment. So as soon as it
8 is sloughed off of your hands, as soon as a blood drop comes
9 off and is deposited on the ground, as soon as a semen
10 sample is deposited outside of the body, the DNA does start
11 to degrade.

12 There are things that will increase the
13 degradation rate. Humidity is one of them. Humid
14 environments will cause a DNA to degrade greater -- at a
15 greater rate than a cool environment. Heat will increase
16 the rate of degradation. Direct sunlight will degrade the
17 sample of DNA more readily than if it is in a dark area.
18 And those are the major considerations.

19 Q. Ms. Clement, I am handing you a forensic testing
20 chart that was put together by Commission staff. Have you
21 seen this prior to today?

22 A. Yes, I have.

23 Q. And are you familiar with what is on that chart?

24 A. Yes, I am.

25 MS. GUICE SMITH: Commissioners, if you will refer

1 to Handout 23 in your Hearing Handout notebooks, this is the
2 forensic testing chart put together by Commission staff.

3 (Handout Number 23 was identified for the
4 record.)

5 MS. GUICE SMITH: Ms. Clement is going to walk
6 through the DNA testing in the order that is on this chart,
7 so you may find it helpful to follow along as you go.

8 Appendix G in your briefs, pages 704 to 709, also
9 includes all testing conducted prior to the Commission's
10 involvement in the case.

11 The lab reports themselves that I've handed up to
12 Ms. Clement in her notebook are not being provided to you.
13 You, of course, are welcome to have those reports if you
14 wish to review them. Please let me know, and those will go
15 home with you this evening as well for your review. If
16 after this -- if you feel like you need more information
17 about that.

18 BY MS. GUICE SMITH:

19 Q. All right. Ms. Clement, if you will go through
20 this testing item by item and explain the results and what
21 they mean. I'm going to have you focus first on the bread
22 bag that was found over the tire tool in the victim's
23 kitchen. What testing was conducted on that item?

24 A. The bread bag was submitted to Cellmark Forensics.
25 They swabbed both the inside and the outside of the plastic

1 bag. And due to an insufficient amount of DNA, no profile
2 was obtained from those swabs.

3 Q. And was that in 2013?

4 A. I believe that was --

5 Q. June 19th --

6 A. Yes.

7 Q. -- 2013?

8 A. June 19th, 2013.

9 Q. Tell the commissioners what testing was conducted
10 on the Ziploc bag that contained the bread bag.

11 A. The Ziploc bag. Again, there was a swabbing
12 performed or two swabbings done of the Ziploc bag. These --
13 those swabs were extracted, and then they were quantitated
14 to determine how much DNA was obtained from those samples.
15 And due to insufficient amounts of DNA in that quantitation
16 -- that resulted from that quantitation, no DNA testing was
17 performed.

18 Q. And can you explain to the commissioners what you
19 mean by taking a sample to quant?

20 A. Yes. The first steps of DNA testing is you either
21 take a cutting of a sample or swab a sample. You will then
22 take that, and you will attempt to extract DNA from the
23 portion of the sample that you cut or swabbed.

24 After you perform the extraction, you take a small
25 portion of the extraction, and you quantitate to determine

1 approximately how much human DNA and how much male DNA is
2 present in that sample.

3 If you get a result that there is no male DNA and
4 no human DNA, we know we're not going to get a result at
5 least in this testing that was performed in 2013, 2014,
6 2015, in those areas. And so they would stop analysis after
7 the quantitation step because they didn't have any hope of
8 getting a profile to make a comparison.

9 Q. And what testing was conducted on the blue
10 curtains from the victim's kitchen window?

11 A. The blue curtains -- the first testing that was
12 performed was performed at the North Carolina State Crime
13 Laboratory in 1995. There was a stain that was
14 presumptively tested for blood, and it gave a positive
15 result. And then they performed confirmatory testing and
16 also did a species test. So they were able to determine
17 that there was a human bloodstain. And then they took that
18 on to ABO blood typing and they determined that the stain on
19 this curtain was a blood type O -- was from an individual
20 with the blood type O.

21 When they compared it to reference samples, that
22 was consistent with the victim. That was consistent with
23 Mr. Spruiell and that was consistent with Mr. McPhatter, but
24 it could --

25 JUDGE WAGONER: Excuse me. Which Mr. Spruiell?

1 THE WITNESS: This -- Leroy Spruiell.

2 JUDGE WAGONER: Thank you.

3 A. But it couldn't have originated from -- and I
4 don't remember the other individual at this time. Let me
5 see. Could not have originated from Wilkins, Jones, or
6 Maybin.

7 BY MS. GUICE SMITH:

8 Q. And, Ms. Clement, can you tell the commissioners
9 what blood typing is?

10 A. Yes. In the population there are four blood
11 types. It's type A, type B, type O, and type AB. Again, we
12 inherit this from our mothers and our fathers. And based on
13 those four types, this particular sample was a blood type O.
14 Blood type O is the most common type in the population.

15 Q. And what percentage of the population makes up
16 blood type O?

17 A. Well, it depends on the -- the ethnic group, but
18 it ranges from between approximately 40 to 45 percent of the
19 population is a blood type O, so a big percentage of it.

20 Q. And what other testing was conducted on the blue
21 curtains?

22 A. In 1995 the curtains were submitted to LabCorp
23 and there were four areas that were examined. We performed
24 a presumptive test using phenolphthalein. And all of them
25 were negative, so no further testing was performed.

1 Then in --

2 COMMISSIONER BOSWELL: Can you explain that --
3 what the presumptive test with phenolphthalein -- explain
4 what that is, please?

5 THE WITNESS: Certainly. A phenolphthalein test
6 is a -- is a simple color test. And when I say "presumptive
7 test," these tests are performed to give you an indication
8 of whether something could be a particular bodily fluid.

9 And so you basically would take a swab, swab it
10 over various areas, and then you test it with chemicals. If
11 there's a pink color change, that would be a positive
12 presumptive test. If it stays neutral, that would be a
13 negative presumptive test.

14 If you get a positive presumptive test, you then
15 want to take it on to confirm whether something is blood or
16 take it on to DNA testing to determine whether you can
17 obtain a profile.

18 In this case, when you get a negative presumptive
19 test, there's no reason to believe that it could be blood,
20 and so no further testing was done.

21 There are situations where you might get a
22 positive presumptive test. And when you take it on further,
23 you can determine that it truly isn't a blood sample because
24 with these presumptive tests, you can get false positives on
25 other types. For instance, rust potentially could give you

1 a positive phenolphthalein test even though we know it's not
2 blood, and further testing would show you it's not blood.

3 COMMISSIONER BOSWELL: I mean, is this the exact
4 same spot where they said it was type O blood?

5 THE WITNESS: No. These were different spots on
6 the curtains -- on the -- on the curtains, yes. When we
7 obtained those at LabCorp, we didn't see anything that was
8 bright red that may have indicated it could have been blood.

9 There were holes. There were previously -- a
10 previous hole in the curtain itself. So we tested other
11 areas that we thought might have blood, maybe slight
12 discolorations or something, and we got negative results.

13 COMMISSIONER FRYE: So that explains how they got
14 a positive result in 1995 and negative results thereafter.

15 THE WITNESS: Correct.

16 COMMISSIONER FRYE: They were testing different
17 spots on the curtains.

18 THE WITNESS: That's correct. That's correct. It
19 appears that the sample that they tested that was positive,
20 they consumed the -- that entire sample during their testing
21 process.

22 BY MS. GUICE SMITH:

23 Q. And is it correct that in order to do the ABO
24 typing, they would have needed to cut that portion of the
25 curtain out?

1 A. Yes. That's exactly right. To perform an ABO
2 blood typing, you actually need to use the fibers from the
3 actual stain itself, and you glued it onto a plate and added
4 chemicals, so they had to consume that. There's no way to
5 perform that test without consuming it.

6 Q. What other testing was conducted on the blue
7 curtains by the Crime Lab?

8 A. In 2007, the North Carolina State Crime Laboratory
9 again looked at the curtain, and they failed to identify any
10 other areas that -- where blood might be present. And in
11 2014, the curtains were sent to Cellmark Forensics, and they
12 attempted to swab portions of the curtain just to see if
13 there was anything. Sometimes stains may leak out in a
14 particular area, and it may not visibly be -- have a color
15 -- discoloration, so they swabbed a specific area and just
16 extracted it to determine whether they could identify any
17 DNA at all.

18 And in the quantitation portion, they did not
19 obtain any DNA, and so they did not take it further for
20 individualized testing.

21 Q. And what testing did the Commission have conducted
22 on the blue curtains?

23 A. The blue curtain -- that was the testing that was
24 sent for -- to Cellmark Forensics.

25 Q. Okay. Thank you.

1 What testing was conducted on the victim's jacket?

2 A. The victim's jacket. In 1995 the State Crime
3 Laboratory tested various areas, and they did reveal the
4 presence of human blood. Their notes indicated that there
5 was a lot of blood-soaking. However, they did not take that
6 on to ABO blood typing, so there was no blood type
7 available. But there was human blood on the jacket.

8 Q. Did the Commission have any testing done on the --
9 on the victim's jacket?

10 A. Yes. In 2011, DNA testing was conducted at
11 LabCorp. LabCorp swabbed the waistband area and a stain
12 from the left sleeve area, and those DNA profiles were
13 consistent with the victim. And there was no reportable DNA
14 that was foreign to the victim from those.

15 Q. Let me turn your attention to the victim's shirt.
16 What testing was conducted on the victim's shirt?

17 A. In 1995 there was analysis conducted by the North
18 Carolina State Crime Laboratory. There were actually four
19 areas that were tested, and all of them were -- revealed the
20 presence of human blood that was blood type O.

21 In their report they reported that it could not
22 have originated from Jones or Maybin. And that was -- those
23 were the only two individuals that they had compared at that
24 time. And they did indicate that they had performed the
25 confirmatory tests on those.

1 Q. And based on later testing by the Crime Lab, can
2 you draw any conclusions as to whether that blood, the type
3 O, could have originated from either the victim,
4 Mr. Spruiell, Mr. McPhatter, or Mr. Wilkins?

5 A. Yes. The victim, Leroy Spruiell, and Mr. McPhatter
6 are all included because they all have a blood type O, or
7 any other individual for that matter who has a blood type O
8 would be a possible source of those stains.

9 Mr. Wilkins was excluded because he is a blood
10 type A.

11 Q. Did the Commission have additional testing
12 conducted on the victim's shirt?

13 A. Yes. In 2011 LabCorp tested profile from the
14 shirt -- or tested a sample from the shirt, and they
15 developed profiles that were consistent with the victim.
16 There was nothing reportable foreign to the victim.

17 Q. So the only DNA that we were seeing was that of
18 the victim?

19 A. That's correct.

20 Q. What testing was conducted on the victim's socks?

21 A. On the victim's socks, in 1995 the North Carolina
22 State Crime Laboratory performed a presumptive test, and it
23 indicated the presence of blood. They indicated that the
24 socks were bloodstained and that there was no indication of
25 a second bleeder. So they only performed the presumptive

1 test and didn't take any samples any further.

2 Q. Can you explain what the lab is looking for when
3 they are looking at blood as it relates to second bleeders?

4 A. Yes. When you first get an article of clothing or
5 an item such as a tablecloth or -- that has particular
6 stains on it, you look at the pattern of the staining. If
7 something's blood-soaked, what you might look for is
8 something that doesn't -- that appears different than the
9 rest of the soaking.

10 So if you have drops at 90-degree angles and then
11 all of a sudden a drop at a 45-degree angle, you would want
12 to test that drop at 45 degrees, as well as maybe one or two
13 of the drops at 90, because that drop at 45 is different and
14 could have come from a different source.

15 But if you look -- in looking at the overall
16 pattern, if everything looks the same, there would be no
17 reason to believe that there could be a second bleeder on
18 the particular item.

19 Q. Did the Commission have additional testing
20 conducted on the victim's socks?

21 A. Yes. In 2014 Cellmark Forensics tested both of
22 the socks, and they obtained partial single source profiles
23 that were consistent with the victim.

24 Q. What testing was conducted on the victim's shoes?

25 A. In 1995 the North Carolina State Crime Laboratory

1 tested a small stain on the right shoe and a thin smear on
2 the left shoe. They performed presumptive testing which was
3 positive. They said that there was no indication of a
4 second bleeder, and they did not take those stains any
5 further.

6 Q. Did the Commission have additional testing
7 conducted on the victim's shoes?

8 A. Yes. In 2014 Cellmark Forensics tested the
9 samples, and they obtained partial single-source profiles
10 that were consistent with the victim.

11 Q. What testing was conducted on the piece of lace
12 that was found in Mr. Spruill's woodpile?

13 A. In 1994 the State Crime Laboratory looked at the
14 piece of lace, and they said it failed to reveal the
15 presence of blood. The bench notes indicated that their
16 presumptive tests were negative.

17 Q. Did the Commission have additional testing on the
18 piece of lace?

19 A. Yes. In 2017, Bode Cellmark Forensics tested the
20 lace. They did collect a sample. They extracted and
21 quantitated, and DNA was not tested after the quantitation
22 step because there was insufficient quantities of DNA.

23 Q. What testing was conducted on the knives found in
24 Mr. Jones's duffel bag?

25 A. The 1994 testing by the North Carolina State Crime

1 Laboratory -- they did not find the presence of any blood
2 based on the phenolphthalein test that they performed.

3 Q. And did the Commission have additional testing
4 conducted on the two knives?

5 A. Yes. In 2017 Bode Cellmark Forensics tested the
6 knives. Again, they took samples. They extracted, and they
7 quantitated. And because there was insufficient quantity of
8 DNA -- basically it gave a zero quantitation -- they did not
9 perform the DNA testing on those.

10 Q. Did the Commission have DNA testing conducted on
11 latent lifts from the crime scene?

12 A. Yes, they did.

13 MS. GUICE SMITH: Commissioners, you just heard
14 earlier from latent expert Mr. Ludas about his analysis of
15 the latent lifts from the crime scene. The latent lifts
16 that could not be identified were then submitted for DNA
17 testing.

18 BY MS. GUICE SMITH:

19 Q. Ms. Clement, can you tell us about the testing
20 conducted on the latent lifts?

21 A. Yes. There were 11 latent prints that were
22 submitted to Bode Cellmark Forensics for testing. From --
23 there were -- six out of the 11 were from the exterior front
24 door of the victim's home, three were from the interior
25 front doorknob of the victim's home, and two were from

1 broken -- a broken ashtray that was on the den floor of the
2 victim's home.

3 Q. What were the results of that testing?

4 A. For three out of the 11 samples, there was a
5 single-source male profile. In six out of the 11, there was
6 a mixture of two individuals with a major profile. The
7 major profile in all six matched the single source from the
8 other three. And on those six, there was only one
9 additional allele, and so that in each of them, there was
10 the same allele that was foreign to the major source on the
11 other samples.

12 And then there were two samples, and both of those
13 samples were from the ashtray where there was mixtures of
14 two individuals and, again, the same major male source was
15 consistent with the others. So we saw the same major male
16 source in all of the samples in six; there was only one
17 additional allele. And in two of them, there were multiple
18 additional alleles.

19 Q. And did the Commission determine who this major
20 profile belonged to?

21 A. Yes. It was determined that the unknown major
22 male profile was consistent with the profile from Marty
23 Ludas.

24 Q. And do you know who Mr. Ludas is?

25 A. Yes. He was the print examiner who looked at the

1 prints.

2 Q. And he looked at those on behalf of the
3 Commission?

4 A. That's correct.

5 Q. Is the result of having Mr. Ludas's profile there
6 consistent with contamination by Mr. Ludas?

7 A. It's consistent -- it's consistent with
8 contamination of the back of the print card and/or the
9 actual top of the print card, but not of the print itself.
10 The print itself was contained and was protected, so it was
11 just the exterior of the prints that would have been
12 contaminated by Mr. Ludas.

13 Q. Are there any other interpretations that can be
14 made for the six samples that you mentioned from the prints
15 that were mixtures?

16 A. Yes. The six samples, as I said, all had only one
17 additional allele. That was a 14 characteristic at what we
18 call the D19 DNA area. And so those all could have come
19 from -- that 14 could have come from the same individual on
20 all of those prints.

21 COMMISSIONER BOSWELL: Could you explain what you
22 just said?

23 THE WITNESS: Yes.

24 (Laughter.)

25 THE WITNESS: At each area of DNA that we're

1 testing, we expect only to find two characteristics, one
2 you've inherited from your mother and one you've inherited
3 from your father.

4 When we see at any location three characteristics,
5 it indicates that there's a mixture from more than one
6 individual because each person should only have two. We
7 have three. That third had to have come from a second
8 person.

9 We test. In this particular testing in 19 --
10 excuse me -- 2015, I believe it was, they were looking at --
11 I believe it was 16 different areas of DNA.

12 And at -- for those six samples, each of them only
13 showed an additional allele at the DNA area called D19.
14 It's actually called D19S433. And they all have the same
15 foreign characteristic, and so they all could have come --
16 all -- that 14 could have come from the same person in all
17 six prints.

18 And not Mr. Ludas because Mr. Ludas doesn't
19 possess a 14 at that location.

20 COMMISSIONER FRYE: Can -- I'm wrapping my head
21 around some of it.

22 THE WITNESS: I know. It's difficult.

23 COMMISSIONER FRYE: Mr. Ludas's DNA would have
24 been on the exterior of the fingerprint of the latent lift.

25 THE WITNESS: Correct.

1 COMMISSIONER FRYE: How did his DNA -- I'm
2 assuming that you peeled it back and swabbed the interior to
3 try to get the DNA of the print.

4 THE WITNESS: Sometimes that is not successful,
5 and so sometimes what they do is they actually just cut a
6 print and they will take the whole portion, dissolve the
7 glue; or if they can peel it back, they will. They may
8 take --

9 COMMISSIONER FRYE: That answers my question as to
10 how --

11 THE WITNESS: Yes. Exactly. And so it's
12 different -- prints are handled different ways, and --

13 COMMISSIONER FRYE: So the allele -- the third
14 allele that was present --

15 THE WITNESS: Yes.

16 COMMISSIONER FRYE: -- was not identified.

17 THE WITNESS: Correct. It could not have come
18 from Mr. Ludas. It had to come from somebody else, but it's
19 unidentified. And in actuality, one allele is not
20 sufficient to really compare -- it's not meaningful to
21 compare to other people when it's only one.

22 COMMISSIONER FRYE: But it actually could have
23 been somebody that handled the fingerprint card other than
24 Mr. Ludas.

25 THE WITNESS: It's possible, yes.

1 BY MS. GUICE SMITH:

2 Q. Are there any interpretations that can be made
3 for the two samples from the ashtray?

4 A. Yes. The two samples from the ashtray gave much
5 more information. One of the samples -- there were four
6 locations where there were additional alleles. And the
7 other sample had eight locations where there were different
8 alleles -- where there were additional alleles.

9 When you compare the alleles present with the four
10 overlapping between the two samples, there were similar
11 alleles present in both of them, and those I could compare
12 to all of the referenced individuals or individuals who had
13 submitted reference samples. And all of those individuals
14 are excluded as a source of the DNA from those two samples.
15 Both of those samples came from the ashtray. And as a
16 further coincidence, both of those also had that 14 at the
17 D19S433 area. So that was consistent throughout the eight
18 prints where there was more than one source.

19 COMMISSIONER FRYE: So one final question, and
20 I'll leave you alone, I think.

21 As with the -- the latent prints, though, with the
22 DNA, except for the degradation that's caused just by time
23 itself, there's no way to tell when that DNA was spawned.

24 THE WITNESS: That is correct. That is correct.

25 BY MS. GUICE SMITH:

1 Q. Ms. Clement, did the Commission have testing
2 conducted on any hairs in the case?

3 A. Yes.

4 Q. Can you explain what testing was conducted?

5 A. Yes. Prior to the Commission having hairs tested,
6 the North Carolina State Crime Laboratory, in 1995, had
7 actually looked at hairs from the clothing of the victim,
8 and they had mounted some of them on slides to
9 microscopically look at them. And upon their examination,
10 they said -- determined that there was no transfer of hairs,
11 and there were no hairs found to compare or no hairs that
12 were relevant for comparison.

13 In 2015, the Commission requested mitochondrial
14 DNA testing. Again, this is the testing that is -- looks at
15 DNA which is inherited through the maternal lineage, and all
16 six of those samples were consistent with the profile from
17 the victim, and all of the others were excluded as a source.
18 So it didn't match anybody but the victim.

19 Q. And that was for the hairs found on the victim's
20 clothing?

21 A. That's correct.

22 Q. All right. And what about testing on hairs from
23 the tapings in front of the victim's body?

24 A. The hairs on tapings from around -- from the floor
25 around the victim -- in 1995, again, the Crime Laboratory

1 looked at the hairs from the taping. They had mounted some
2 of the hairs, and they had determined that there were no
3 hairs for comparison, that there was no transfer of hairs.

4 And in 2015 the Commission requested Bode Cellmark
5 Forensics to perform mitochondrial DNA testing. They tested
6 five hairs that had been mounted, and all of them matched
7 the victim.

8 Q. And did the Commission have testing conducted on
9 hairs found on the victim's jacket?

10 A. Yes. In -- again, in 1995, the North Carolina
11 State Crime Laboratory had looked at hairs that were found
12 on the victim's jacket. They had mounted two hairs. They
13 had determined that it did not reveal a transfer, and that
14 there were no comparisons that could be made.

15 Those two hairs -- the Commission requested Bode
16 Cellmark Forensics to perform mitochondrial DNA testing.
17 One of those hairs was found to be consistent with the
18 victim. And when I say "consistent with the victim," all
19 the other individuals were excluded.

20 A second hair was found to be consistent with
21 Wyatt Spruiell. And all of the other individuals were
22 excluded, including the victim on that one. So one was
23 consistent with the victim. The second was consistent with
24 Wyatt Spruiell.

25 Q. You indicated that the hair was consistent with

1 the DNA sequence of Wyatt SpruiII.

2 A. Yes.

3 Q. Was the hair also then consistent with the DNA
4 sequence of Leroy SpruiII?

5 A. No. Leroy SpruiII and Wyatt SpruiII had different
6 mitochondrial sequences, so you could tell the difference
7 between the two of them based on the mitochondrial.

8 So in this case, it would appear that Wyatt
9 SpruiII and Leroy SpruiII did not have the same maternal
10 lineage, that they were probably paternally related, not
11 maternally.

12 Q. Okay. What testing was conducted on the scrapings
13 from the exterior door of the victim's home?

14 A. In 1994 the North Carolina State Crime Lab
15 performed testing. They determined that the scrapings from
16 the victim's front door was human blood. The amount they
17 said was insufficient in order to perform an ABO blood type,
18 though.

19 Then in 1995 that sample was submitted to LabCorp
20 on behalf of the defense attorney in the trial. And when we
21 opened the envelope, there didn't appear to be any sample
22 present, so no testing was performed.

23 Then in 2007 ---

24 Q. Can I stop and ask --

25 A. I'm sorry.

1 Q. -- do you have any opinion as to why there was no
2 sample present in 1995 when LabCorp opened the envelope?

3 A. It appeared that it had been consumed during the
4 testing by the North Carolina State Crime Lab.

5 Q. Okay. And then what happened in 2007?

6 A. In 2007 the North Carolina State Crime Laboratory
7 again opened the envelope, and they determined that there
8 was no further evidence left to test.

9 Q. Did the Commission have additional testing on the
10 envelope that originally contained the scrapings from the
11 exterior door of the victim's home?

12 A. Yes. In 2014 the envelope was submitted to
13 Cellmark Diagnostics. Sometimes just visually something
14 doesn't look like there is anything in there, and what
15 Cellmark did was they went in and they swabbed the interior
16 of the envelope to collect anything that may be
17 microscopically there. And that sample was tested, and
18 there was a partial DNA profile that was developed which was
19 consistent with a mixture of two individuals, including at
20 least one male.

21 Q. Were any conclusions drawn about contributors to
22 that sample?

23 A. Yes. In this particular sample, the victim could
24 not be excluded as one of those contributors. However,
25 Leroy Spruiell, Wallace Brandon Jones, Dana Maybin, Alfred

1 Armstrong, Edward Fields, Curtis Furlough, Tommy Garrett,
2 Sherry Honea, Ray Hurst, Russell Knowles, Michael Lassiter,
3 Joseph Lynn, Joseph McNair, Lee McPhatter, David Nixon, Jr.,
4 Wyatt Spruiell, and Maurice Wilkins were excluded from this
5 mixture.

6 Q. And is there anybody that couldn't be excluded
7 other than the victim?

8 A. When you go back and look at this profile, as
9 Cellmark had reported, it was a mixture of at least two
10 individuals. If you -- which means that there was one area
11 actually where there were five characteristics.

12 Now, as I stated earlier, each person is only
13 going to have two, so we know one person has potentially
14 given two characteristics. A second person has potentially
15 given two characteristics. But there is one area where
16 there is five. So we don't know whether that area is
17 actually producing an artifact of the testing or whether
18 that characteristic is truly from a third individual. And
19 that's why Cellmark reported at least two individuals.

20 If you assume that there are two contributors,
21 then Dennis Honeycutt would be excluded and Tim Swain would
22 also be excluded. However, if you say that there could be
23 three contributors based on that one location where there
24 are five, Dennis Honeycutt would be inconclusive. You
25 simply can't draw a conclusion as to whether he's included

1 or not.

2 However, Tim Swain would be included in that
3 mixture because within that combination of characteristics,
4 Tim Swain -- all of the characteristics in his reference
5 would be found in that mixture as well.

6 So only if there are three contributors would we
7 include Tim Swain.

8 COMMISSIONER BOSWELL: And that would be from
9 blood?

10 THE WITNESS: That is from a blood sample, yes.

11 Now, when you have a blood sample, you don't know
12 whether it's blood and blood, whether it's blood and skin
13 cells. All you know is there's at least one blood
14 contributor, but you don't know who the blood -- whether
15 there's two -- two bloods or blood/saliva, blood and cells.

16 COMMISSIONER BOSWELL: Would there be any way to
17 know if the cells were put down and blood was put on top, or
18 the blood was put down and the cells were put on top?

19 THE WITNESS: There is no way to know that.

20 COMMISSIONER FRYE: So you don't know which would
21 come first, the chicken or the egg?

22 THE WITNESS: Correct.

23 BY MS. GUICE SMITH:

24 Q. And, Ms. Clement, was any kind of statistic able
25 to be developed and referenced to that inclusion of Tim

1 Swain, assuming three -- a three-person mixture?

2 A. Yes. And it's not -- the statistic is not just in
3 reference to Tim Swain. The statistic is in reference to
4 Tim Swain and the victim.

5 And the -- there were only five locations that we
6 could use for the statistical analysis. And the probability
7 of randomly selecting an unrelated individual who would
8 included in that mixture at those five locations would be
9 one in 140 in the Caucasian population, one in 170 in the
10 Hispanic population, and one in a hundred and -- excuse me
11 -- one in 450 in the African-American population.

12 Q. And --

13 COMMISSIONER BOSWELL: I didn't understand the
14 five locations. I thought we were just talking about the
15 outside of the door.

16 THE WITNESS: Well, it is the outside of the door,
17 but I meant five DNA locations. So we did not get -- there
18 wasn't a complete profile; there was only a partial profile.
19 And out of that partial profile, there were five genetic
20 areas that we were able to use to calculate the statistic.

21 COMMISSIONER BRITT: Did you have a DNA sample
22 from Dennis Honeycutt?

23 THE WITNESS: Yes.

24 COMMISSIONER BRITT: Did he submit that? Who
25 submitted that?

1 MS. GUICE SMITH: I'll allow our staff to testify
2 about that in just a little bit, if you don't mind.

3 Ms. Clement doesn't --

4 COMMISSIONER BRITT: Okay. I just --

5 MS. GUICE SMITH: -- know the answer.

6 COMMISSIONER BRITT: I just know we heard earlier
7 that he didn't respond to the request.

8 MS. GUICE SMITH: You heard correctly.

9 COMMISSIONER BRITT: Okay.

10 BY MS. GUICE SMITH:

11 Q. Ms. Clement, those statistics, one in 140 for the
12 Caucasian population, one in 450 for the African-American
13 population, and one in 170 for the Hispanic population: Can
14 you provide to the commissioners some context as to what
15 those statistics mean?

16 A. Certainly. If I were to test the first Caucasian
17 individual who walked by and I were to look at those five
18 areas in their DNA, the probability that they would also
19 randomly be included in that mixture would be one in 140.

20 Likewise, with the African-American, if I were to
21 test the first African-American, it would be one in 450 that
22 they would arbitrarily also fall within those mixtures of
23 characteristics that I found from the particular sample.
24 And for Hispanics, it would be one in 170.

25 These are not -- I mean, typically numbers that we

1 get when we get full profiles are one in the millions,
2 billions, quadrillions. So it's not extremely rare, but it
3 certainly isn't one in two. You wouldn't expect every other
4 person to fall within this mixture. It's one in 140.

5 So I would have to test approximately 140
6 Caucasians before I would find another Caucasian who would
7 randomly fit within this mixture or one in 170 Hispanics
8 before I would find a Hispanic who would randomly fit within
9 that mixture or 450 African-Americans before I would find
10 one who would fit within the mixture.

11 Q. Okay. What testing was conducted on the jeans
12 belonging to the victim?

13 A. On the jeans, in 1995 the North Carolina State
14 Crime Laboratory performed presumptive tests. They did
15 obtain positive presumptive tests, and they indicated that
16 there was no indication of a second bleeder. They did not
17 take that on to DNA testing or -- excuse me -- for ABO blood
18 typing.

19 Then in 2011 the Commission requested LabCorp to
20 look at the jeans, and LabCorp tested a stain on the right
21 leg of the jeans just below the knee.

22 When they developed a profile, they did not get
23 sufficient profile to make any comparisons. So this did go
24 through the DNA process, but they simply did not obtain
25 results to make any -- sufficient results to make

1 comparisons.

2 Q. Did the Commission have additional testing
3 conducted on the jeans of the victim?

4 A. Yes, they did. In 2014 the jeans were sent to
5 Cellmark Forensics. They conducted testing on the bottom
6 three inches of both legs of the pants, and they developed a
7 partial DNA profile that was consistent with the victim.

8 And then there were -- they took multiple samples
9 from the pockets. So they took two areas from the front
10 pocket of the victim's jeans and two areas from the left
11 pocket of the victim's jeans. So there were four samples
12 total -- two from the right pocket and two from the left
13 pocket. And this is the inside pocket.

14 Q. So it's your understanding that this was the
15 inside front pocket of the -- inside of the front pockets of
16 both the right and the left?

17 A. That's correct.

18 Q. All right. And what results were obtained on the
19 first sample from the inside left pocket of the jeans?

20 A. The first sample area, one of the inside left
21 pocket, there was a mixture of DNA from at least two
22 individuals, including at least one male. The victim could
23 not be excluded. And when all of the other samples were
24 compared to that mixture, all of the sources of those other
25 reference samples are excluded.

1 Q. And that includes Mr. Jones, Leroy Spruiell, and
2 Ms. Maybin?

3 A. Yes, that's correct.

4 Q. Okay.

5 A. And then for the second area of the inside left
6 pocket, again, a mixture profile of at least two
7 individuals, including at least one male, was developed.
8 The major profile was consistent with the victim again, and
9 the minor profile was insufficient for comparison purposes.
10 There was very limited -- I believe there was only two
11 alleles that were foreign to the victim, and that is
12 insufficient to perform a meaningful comparison.

13 Q. So to summarize that, there was a mixture, but
14 only the victim could be included in that mixture. The
15 other portion of the mixture was just too low-level -- there
16 just wasn't enough there to do any meaningful comparisons.

17 A. That's correct.

18 Q. All right. Can you move on to the inside right
19 pocket of the jeans, the first area?

20 A. Yes. Area 1 of the inside right pocket, a partial
21 DNA profile was obtained that was a mixture of two
22 individuals. The victim could not be excluded as one of
23 those individuals.

24 And when you compared the foreign alleles, those
25 characteristics which could not have been contributed by the

1 victim, all of the other sources of references were
2 excluded.

3 Q. And that includes Leroy Spruiell, Mr. Jones, and
4 Ms. Maybin, correct?

5 A. That's correct.

6 Q. And if you'll move on to the fourth area, the
7 inside right pocket of the jeans --

8 A. Yes.

9 Q. -- the second area in that right pocket.

10 A. The second area inside the right pocket, again,
11 was a partial DNA profile that was a mixture of at least two
12 individuals, including at least one male. The victim could
13 not be excluded again.

14 And when you compared those characteristics, which
15 the victim could not have contributed to that mixture, to
16 all of the reference samples, all of those individuals were
17 excluded as a source of that foreign DNA to the victim.

18 Q. And that also includes Leroy Spruiell, Mr. Jones,
19 and Ms. Maybin?

20 A. That's correct.

21 Q. Did Cellmark also develop from that pocket a
22 deduced male donor profile?

23 A. Yes.

24 Q. Can you explain what that means?

25 A. Yes. When you develop a deduced donor profile,

1 what that means is that there is clear indication or there
2 is sufficient differences between the two sources of DNA
3 that you can identify a major contributor.

4 And so in this particular sample, there was a
5 clear profile. You subtract the victim's profile, and there
6 is clear profile remaining that can be determined in there
7 for them compared to anybody else.

8 Q. And I want to go back, now that we know about that
9 deduced male profile. Was Cellmark also able to exclude
10 that deduced male profile from the inside right pocket of
11 the jeans from this unknown portion of the profile that we
12 had from the scrapings on the exterior door of the victim's
13 home?

14 A. Yes.

15 Q. So what that means is that the profile that we're
16 seeing in the pockets is not the same profile that we're
17 seeing on the exterior of the door.

18 A. That's correct. They're two different sources.

19 Q. For the four samples that we have from the inside
20 of the pockets -- two on the left, two on the right -- are
21 the alleles that are foreign to the victim in this case
22 consistent with one another?

23 A. They are. The alleles which could not have come
24 from the victim on both the left and the right pockets are
25 similar to each other and therefore consistent with possibly

1 coming from the same individual.

2 Q. And did the Commission seek additional testing on
3 the jeans pockets?

4 A. Yes, they did. In 2018 the samples were sent to
5 DNA Labs International, and they performed additional
6 testing as well on both the pants themselves as well as the
7 extracts, which had previously been created in the testing
8 by Cellmark.

9 Q. And have you had an opportunity to review the lab
10 reports from that testing --

11 A. I have, yes.

12 Q. -- the lab report?

13 A. Yes.

14 Q. And are you able to testify about those results?

15 A. I am, yes.

16 Q. Can you explain the testing that DNA Labs
17 International did?

18 A. Yes. DNA Labs International also performed STR
19 testing. In 2017 the FBI mandated that they were going to
20 expand the locations that were tested in DNA for the
21 combined DNA index system. So we went from kits that looked
22 at anywhere from 15 to 16 different locations to kits that
23 looked at anywhere from 24 to 29 different locations. And
24 so the testing that DNA Labs International did were with
25 these expanded kits that looked at a lot of -- many, many

1 more genetic areas than the testing that had been done
2 previously.

3 DNA Labs International also uses software programs
4 in the analysis of their results. And I don't know whether
5 you want me to explain that now or wait until we get to that
6 point.

7 Q. Let's -- we'll hold on that for just a second.

8 A. Okay.

9 Q. Can you explain what testing, then, was done just
10 on the DNA extracts from the pockets?

11 A. DNA Labs International tested the extracts from
12 Area 1 of the left pocket, from Area 1 of the right pocket,
13 and Area 2 of the right pocket. They did not perform
14 testing on Area 2 of the left pocket.

15 Q. Okay. And what were the results from Area 1 of
16 the left pocket?

17 A. From Area 1 of the left pocket, they developed a
18 mixture of at least two individuals, and they determined
19 that due to the complex nature of the mixture, it was
20 inconclusive for comparison. So they didn't -- they could
21 not make any comparisons.

22 Q. And Area 1 from the inside right pocket, those
23 extracts?

24 A. Area 1 from the inside right pocket, again, they
25 obtained a mixture of at least two individuals, including at

1 least one male. And, again, they determined that due to the
2 complex nature of that mixture, it was inconclusive for
3 comparison purposes.

4 Q. And then finally Area -- the second area from the
5 inside right pocket.

6 A. From Area 2 of the right pocket -- and this was
7 the extract from Cellmark -- they obtained a partial mixture
8 of at least three individuals, at least one of which was a
9 male, and they excluded Wallace Brandon Jones based on their
10 visual examination of the entire mixture. However, they did
11 not draw any conclusions. They said the remaining
12 individuals were inconclusive.

13 Q. And can you generally just explain what
14 "inconclusive" means?

15 A. Yes. It's one of a number of things. Generally,
16 when you determine that something is inconclusive, it may be
17 -- and this -- because they only got a partial mixture, it
18 shows that there are characteristics that are dropping out
19 because, number one, these extracts are older. There's been
20 degradation, so they're losing genetic information, and they
21 may feel that there just simply isn't enough genetic
22 information there for them to draw a conclusion on the
23 majority of the individuals.

24 It could be that there -- because this is a
25 mixture of at least three individuals, if it's low-level,

1 they're just uncomfortable determining whether somebody is
2 included or excluded. So at that point, they report it as
3 inconclusive.

4 Q. Can you tell if those mixture profiles that DNA
5 Labs International obtained from these three areas on the
6 pockets, those extracts, if they're obtaining profiles that
7 are consistent with the profiles that Cellmark Forensics got
8 when they tested those pockets originally?

9 A. Yes. In looking at the raw data that DNA Labs
10 International had generated from the extracts and comparing
11 them to the raw data from that which Cellmark had created,
12 there definitely was consistency between the two.

13 DNA Labs International obtained results at 10 out
14 of 28 locations, whereas Cellmark -- again, they used a
15 different kit -- obtained results at 14 out of 16. And so
16 when you look at the eight locations that overlapped, there
17 were consistencies with the characteristics or alleles that
18 were being seen in both the labs' testings.

19 Q. And is that consistent with what you would expect
20 when you retest a DNA extract?

21 A. Yes, absolutely. The -- I mean, there were a
22 couple of areas where maybe LabCorp got four alleles and DNA
23 Labs International only got three or vice-versa. And that
24 is very consistent with what you see when you're retesting
25 an extract years later, using different kits, especially.

1 Q. And is it your understanding that the Commission
2 staff -- from Commission staff that that second extract from
3 the left pocket of the jeans was not tested at the
4 recommendation of DNA Labs International?

5 A. That's correct.

6 Q. And is that just because -- we talked about
7 earlier that when we saw the victim, but we only had two
8 additional locations, then the victim, and so there wasn't
9 much data there to begin with?

10 A. Right. There was very, very little data there in
11 the original testing. Years later you would expect even
12 less.

13 Q. Did the Commission then have additional testing
14 conducted on the pockets from the victim's jeans?

15 A. Yes.

16 Q. Can you explain what the Commission had done and
17 where?

18 A. Yes. At DNA Labs International, they use an
19 instrument called an MVAC -- that's M-V-A-C. And what this
20 instrument does is it is a way of collecting the DNA from a
21 sample. And it -- what happens is it's -- it's got a vacuum
22 section, and it's got a sprayer section.

23 And the best analogy I can give is if you think
24 about a rug cleaner, you spray the rug, and then you vacuum
25 up the dirt in the water. And that's similar to what this

1 is doing. The fabric is moistened, and then this vacuum
2 hose -- there's a filter -- so as things are being vacuumed
3 up from the article, the cells are being caught on the
4 filter, and then you test the filter which should contain
5 any cellular material that's taken from the article of
6 clothing.

7 In this case they took samples from the right
8 pocket and left pocket, and their notes clearly indicate
9 that they were avoiding areas that appeared to be blood. So
10 they were looking at the non-bloody areas to find the
11 cellular material of somebody who may have touched that
12 section.

13 Q. And is clothing the type of sample for which the
14 MVAC is designed?

15 A. Yes.

16 Q. Can you explain that a little bit?

17 A. Cells tend to get caught in the fibers of
18 material. And so using an MVAC, it's -- it's one of the
19 better ways to pick up that cellular material.

20 Q. But it wouldn't be good for something like paper,
21 right?

22 A. No. Correct. Correct.

23 Q. And that's because it would just disintegrate the
24 paper --

25 A. Exactly.

1 Q. -- because it uses water?

2 A. Right.

3 Q. Based on your review of the lab report and file,
4 do you know what areas of the pocket that were MVAC'd?

5 A. They basically had indicated that they looked at
6 areas that were not bloodstained or tried to avoid the areas
7 that were bloodstained.

8 Q. What type of testing was conducted on the pockets
9 after they were MVAC'd?

10 A. After they were MVAC'd, they performed STR
11 analysis using the newer kits.

12 Q. And did they use a newer technology to interpret
13 the mixtures?

14 A. Yes. DNA Lab International's has a -- it uses a
15 software program called STRmix. This is a program that
16 basically performs probabilistic genotyping. And all that
17 means is that it takes all of the genetic information that
18 has been developed from a profile. You put it into the
19 software program. You let the software program know if you
20 have known reference samples that you expect to be a part of
21 that sample. And then you pose two hypotheticals, and the
22 software program interprets using the genetic data entered
23 and will calculate a probability of which hypothetical is
24 more probable.

25 So, for instance, in the right pocket, there was a

1 mixture of at least three individuals, and at least one of
2 them was a male. So they can input that genetic information
3 and then they input the victim's reference and said, Is it
4 more probable that the victim is included as one of these
5 three individuals, or is it more probable that this is a
6 mixture of three unknown individuals?

7 And based on the peak heights and all of the
8 genetic information the software has, the victim could not
9 be ruled out as a possible contributor.

10 So given that, you can then pose different
11 hypotheticals. Now that we know that the victim is
12 included as one of these three individuals, you can then
13 pose different hypotheticals. You can say, I'm going to
14 assume the victim is in this mixture of three. Now, is it
15 more probable that this -- that this profile is a
16 combination of the victim and two unknown individuals, or
17 the victim and Leroy Spruiell and one unknown individual?
18 And you go through and you run that probability.

19 And after you run it with Leroy Spruiell, you run
20 that probability with William Brandon Jones. You run that
21 probability with Dana Maybin. And basically each individual
22 person gets their own statistical run or probabilistic run.

23 And what the result was, was that it was more
24 probable or in this case actually all of the individuals
25 other than the victim were excluded as possible contributors

1 to that mixture of three. And there was a clear major
2 unknown source. So we knew, at least based on statistical
3 probabilities, the victim is included. There is a major
4 male who is also included. We have that profile, and all of
5 these -- the other reference samples are excluded.

6 Q. And do you know what percentages those three
7 profiles made up in that mixture?

8 A. Yes. That is one thing that the probabilistic
9 genotyping or STRmix will help and determine is the
10 approximate concentrations of each of the contributors.

11 The major male profile -- unknown male profile was
12 approximately 87 percent of the total DNA from the right
13 pocket mixture. The victim was only approximately eight
14 percent. And then the third minor was approximately five
15 percent.

16 COMMISSIONER BOSWELL: And was it the same male
17 found in other places that was going through the pockets?
18 In the various pockets, was it this unknown male -- was it
19 the same DNA in each of those locations?

20 THE WITNESS: The profiles were consistent, yes.

21 COMMISSIONER BOSWELL: Okay.

22 BY MS. GUICE SMITH:

23 Q. You said the victim --

24 JUDGE WAGONER: A question here.

25 COMMISSIONER BRITT: Can you -- can you repeat

1 percentages again? You said 87?

2 THE WITNESS: 87 was the unknown male, eight
3 percent was consistent with the victim, and five percent was
4 a third unknown, which we exclude all of the other
5 references as being a possible contributor of.

6 BY MS. GUICE SMITH:

7 Q. And specifically that you've excluded Leroy
8 Spruiell?

9 A. Yes.

10 Q. Wallace Brandon Jones?

11 A. Yes.

12 Q. Dana Maybin?

13 A. Yes.

14 Q. And also Dennis Honeycutt?

15 A. That's correct.

16 Q. Along with the other individuals who were listed
17 on the chart that the commissioners have?

18 A. That's correct.

19 Q. All right. Let's turn our attention to that
20 second pocket sample. I believe that's going to be the left
21 pocket?

22 A. Correct.

23 Q. Okay.

24 A. The left pocket -- DNA Labs International obtained
25 a mixture of at least four individuals here, at least one of

1 which was a male. The percentages of these four determined
2 by STRmix was the major male was 45 percent, and that major
3 male 45 percent is similar to the same major male on the
4 right pocket, which was 87 percent.

5 The second concentration was 29 percent, and they
6 determined that that was consistent with the victim. So,
7 again, the victim was the second most concentrated in both
8 the left and the right samples.

9 And then the third was 22 percent, and the fourth
10 was four percent. And these numbers are rounded, so it may
11 not -- it may be slightly over 100 percent.

12 Q. Okay. And what assumptions are made in this
13 testing?

14 A. So when they assumed that the victim is a
15 contributor -- is Contributor Number 2 -- they -- the
16 likelihood ratios or the probability supports that Dana
17 Maybin, Dennis Honeycutt, Tim Swain, Ray Hurst, Edward
18 Fields, and David Mixon, Jr., are excluded from being a part
19 of that number third or fourth location.

20 And it doesn't distinguish between the third or
21 the fourth. It looks at all of that information for the
22 third and fourth person combined.

23 However, when it -- when you input the genetic
24 information for the remainder of the individuals, the
25 software couldn't explain those other individuals as even

1 being a part of the mixture. So it couldn't come up with a
2 probability of whether it was more probable they were there
3 or not. It just couldn't calculate it. And, therefore,
4 it's reported as being inconclusive for those individuals.

5 Q. So with respect to the 45 percent profile, that
6 major unknown, is everyone able to be excluded from that?

7 A. Yes.

8 Q. Okay.

9 A. Every individual, including the victim, could not
10 have been the major source, that 45 percent. And all of the
11 other individuals obviously are excluded as -- they
12 certainly don't have the same profile as -- as the victim,
13 and so they're excluded from the number one and number two
14 positions, but only Leroy Spruiell -- no, excuse me -- only
15 Dana Maybin, Dennis Honeycutt, Tim Swain, Ray Hurst, Edward
16 Fields, and David Mixon, Jr. are excluded from the third and
17 fourth. The others, no conclusions can be drawn.

18 COMMISSIONER BARROW: Could -- could money have
19 carried DNA into the pocket?

20 JUDGE WAGONER: Would you repeat the question, or
21 just have her --

22 COMMISSIONER BARROW: Could money have transferred
23 the DNA into the pocket?

24 JUDGE WAGONER: Gotcha.

25 THE WITNESS: There is a possibility that money

1 could transfer some DNA into the pocket. That would be
2 considered a secondary transfer.

3 So somebody had to touch the money first. Then
4 the money goes into the pocket. And that DNA that's on the
5 money transfers to the pocket. So that is -- because
6 somebody isn't touching it directly, that would be
7 considered a secondary transfer.

8 It is possible for that to happen. You would
9 expect to find very minor amounts of DNA in a situation like
10 that.

11 ALT. COMMISSIONER NEWTON: Even with a large
12 amount of money?

13 THE WITNESS: Yes, because generally the only
14 thing that's going to touch the pocket is the outermost
15 bill. Nothing else on the inside -- I mean, if something is
16 folded -- if you have, you know, five one-dollar bills
17 folded, the only thing that's going to touch the pocket is
18 the outside portion of that outermost bill.

19 ALT. COMMISSIONER NEWTON: Well, the facts in this
20 case are the money is apparently crumpled, and it's a number
21 of dollar bills or certain denominations of dollar bills.
22 Would that change your description?

23 THE WITNESS: Well, in that case, anything that
24 touches, yes, the pocket certainly could.

25 ALT. COMMISSIONER NEWTON: I have a -- I have a

1 follow-up, if I could.

2 You weren't given any information about the pants
3 themselves. For example, obviously we don't know where the
4 pants came from, how long he had the pants, whether he was
5 wearing someone else's pants. If pants are, let's say, not
6 washed, would that explain another contribution to the DNA?
7 In other words, how long does DNA last before it's not
8 usable or not testable if it's in the pants?

9 THE WITNESS: DNA lasts for -- could last for a
10 very long time, depending on the storage location, the
11 temperature, and various other things. It is possible that
12 if these were somebody else's pants and they had worn them
13 and they had not been washed and then the victim wore them,
14 that -- that could account for some of the combinations.

15 Going back to the money, if -- because we're
16 seeing the same major male DNA profile in both the left and
17 the right, if it was coming from the money, the money would
18 have had to have been switched back and forth from the left
19 to the right and it would have had to have rubbed off on
20 both the left pocket and the right pocket. That seems a
21 little less probable.

22 But, yes, to get -- as far as if the pants were
23 worn by somebody else, if they were somebody else's pants,
24 that is possible that that could account for two of the
25 sources or subsequent three or four, but it would have to

1 generally not have been washed in between wearings by
2 multiple individuals. You would expect that generally
3 washing does tend to destroy DNA.

4 ALT. COMMISSIONER NEWTON: It was a plastic bag
5 also. Would that be different as a contributor as opposed
6 to money? In other words, if the bag -- let's say he was a
7 drug dealer. And let's say he took the baggie out and he
8 put it in a different pocket. Would that tend to distribute
9 DNA?

10 THE WITNESS: Somebody else would have had to have
11 touched the outside of that bag for it to be deposited into
12 the pocket if it was, then, put into his pocket.

13 COMMISSIONER FRYE: A followup, just a little bit.
14 In your expert opinion, could the major contributor, the
15 major unknown contributor that we have, could that
16 contribution have been from a secondary transfer? Or is it
17 -- is it likely that it would be from a secondary transfer
18 or is it more probable that it's from a direct contact with
19 the interior of the pocket?

20 THE WITNESS: I can say that generally when we're
21 testing clothing, we find the person who is wearing the
22 clothing on that clothing more than we find anything else.
23 Usually they are the major contributor. So it's very
24 unusual to find a major contributor that is not the person
25 who is wearing those clothes.

1 Anytime you ask, Could it be? I have to say there
2 is

3 COMMISSIONER FRYE: That's why I changed it --

4 THE WITNESS: -- always a possibility.

5 COMMISSIONER FRYE: That's why I changed it to say
6 "probable."

7 THE WITNESS: However, it's more likely, in my
8 opinion, that it would be from a direct contact.

9 COMMISSIONER BOSWELL: So -- I'm sorry, go ahead.

10 COMMISSIONER FRYE: And the major contributor is
11 none of the people that are listed here that we -- that we
12 gave you the samples from.

13 THE WITNESS: That's correct. They are all
14 excluded.

15 COMMISSIONER BOSWELL: And we're talking about the
16 right front and right and left pocket?

17 THE WITNESS: Correct.

18 COMMISSIONER BOSWELL: So under these two
19 scenarios, in one case, other than the victim, two people
20 would have put their hands in the pocket or somehow got DNA
21 in the pocket. In the other case, three people would have?

22 THE WITNESS: Correct. Or --

23 COMMISSIONER FRYE: Transfer.

24 THE WITNESS: -- transfer. Some of the minor DNA,
25 especially at four percent or five percent, I can see that

1 potentially being a transfer and/or residual DNA from -- the
2 hypothetical given me, the somebody else who -- who had worn
3 them. But as far as the major contributors, my opinion
4 would be that it's more likely -- it's -- it's generally
5 what we see more with direct versus secondary. I can't say
6 it's impossible.

7 MS. GUICE SMITH: Anybody else have follow-up?

8 COMMISSIONER BOSWELL: You had mentioned about
9 degradation. Is the effect of degradation that you just
10 can't good read -- get -- get good readings, but it doesn't
11 change the false -- you don't get false positives or
12 anything with degradation?

13 THE WITNESS: That's correct. With -- with
14 degradation, what happens is the DNA starts breaking up to
15 the point where you won't get a result. But it's not going
16 to change a result from -- you know, one type to the next.
17 You're either going to see it or you'll see it in very small
18 quantities, but it's not going to change it.

19 BY MS. GUICE SMITH:

20 Q. To just be very clear, the 45 percent that we're
21 seeing in the left pocket and the 87 percent profile that
22 we're seeing in the right pocket, those two profiles are
23 consistent with one another.

24 A. Correct.

25 Q. And Dana Maybin has been excluded from all of the

1 profiles in both pockets.

2 A. That is correct.

3 Q. All right. I think those are my questions on the
4 pockets. Have I left out anything that you think needs to
5 be explained to the commissioners about the testing that was
6 done on the pockets?

7 A. I don't think so. I think we've covered that.

8 Q. Can you describe what testing was conducted on the
9 tire tool?

10 A. Yes. The tire tool -- the North Carolina State
11 Laboratory originally performed tests and determined that
12 human blood was present. They attempted to perform a blood
13 type, but it was inconclusive.

14 Also, in 1995 that sample was sent to LabCorp, and
15 a DNA profile was developed from the blood on the end of the
16 tire iron or tire tool. And the only reference sample that
17 LabCorp had to compare was to Leroy Spruiell, and he was
18 excluded as a source of the DNA on that.

19 Q. Ms. Clement, have you since that time been able to
20 do a comparison with the victim to that sample from 19 --
21 the 1995 LabCorp testing?

22 A. Yes.

23 Q. And were you able to include or exclude the victim
24 as the donor of that sample?

25 A. He was included as the -- as the source of that.

1 Q. And that was a single source sample?

2 A. Yes, correct.

3 Q. So there's no reason to believe that it's anyone
4 other than the victim --

5 A. That's correct.

6 Q. -- on that sample? Okay.

7 COMMISSIONER GRACE: What kind of DNA was that?
8 How would you characterize that? Was it blood? Semen?
9 Touch?

10 THE WITNESS: That particular sample was -- we
11 specifically swabbed the blood, the red portion on the end
12 of the tire iron. So we were tested -- testing for the
13 blood on the end of that.

14 COMMISSIONER GRACE: Do you remember -- did you
15 get a picture of the tire iron, and could you determine
16 where on that tire iron the sample was taken?

17 THE WITNESS: I can -- we did not take a picture.
18 I personally tested this back in 1995, and I took a swab
19 from the very end portion where the -- it would go into a
20 bolt on the tire to loosen it up. And there was red
21 staining on that, so I personally swabbed the red portion.
22 And so my -- the State Lab had identified it as blood. And
23 that is what I tested for DNA.

24 COMMISSIONER FRYE: The sample -- the major male
25 unknown sample, has it been entered into CODIS to see if

1 there is any identification?

2 THE WITNESS: Are we back on the pocket?

3 COMMISSIONER FRYE: Yes.

4 COMMISSIONER GRACE: ^Pocket or --

5 COMMISSIONER FRYE: I'm -- I'm on the pocket.

6 THE WITNESS: I am not sure whether that has been
7 entered into CODIS right now -- not --

8 MS. GUICE SMITH: I can ask a follow-up.

9 THE WITNESS: Okay.

10 BY MS. GUICE SMITH:

11 Q. Are you aware that the Crime Lab does not have
12 STRmix online as of this date?

13 A. Yes.

14 Q. And since the Crime Lab does not have STRmix
15 online as of this date, is there -- are we -- is that
16 profile eligible to be uploaded to CODIS?

17 A. That's -- no, it is not. The State Crime
18 Laboratory has to be able to review all data before they can
19 input it into CODIS. So, therefore, it's not eligible at
20 this time.

21 ALT. COMMISSIONER NEWTON: May I ask a follow-up
22 to that? I'm glad he did that, if you don't mind.

23 Were you asked to exclude any law enforcement
24 officers from the sample of the 87 percent from either
25 pocket or both?

1 THE WITNESS: The only -- it's my understanding
2 that the only law enforcement profile that was submitted for
3 comparison was that of Dennis Honeycutt, and he was
4 excluded.

5 ALT. COMMISSIONER NEWTON: Do you know why?

6 THE WITNESS: I can't answer that. I don't -- I
7 don't know why.

8 ALT. COMMISSIONER NEWTON: Well, apparently there
9 was some testimony and some questioning of Dana that there
10 was money in the pocket that was removed when she talked
11 about it, but there was money that remained in the pocket,
12 seeming to indicate that law enforcement had actually been
13 in the victim's pocket. So I was wondering if you had any
14 samples of any law enforcement at the scene to exclude.

15 THE WITNESS: As I said, the only law enforcement
16 individuals' profile that we had to exclude was Dennis --
17 Dennis Honeycutt. I don't know what -- how many other --

18 ALT. COMMISSIONER NEWTON: You don't know who else
19 was there who might have removed that money --

20 THE WITNESS: No.

21 ALT. COMMISSIONER NEWTON: -- from his pocket?

22 THE WITNESS: That's correct.

23 COMMISSIONER BOSWELL: And is Dennis Honeycutt the
24 person we talked about wearing gloves?

25 MS. GUICE SMITH: It is.

1 COMMISSIONER FRYE: Yes. Crime scene tech.

2 JUDGE WAGONER: Yes.

3 ALT. COMMISSIONER NEWTON: Does anybody know if he
4 removed the additional money from the pocket?

5 COMMISSIONER BRITT: According to the brief, there
6 was money removed during the autopsy.

7 MS. GUICE SMITH: Yes. We've got some additional
8 testimony from staff about that.

9 BY MS. GUICE SMITH:

10 Q. Ms. Clement, I'm going to take you back just
11 briefly. Do you have in your packet there the September
12 2nd, 2015 lab report from the North Carolina Crime Lab?

13 A. September 2nd -- I'm sorry. Two thousand --

14 Q. '15.

15 A. (Reviewing documents.) Yes.

16 Q. Okay. And to be clear, this is not related to the
17 major profile from the DNA Labs International testing that
18 we've just talked about with the 87 percent and the 45
19 percent, but is rather related to testing that was conducted
20 by Cellmark on the pockets. Is that correct?

21 A. That's correct.

22 Q. Did the Commission at that time attempt to have
23 any of the profiles from the pockets uploaded into CODIS?

24 A. Yes. The --

25 Q. And what were the results of that?

1 A. The North Carolina State Laboratory reported that
2 the profile obtained from the swabbing of the inside right
3 pocket of the pants is not suitable for search or entry in
4 the CODIS system database.

5 Q. And that was the deduced major --

6 A. That's correct.

7 Q. -- male profile -- or the deduced male, I'm sorry --
8 deduced unknown male profile from the pants pocket?

9 A. That's correct.

10 Q. All right. I'm going to turn your attention back
11 now to the testing that was conducted on the tire tool. I
12 think you were talking about the LabCorp testing in 1995 --

13 A. Yes.

14 Q. -- which was compared to Mr. Spruiell and was not
15 him, but which you later determined was that of the victim.
16 What type of testing was done back in 1995?

17 A. Actually -- and I -- I must correct my testimony.

18 Based on the 1995 testing, in 1995 -- 1995
19 LabCorp performed what was called DQ Alpha and polymarker
20 testing. It was one of the very first testing methodologies
21 using polymerase chain reaction where we genetically
22 photocopy areas of DNA where there are differences. That
23 particular testing couldn't be compared to any of the STR
24 testing that's done today.

25 There was subsequent testing performed by LabCorp

1 on the same extracts from 1995 that we couldn't exclude
2 Leroy Spruiell as being a profile -- excuse me -- we did
3 exclude Leroy Spruiell as being the source of when we
4 subsequently compared the results from the 2007 testing.
5 That is the testing where we included the victim.

6 So I misspoke. I apologize. The two thousand --
7 the 1995 testing was a different type of testing and
8 couldn't be compared to any of the other results. And at
9 that point we only had Leroy Spruiell, and he was excluded.
10 Then in 2007, there was subsequent testing.

11 Q. Thank you for the clarification.

12 There is no report for that 1995 testing. Is that
13 correct?

14 A. That's correct.

15 Q. And why is that?

16 A. We were performing testing on behalf of the
17 defense attorney, Mr. Maynard Harrell, I believe. And when
18 we called to let him know that Leroy Spruiell was excluded as
19 the source of the blood on the tire iron, he told us to halt
20 testing because a plea offer -- or a plea agreement had been
21 made. And so he said please halt testing, and no -- no
22 report was needed.

23 Q. Okay.

24 COMMISSIONER GRACE: Didn't want to do anymore
25 work.

1 (Laughter.)

2 BY MS. GUICE SMITH:

3 Q. All right. What other testing was conducted on
4 the tire tool?

5 A. In 2007 the North Carolina State Crime Laboratory
6 developed a profile consistent with a mixture. The victim
7 could not be excluded. And they made comparisons, and they
8 did exclude Wallace Brandon Jones, Leroy Spruiell, Dana
9 Maybin, Maurice Wilkins, and Lee McPhatter.

10 Q. And is it your understanding that this testing in
11 2007 by the Crime Lab was done on a different area of the
12 tire tool?

13 A. Yes. According to the notes from the North
14 Carolina State Laboratory, it was still done on that upper
15 portion before the -- the joint. It was still done on the
16 first -- the top portion where the lug nut would go into, so
17 it looked like they had swabbed more of that area.

18 Q. And what was the result of the 2007 testing, other
19 than it was excluding those individuals? Was anything else
20 done with it?

21 A. Yes. It was compared to the additional reference
22 samples of other individuals -- of all the other
23 individuals, and they were all excluded as well.

24 Q. And was that profile uploaded to CODIS?

25 A. Yes. The profile that was foreign to the victim

1 in this particular sample was uploaded to CODIS, and there
2 was no matches.

3 Q. Can you just briefly explain to the commissioners
4 what CODIS is?

5 A. Yes. CODIS stands for a Combined DNA Index
6 System. It's the national database that houses samples from
7 every state. There are certain criteria that have to be met
8 before a sample can be uploaded into the national CODIS
9 database. And at the time it had to -- you had to test for
10 the 13 -- they were called core loci or core locations, and
11 you had to have at least 10 out of those 13 in order for it
12 to be uploadable. So this was a fairly robust profile that
13 was searchable in CODIS, and it did not match.

14 COMMISSIONER BOSWELL: But it was -- that was just
15 one person, and it was consistent with the victim.

16 THE WITNESS: Well, this was a mixture --

17 COMMISSIONER BOSWELL: Oh, okay.

18 THE WITNESS: -- and they could -- if you subtract
19 the victim's characteristics, they deduced another profile
20 that was eligible for CODIS upload.

21 COMMISSIONER BOSWELL: I got it.

22 THE WITNESS: And that is routinely being --
23 because if it entered into CODIS, it's routinely being
24 searched. Every time there's a search of the CODIS system,
25 which is either weekly or however often it occurs, it

1 continues to be searched.

2 BY MS. GUICE SMITH:

3 Q. And if you know, Ms. Clement, how do individuals
4 get their profiles into CODIS?

5 A. Different states have different laws, but
6 generally it started -- the CODIS system started in 1998
7 nationally. And it started with convicted felons, and then
8 over the course of time, various states and the FBI actually
9 dictated that it didn't necessarily have to be convicted
10 felons, that they could be individuals who had been arrested
11 for felonies or arrested for other major crimes.

12 And so different states have different laws. But
13 it's either convicted felons and/or arrestees, or
14 occasionally a person will volunteer to give their sample
15 and if you volunteer, it can be uploaded.

16 Q. So that started in 1998.

17 A. The national CODIS system started in 1998, yes.

18 Q. Has the Commission had any additional testing
19 conducted with respect to the tire iron?

20 A. Yes. As I stated, LabCorp did additional testing,
21 and that's when we were able to say that the profile that
22 LabCorp obtained was consistent with the victim. In 2011,
23 the -- I'm sorry. That's when we said that the profile was
24 consistent with the victim.

25 In 2018 the extract from the crime laboratory --

1 the North Carolina Crime Lab was sent to DNA Lab
2 International, and they attempted to have that sample -- the
3 extract was -- I'm sorry.

4 The DNA extract from the 2000 testing at the North
5 Carolina State Crime Laboratory was sent for genetic
6 genealogy testing at Parabon Laboratories. This is a
7 laboratory that will take the genetic information from DNA
8 samples, and they attempt to develop what we call phenotypic
9 characteristics. They attempt to develop information on eye
10 color, hair color, and physical characteristics. But due to
11 degradation, no human DNA remained in that extract, so they
12 were not able to do anything with it.

13 Q. And that's the extract from the tire iron where
14 that profile is currently being run in CODIS.

15 A. That's my understanding, correct.

16 Q. All right. Do you have anything to add about DNA
17 testing in general or about the testing in this case that I
18 have not asked today?

19 A. I don't think so.

20 MS. GUICE SMITH: Commissioners, questions?

21 JUDGE WAGONER: This is probably the dumbest
22 question you've ever had, but I was an English major ^ for
23 this. Okay. You've probably noticed these people, a lot of
24 them have the same last names and they continue to marry,
25 and it's a -- it's a very close-knit group.

1 THE WITNESS: Yes.

2 JUDGE WAGONER: I'll just put it that way.

3 Knowing all that, what is the possibility that
4 this close familial relationship could result in
5 inconclusive DNA, false positives, or -- or anything like
6 that? Because I noticed that David Mixon, Jr., did a crime
7 lab comparison familial -- familial link to David Mixon.
8 I'm just -- would that have anything to do with this?

9 MS. GUICE SMITH: Let me ask a question. That's
10 actually something that I forgot to ask that may -- may make
11 that more clear.

12 JUDGE WAGONER: Okay.

13 BY MS. GUICE SMITH:

14 Q. Is it your understanding, Ms. Clement, that the
15 Commission obtained a DNA standard from David Mixon, Jr.,
16 because he's the son of David Mixon, Sr.?

17 A. Yes.

18 Q. And David Mixon, Sr., is deceased?

19 A. That's my understanding.

20 Q. Why would someone want the standard of a child for
21 a deceased parent?

22 A. Because a child is going to share half of their
23 DNA with their father, there are certainly -- if you saw a
24 close situation where, let's say, everything was matching
25 except at one location. If there were a situation where we

1 said, We've compared this and it's inconclusive for this
2 person, it may be because of that familial relationship and
3 could potentially point to a father in a situation like
4 that.

5 However, without the father's DNA, you certainly
6 can only exclude the son. But there was no situation where
7 he wasn't clearly excluded on any of the samples.

8 Q. So we've only, though, excluded the son --

9 A. That's correct.

10 Q. -- not the father?

11 A. That's correct. Yeah. If there were a situation
12 where the son couldn't -- was inconclusive and maybe
13 something couldn't have been determined because it was
14 really close, it may have been something that you want to
15 look more closely into. However, we clearly excluded him.

16 JUDGE WAGONER: I guess what I'm talking about --
17 I'm really not talking so much about this Mixon person as
18 Wyatt Spruiell and Leroy Spruiell and being his nephew. Isn't
19 that correct?

20 MS. GUICE SMITH: Cousin?

21 JUDGE WAGONER: Wyatt? That was Wyatt.

22 MS. GUICE SMITH: Cousin? Second cousin?

23 THE WITNESS: Okay.

24 JUDGE WAGONER: Would -- could that have anything
25 to do with some of this inconclusiveness?

1 THE WITNESS: No.

2 JUDGE WAGONER: The cousins and mothers and
3 fathers and --

4 THE WITNESS: If we exclude them, we can clearly
5 exclude them. They're certainly -- their profiles are --
6 are very different, although there -- you know, there are
7 some areas where they may share a particular characteristic.
8 Any two people in the population could arbitrarily share a
9 characteristic at a specific location.

10 But their profiles -- I believe it's Wyatt Spruiell
11 and Leroy Spruiell -- are -- are completely different when
12 you look at them in their entireties as are Tim Swain's.

13 And I don't know what the relationship is between
14 Tim Swain and William Frank Swain. Their profiles were
15 completely different when you looked at them. And so it's
16 very clear that they can be differentiated within a
17 particular sample as well as within a mixture.

18 JUDGE WAGONER: Okay.

19 MS. GUICE SMITH: Sheriff Frye?

20 COMMISSIONER FRYE: And I may have missed
21 something, so bear with me on this. On the tire iron, the
22 section that was tested was the section that had blood on
23 it.

24 THE WITNESS: Originally. In the early testing in
25 1995, yes, that is correct, by LabCorp and by the State

1 Crime Laboratory. It was the area on the end that had blood
2 in it.

3 COMMISSIONER FRYE: But later on everything -- it
4 was completely swabbed?

5 THE WITNESS: Later on, it was a much larger
6 section of the tire iron and --

7 COMMISSIONER FRYE: Like which -- which end --

8 THE WITNESS: -- and it included, I believe --

9 COMMISSIONER FRYE: -- of the section?

10 THE WITNESS: -- areas that did not have blood on
11 it.

12 COMMISSIONER FRYE: Here's my question, okay? And
13 I'm just thinking. If I'm hitting him with a tire
14 iron --

15 THE WITNESS: Yes.

16 COMMISSIONER FRYE: -- okay? This end is not
17 going to have my DNA. It's going to be on the complete
18 opposite end of it. Was the whole tire iron tested opposite
19 from the -- the part that made the impact? Does that make
20 sense?

21 THE WITNESS: I would have to refer to the notes
22 on that.

23 BY MS. GUICE SMITH:

24 Q. Ms. Clement, I'm going --

25 COMMISSIONER FRYE: That's the end --

1 BY MS. GUICE SMITH:

2 Q. -- to hand you --

3 COMMISSIONER FRYE: -- that the person would have
4 been holding.

5 BY MS. GUICE SMITH:

6 Q. -- a computer --

7 A. Yes.

8 Q. -- that has the --

9 COMMISSIONER FRYE: (Unintelligible; speaking
10 simultaneously.)

11 BY MS. GUICE SMITH:

12 Q. -- bench notes from that testing.

13 COURT REPORTER: I'm sorry. Could you --

14 BY MS. GUICE SMITH:

15 Q. If you can --

16 COURT REPORTER: Could you repeat that?

17 MS. GUICE SMITH: Yes.

18 COURT REPORTER: There was --

19 BY MS. GUICE SMITH:

20 Q. I'm handing you the computer with the bench notes
21 from that testing that show what areas were swabbed.

22 A. Okay. And it is indicating that the North
23 Carolina State Crime Laboratory, if on the tire iron you
24 have that little -- did swab the entire top portion. It
25 said, "There were no obvious stains seen on the area that

1 they were swabbing on the exterior portion." But it does
2 not appear that they -- they swabbed the bottom section of
3 it.

4 MS. GUICE SMITH: Commissioners, I will be happy
5 to find a way to put that page on the screen, if that will
6 help you in seeing -- visualizing --

7 COMMISSIONER FRYE: No, she answered -- I think
8 she answered my question, is that where somebody would have
9 been holding it was not tested for DNA.

10 COMMISSIONER BOSWELL: But let me ask this
11 question. If there were no fingerprints at the bottom, then
12 there likely wouldn't be any DNA.

13 COMMISSIONER FRYE: Not necessarily.

14 THE WITNESS: That is not necessarily the case.
15 There are circumstances where you can't see fingerprints,
16 but there is plenty of DNA present.

17 COMMISSIONER BOSWELL: Okay.

18 COMMISSIONER FRYE: Particularly on a piece of
19 metal.

20 COMMISSIONER BOSWELL: Yeah.

21 MS. GUICE SMITH: Any other questions for
22 Ms. Clement?

23 ALT. COMMISSIONER NEWTON: I don't want to keep
24 bouncing back and forth, but I want to follow back up
25 because I found the references about this DNA in the pocket.

1 So may I ask a follow-up on that?

2 MS. GUICE SMITH: Sure.

3 ALT. COMMISSIONER NEWTON: Mr. Britt mentioned
4 that the medical examiner found additional money -- the
5 medical examiner's report, which of course, he did -- \$65 on
6 page 39 of that report, that that was in the shirt. You
7 were not reporting on DNA in the shirt. You were reporting
8 DNA in the pants pocket.

9 THE WITNESS: That's correct.

10 ALT. COMMISSIONER NEWTON: Okay. Now, in the
11 deposition of Dana Maybin, at the very end of the brief,
12 I'll call attention to it. It's page 79 of that deposition,
13 line 11 through 12.

14 The question was asked:

15 "Ms. Maybin, can you explain why the S.B.I.
16 located \$97 in folded-up money in the same pocket
17 that you took that roll of money from?"

18 Is Agent Honeycutt the S.B.I. agent that removed
19 that \$97 that -- that you -- the standard you compared
20 against the DNA?

21 THE WITNESS: I don't have that information. I'm
22 not sure.

23 ALT. COMMISSIONER NEWTON: Okay.

24 MS. GUICE SMITH: Any other questions for
25 Ms. Clement?

1 (No response.)

2 MS. GUICE SMITH: Okay.

3 I have a couple of housekeeping things. I'd like
4 to have her step down now, but I do have -- I do need staff
5 to follow up with her before we let her leave for the day.

6 So while she does that, I'm going to do a couple
7 of housekeeping things, and then we'll figure out where we
8 are for the afternoon. Okay?

9 (The witness left the stand.)

10 MS. GUICE SMITH: We are going to hand out, before
11 you leave today -- so do not leave here without them -- the
12 three things that we have made copies of for you today.
13 That includes Janice Spruiell's transcript of the Commission
14 interview, Dana Maybin's trial testimony, and the full
15 M. A. R. transcript.

16 My follow-up question to you-all -- and this is
17 for planning for expert purposes, too -- do you want the
18 full lab reports to review this evening?

19 JUDGE WAGONER: I don't. Somebody might.

20 COMMISSIONER FRYE: Probably wouldn't understand
21 it if we had it.

22 (Laughter.)

23 MS. GUICE SMITH: Okay. If you did, I was just
24 going to make sure we had Ms. Clement available tomorrow to
25 be able to answer follow-up questions you may have. But if

1 you do not, then after we check with her on this matter, my
2 hope is to be able to let her go today.

3 We do have some additional testimony from
4 Ms. Matoian on the testing just related to the Commission's
5 -- you know, why we did certain things, that I think may
6 clear up some of the questions you-all had.

7 I don't anticipate that will take a very long
8 time, so if you want to finish that up this afternoon, we
9 could do that. If we could just be at ease for maybe five
10 minutes and then finish that up. Is anybody opposed to
11 that?

12 JUDGE WAGONER: I'm not driving 30 or 40 or 50
13 miles like some people are tonight.

14 MS. GUICE SMITH: Anybody oppose?

15 (No response.)

16 MS. GUICE SMITH: Okay. So if we could be at ease
17 for maybe just --

18 JUDGE WAGONER: Okay.

19 MS. GUICE SMITH: -- be at ease for maybe --

20 JUDGE WAGONER: Five minutes.

21 MS. GUICE SMITH: -- five minutes, and then we
22 should wrap up around five

23 JUDGE WAGONER: Okay.

24 MS. GUICE SMITH: -- or a few minutes after.

25 (Off the record at 4:43 p.m.)

1 (A brief recess was taken.)

2 (Back on the record at 4:59 p.m.)

3 (The witness, Meghan Clement, resumed the
4 stand.)

5 MS. GUICE SMITH: I have put Ms. Clement on the
6 spot this afternoon and asked her to do one additional
7 comparison for us that hadn't previously been done.

8 BY MS. GUICE SMITH:

9 Q. Ms. Clement, you testified earlier about the
10 latent prints on the ashtray and that Mr. Ludas was the
11 major source of that profile, but there was a minor profile
12 present. Is that correct?

13 A. That's correct.

14 Q. And were you able to compare that minor profile on
15 the ashtray to the profile on the tire iron -- the portion
16 that's not the victim?

17 A. Yes.

18 Q. And is the profile from the ashtray consistent
19 with that unknown profile on the tire iron?

20 A. It is not.

21 JUDGE WAGONER: It is not.

22 BY MS. GUICE SMITH:

23 Q. And were you able to compare that profile on the
24 ashtray to the deduced major profile -- I'm sorry, the
25 deduced profile of an unknown male from the pockets in the

1 victim's jeans?

2 A. Yes.

3 Q. And is the profile from the ashtray consistent
4 with that profile from the pockets?

5 A. It is not.

6 Q. Okay. And were you able to compare the profile
7 from the ashtray to the unknown portion of the profile from
8 the testing on the envelope that held the scrapings from the
9 victim's front door?

10 A. I looked at those two profiles, but there -- it's
11 inconclusive. There's not enough overlapping information on
12 both of those samples for me to draw a conclusion.

13 Q. Okay.

14 COMMISSIONER BRITT: May I ask, what was the
15 second comparison?

16 MS. GUICE SMITH: To the pockets.

17 COMMISSIONER BRITT: The pocket and the ashtray?

18 THE WITNESS: Yes.

19 MS. GUICE SMITH: Yes.

20 COMMISSIONER BRITT: How about the tire iron and
21 the pocket?

22 THE WITNESS: The --

23 COMMISSIONER GRACE: Except for the victim's
24 share?

25 COMMISSIONER BRITT: Yes. Except --

1 THE WITNESS: Except for the victim's --

2 BY MS. GUICE SMITH:

3 Q. Except for the victim's --

4 A. Except for the victim --

5 Q. -- profile in both the pocket and the --

6 A. -- if you compared --

7 Q. -- and the tire iron. The unknown male profiles
8 on the tire iron and the pocket.

9 A. They are different.

10 COMMISSIONER BRITT: Okay.

11 COMMISSIONER BOSWELL: Can I ask a question? And
12 I think I know what your answer will be, but I want to ask
13 it anyway.

14 If -- if Ms. Maybin had gone through the pockets
15 of the victim, would you expect her DNA to be in there?

16 THE WITNESS: My answer is I never expect
17 anything. I just test and look at the profiles and
18 determine what I can or cannot say based on those.

19 Would I be surprised to find her DNA profile? No.
20 Am I surprised if somebody actually does make that action
21 that I don't find it? No. I -- I really don't expect one
22 way or the other. It could be possible it's there. It
23 could be possible it's not.

24 COMMISSIONER BOSWELL: Okay.

25 THE WITNESS: There are so many variables -- how

1 long she was in there; whether, you know, she's a shedder,
2 and all sorts of different things.

3 COMMISSIONER BOSWELL: Great.

4 MS. GUICE SMITH: Any other questions of
5 Ms. Clement?

6 (No response.)

7 MS. GUICE SMITH: Okay.

8 JUDGE WAGONER: 9:00 tomorrow morning --

9 MS. GUICE SMITH: Yes.

10 JUDGE WAGONER: -- we will resume.

11 Lindsey says we may leave these books here.

12 MS. GUICE SMITH: You may leave your stuff here.
13 You do have the Redwell that was passed out that has the
14 three things that you-all requested today. If you will
15 please review those.

16 I will recommend that you review them tonight
17 because I do anticipate having a couple of other transcripts
18 that we already planned to hand out to you-all plus anything
19 else that you-all want to see throughout the week. So I
20 wouldn't leave it hanging out.

21 (An overnight recess was taken at 5:02 p.m.)

22

23 (CONTINUED IN VOLUME II, PAGE 238.)

24

25

NORTH CAROLINA GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA	)	COUNTY OF WASHINGTON
)	
v.	)	94 CRS 1984
	)	94 CRS 1566
LEROY SPRUIELL,)	
)	
Defendant.)	
_____)	

STATE OF NORTH CAROLINA	)	COUNTY OF WASHINGTON
)	
v.	)	94 CRS 1973
	)	94 CRS 1565
WALLACE BRANDON JONES,)	
)	
Defendant.)	
_____)	

HEARING BEFORE THE
NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

VOLUME II OF V

(Pages 238 - 539)

Tuesday, October 2, 2018

Wanda B. Constantino, CVR-CM-M
AOC-Approved Per Diem Reporter
1102 Driftwood Drive
Siler City, North Carolina 27344
919.548.4914
wanda@mywordservices.com

APPEARANCES

Commi ssi oners Present and Servi ng:

The Honorable Anna Mi l l s Wagoner, Chair

Ni gl e "Tex" Barrow, Esq. , Commi ssi oner

John Boswel l , Esq. , (Al ternate servi ng as Commi ssi oner)

Johnson Bri tt, Esq. , Commi ssi oner

Ms. Cami l l a Cover (Al ternate servi ng as Commi ssi oner)

Sheri ff Kevi n Frye, Commi ssi oner

Mi chael Grace, Esq. , Commi ssi oner

Ms. Jenni fer Thompson (Al ternate servi ng as
Commi ssi oner)

Al so Present:

Deborrah L. Newton, Esq. (Commi ssi oner servi ng
as Al ternate)

Li ndsey Gui ce Smi th, Esq.

North Caroli na Innocence Inqui ry Commi ssi on

Admi ni strati ve Offi ce of the Courts

Post Offi ce Box 2448

Ral ei gh, North Caroli na 27602

TABLE OF CONTENTS

	<u>PAGE</u>
Colloquy	244
<u>COMMISSION'S WITNESSES (Cont'd.)</u>	
Maynard Harrell	
Examination by Commissioner Barrow	248
Examination by Commissioner Boswell	251
Examination by Commissioner Britt	252
Examination by Alt. Comm. Newton	253
Colloquy	255
<u>COMMISSION'S WITNESSES (Cont'd.)</u>	
Catherine Matoian (re-called)	
Examination by Ms. Guice Smith	258
Seth Edwards	
Examination by Ms. Guice Smith	317
Examination by Commissioner Britt	319
Examination by Judge Wagoner	322, 332
	334
Examination by Commissioner Grace	324, 333
Examination by Commissioner Boswell	326
Examination by Commissioner Barrow	327
Examination by Alt. Comm. Newton	329
Colloquy	336
<u>COMMISSION'S WITNESSES (Cont'd.)</u>	
Catherine Matoian (re-called)	
Examination by Ms. Guice Smith	339
Beth Tanner	
Examination by Ms. Guice Smith	380
Lindsey Guice Smith	
Direct testimony	391
Colloquy	394

TABLE OF CONTENTS (Cont'd.)

	<u>PAGE</u>
<u>COMMISSION'S WITNESSES (Cont'd.)</u>	
Beth Tanner (re-called) Examination by Ms. Guice Smith	400
Catherine Matoian (re-called) Examination by Ms. Guice Smith	401
Edward Hudson	
Examination by Ms. Guice Smith	444, 522
Examination by Commissioner Britt	465, 499
Examination by Judge Wagoner	473, 492
	525
Examination by Commissioner Thompson	474
Examination by Commissioner Boswell	476, 492
	518, 521
Examination by Commissioner Frye	479, 493
	508
Examination by Commissioner Grace	483, 500
Examination by Commissioner Barrow	494, 509
	523
Examination by Alt. Comm. Newton	513
Colloquy	527
<u>COMMISSION'S WITNESSES (Cont'd.)</u>	
Catherine Matoian (re-called) Examination by Commissioners	531
Colloquy	537

TABLE OF CONTENTS (Cont' d.)HANDOUTS

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE IDENTIFIED</u>
24	Davis Mixon, Sr., Criminal Record	348
25	Edward "Beaver" Fields Criminal record	350
26	Ray Hurst Criminal Record	354
27	Tommy Garrett Criminal Record	356
28	Curtis Furlough Criminal Record	360
29	Russell Knowles Criminal Record	363
30	New Jersey Arrest Records - Knowles and Victim	366
31	Alfred Armstrong Criminal Record	369
32	Michael Lassiter Criminal Record	373
33	Alton "BoJack" Clagon Criminal Record	406
34	Joseph Lynn Criminal Record	422
35	Maurice Wilkins Criminal Record	422
36	Lee McPhatter Criminal Record	422
37	Avis Arnold Criminal Record	429
38	Edward Hudson Criminal Record	432
39	Joseph McNair Criminal Record	438
69	Wallace Jones' Previous Statements	530
70	Wallace Jones Transcript - Commission interview	528
74	Leroy Spruiell's Previous Statements	530
75	Leroy Spruiell's Transcript - Commission Interview - 2/9/2011	528
76	Leroy Spruiell's Transcript - Commission Interview - 8/4/2011	528

TABLE OF CONTENTS (Cont' d.)HANDOUTS

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE IDENTIFIED</u>
78	A. G. ' s Statement	528
79	S. B. I. report of meeting between Assistant D. A. Hensley and Dana Maybin, February 8th, 1995	381
80	E-mails - Mumma and Coman	301
81	Photograph (sealed)	338
82	Photograph (sealed)	338
83	Photograph (sealed)	338
84	Letter from Hudson to Coman; subsequent S. B. I. report of interview between S. B. I. and Hudson	527
85	Movement records of Edward Hudson from Hudson' s D. P. S. file	527

1 PROCEEDINGS OF TUESDAY, OCTOBER 2, 2018:

2 (Proceedings resumed at 9:07 a.m.)

3 JUDGE WAGONER: All right. I think we'll resume.
4 Hope everybody had a nice evening. And I just want -- I
5 know we're all very friendly people, but remind us and the
6 folks in the audience that it's improper for us -- any
7 commissioner to speak with anybody in the audience. I'll
8 just remind that. Okay. Next?

9 MS. GUICE SMITH: Yes. Good morning.

10 COMMISSIONER BOSWELL: Good morning.

11 COMMISSIONER GRACE: Good morning.

12 MS. GUICE SMITH: This morning we have the defense
13 attorneys available via video conference. I know there's
14 been a request to have Maynard Harrell, but before we do
15 him, John Skinner has a doctor's appointment a little bit
16 later this morning, so I want to do him first if anyone
17 wants to speak with John Skinner.

18 JUDGE WAGONER: Okay.

19 MS. GUICE SMITH: Anybody? Do you have questions
20 for John Skinner?

21 (No response.)

22 MS. GUICE SMITH: No? Okay. If that's true, then
23 I'll ask that he be released so he can go to his doctor's
24 appointment.

25 JUDGE WAGONER: Is that okay with everybody?

1 (No response.)

2 JUDGE WAGONER: All right. Yes.

3 MS. GUICE SMITH: Okay. And then I know that we
4 had at least one commissioner that wanted to hear from
5 Maynard Harrell. So if you'll give us just a moment, we
6 should be able to get him on the screen momentarily.

7 JUDGE WAGONER: Do I need to swear him?

8 MS. GUICE SMITH: Yes. We'll need to swear him
9 in.

10 JUDGE WAGONER: All right.

11 MS. GUICE SMITH: While we're working on that,
12 does anyone want to hear from Seth Edwards this morning? Do
13 you have any questions for him? Anybody?

14 JUDGE WAGONER: Anybody?

15 (No response.)

16 JUDGE WAGONER: Okay.

17 MS. GUICE SMITH: Okay.

18 COMMISSIONER BARROW: I'm the culprit on Maynard
19 Harrell.

20 JUDGE WAGONER: What now?

21 COMMISSIONER BOSWELL: I'd like to hear from --
22 I'd like to hear what Maynard Harrell has to say.

23 JUDGE WAGONER: You'd like to hear from?

24 COMMISSIONER BOSWELL: Maynard Harrell.

25 JUDGE WAGONER: Okay.

1 MS. GUICE SMITH: Okay. So we will get him up on
2 the screen.

3 (Pause in proceedings.)

4 JUDGE WAGONER: Maybe he's not there yet.

5 MS. GUICE SMITH: They're there.

6 COMMISSIONER BOSWELL: Where is Mr. Harrell?

7 MS. GUICE SMITH: He is at the Washington County
8 Courthouse this morning.

9 (Pause in proceedings until 9:14 a.m.)

10 JUDGE WAGONER: All right. Good morning, sir.
11 Would you please place your left hand on the Bible, raise
12 your right hand?

13 MAYNARD HARRELL,
14 having been called as a witness for the Commission and
15 appearing via video conference, was sworn by Judge Wagoner
16 and testified as follows:

17 JUDGE WAGONER: Okay. Thank you, sir. All right.

18 THE WITNESS: Can you turn the volume up a little
19 bit?

20 MS. GUICE SMITH: Good morning, Mr. Harrell. Can
21 you see us?

22 THE WITNESS: Good morning.

23 MS. GUICE SMITH: Are you able to see us?

24 THE WITNESS: Yes.

25 MS. GUICE SMITH: Okay. My name is Lindsey Guice

1 Smith. I'm the director of the North Carolina Innocence
2 Commission.

3 Around this table are seated our commissioners who
4 are hearing the case of State versus Leroy Spruiell and State
5 versus Wallace Brandon Jones. They've got some questions
6 for you this morning, so I'm going to allow them to ask
7 those questions.

8 Commissioners, I would just ask that as you ask
9 a question the first time, if you'll please introduce
10 yourself to Mr. Harrell so that he knows who he's speaking
11 with.

12 THE WITNESS: Now, I have to tell you the volume
13 is not real good.

14 JUDGE WAGONER: All right. Maybe we can turn it
15 up. Is it -- can he turn it up down there?

16 N.C.I.I.C. INVESTIGATOR: We're at maximum volume
17 on our end here, so maybe if you could speak up a little bit
18 there. We're at maximum volume here.

19 JUDGE WAGONER: Okay. These are the speakers,
20 right? No.

21 MS. GUICE SMITH: Those are only for the court
22 reporter.

23 JUDGE WAGONER: Okay. So what speaker are we
24 supposed to be speaking into?

25 N.C.I.I.C. STAFF PERSON: They are actually -- the

1 microphones are throughout the room.

2 JUDGE WAGONER: Can you hear me now, sir?

3 THE WITNESS: Yeah. I can hear you, but it's real
4 faint.

5 JUDGE WAGONER: Okay. Then we'll just have to
6 yell when we ask questions.

7 COMMISSIONER COVER: Judge Wagoner?

8 JUDGE WAGONER: Yes.

9 COMMISSIONER COVER: May I suggest, as somebody
10 who has trouble hearing, if we speak a little slower --

11 JUDGE WAGONER: Slower. Okay.

12 COMMISSIONER COVER: -- that it will make hearing
13 -- or be hearable.

14 JUDGE WAGONER: Okay. I will talk slower, but I
15 don't have the first question, so there you go. Okay.

16 EXAMINATION BY COMMISSIONER BARROW:

17 Q. Mr. Harrell, my name is Tex Barrow. I'm a lawyer
18 from Raleigh. And I'm serving as commissioner, and I had a
19 couple of questions.

20 When you interviewed Ms. Maybin, was her lawyer
21 present?

22 A. I do not recall her lawyer being present.

23 Q. Was it customary at the time to have counsel for
24 co-defendants interview witnesses without the witness's
25 lawyer present?

1 A. I -- I do not know.

2 Q. What was your impression of Ms. Maybin when you
3 interviewed her?

4 A. At -- at this time I cannot recall.

5 Q. How many times did you interview her?

6 A. I believe once.

7 Q. And where were you when you interviewed her?

8 A. At a correctional institute somewhere, I believe.

9 Q. And you had a court reporter with you?

10 A. No. I think it was record -- taped, but not a
11 court reporter.

12 Q. Okay. So it was recorded and then later
13 transcribed?

14 A. I'm not even sure it was ever transcribed.

15 Q. Do you know what happened to that audio recording?

16 A. No, I do not.

17 Q. And can you today recall your impressions of the
18 witness at that event?

19 A. No, I do not.

20 Q. And were your -- was your co-counsel present with
21 you when you interviewed her?

22 A. I believe so.

23 Q. And did you have any indication of what she would
24 say before that interview?

25 A. No.

1 Q. Were you surprised that she told a story different
2 from the story she had told the D.A.?

3 A. I don't recall being surprised.

4 Q. So are you saying that you anticipated that she
5 would recant, or you just had no impression one way or the
6 other?

7 A. I did not know what she was going to testify to.

8 Q. And are you saying that you interviewed her once
9 and only once?

10 A. I only recall one time.

11 Q. Okay. And do you recall whether you had chance to
12 interview her again before the trial?

13 A. I do not -- I'm sorry?

14 Q. Did you have a chance to interview her again
15 before the trial or closer to the trial?

16 A. I don't recall having done that.

17 Q. Did you try to interview her again?

18 A. I do not recall.

19 Q. And you don't recall whether it was customary to
20 interview co-defendants without their lawyers present?

21 A. I don't know about the lawyer being present. I
22 know that I had received permission from her attorney to
23 discuss it with her.

24 Q. Was it customary for a lawyer for one co-defendant
25 to give lawyers for the other co-defendants permission to

1 interview witnesses?

2 A. I would not think so.

3 Q. Okay. All right. That's the questions I had.

4 Thank you, sir.

5 A. Thank you.

6 EXAMINATION BY COMMISSIONER BOSWELL:

7 Q. Mr. Harrell, I'm John Boswell. I'm a lawyer in
8 Raleigh and also a commissioner.

9 So when Ms. Maybin told you a story and you
10 recorded it, when she got on the stand and said something
11 completely different, did that surprise you?

12 A. I do not recall it. I don't recall being
13 surprised. I don't even recall her testimony at this point.

14 Q. I understand. Did -- did you, at the time,
15 believe that your clients were innocent of the -- of the
16 charges?

17 A. Yes.

18 Q. Do you still think that?

19 A. Based on what I can recall about the case, yes.

20 Q. So from the evidence we've seen, Ms. Maybin wrote
21 -- changed her story multiple times. And one of the times
22 that she told the story is when she told you and you
23 recorded it, that she'd made it all up, that it was a lie,
24 and that she was trying to set the record straight. And
25 then when she got on the stand, she -- she told a completely

1 different story, alleging that Mr. Spruiell and Mr. Jones had
2 create -- had committed the murder.

3 Do you have any idea -- did you form any opinion
4 as to why she had changed her story?

5 A. No, I did not.

6 Q. And -- and to this day, you don't -- you don't
7 have a theory as to what -- what caused her to change her
8 story back and forth?

9 A. I do not.

10 Q. All right. Thank you.

11 A. Thank you.

12 EXAMINATION BY COMMISSIONER BRITT:

13 Q. Mr. Maynard, my name is Johnson Britt. I'm the
14 District Attorney in Robeson County. I want to talk with
15 you about Mr. Spruiell and leading up to Mr. Jones's trial
16 and subsequent conviction. Were you -- was your client
17 offered a plea?

18 A. I do not recall.

19 Q. At what point do you recall there being a plea
20 offer made?

21 A. I do not recall one being made.

22 Q. Now, Mr. Spruiell ended up pleading guilty to
23 second degree murder, correct?

24 A. Correct.

25 Q. Was that something -- a conversation that he

1 initiated with you, and then you initiated with Mr. Norton?

2 A. I don't recall specifically. I just know that
3 when the jury returned the verdict in the co-defendant's
4 case, it certainly made us reconsider our position.

5 Q. And were you surprised that Mr. Spruill was
6 interested in entering a plea, whether it was an Alford
7 plea, a no contest plea, or a guilty plea?

8 A. I don't recall being surprised, no.

9 Q. What discussions did you and Mr. Spruill and
10 Mr. Edwards have about entering into that plea agreement?

11 A. I do not recall the discussions.

12 Q. But is it your belief that Mr. Spruill entered
13 that plea because of what had happened in Mr. Jones's trial?

14 A. I'm sure that had a great deal to do with it, yes.

15 Q. And was there any reluctance on the part of
16 Mr. Spruill to enter that plea?

17 A. I do not recall.

18 Q. In terms of going through the transcript with the
19 judge, was there any hesitation that you recall?

20 A. Not that I recall.

21 Q. All right. Thank you, sir.

22 A. Thank you.

23 JUDGE WAGONER: Ms. Newton? Yes, ma'am.

24 EXAMINATION BY ALT. COMMISSIONER NEWTON:

25 Q. Good morning, Mr. Maynard. My name is Deb Newton.

1 I am an Alternate on -- on the Commission. I'm a criminal
2 defense lawyer in Raleigh.

3 Did the defense develop a theory of the killing,
4 alternate --

5 A. I'm sorry? I'm sorry, I can't hear you.

6 Q. Did you develop a theory of the killing, an
7 alternate to your client being guilty?

8 A. Nothing other than the fact that I thought he was
9 innocent.

10 Q. You -- your team didn't develop a -- solve the
11 crime, so to speak, an idea of who might have committed the
12 killing?

13 A. We may have. I do not recall at this time.

14 Q. Okay. Thank you.

15 Did you -- do you recall finding out that the
16 victim's girlfriend was killed some nine months later?

17 A. I do not remember that.

18 Q. You didn't hear that the killing of the girlfriend
19 was the same method as the killing of the man in this case?

20 A. I do not recall that.

21 Q. Okay. Thank you, Mr. Maynard.

22 A. Thank you.

23 JUDGE WAGONER: Other questions for Mr. Harrell?
24 Anybody? No?

25 (No response.)

1 JUDGE WAGONER: No.

2 MS. GUICE SMITH: Can we release Mr. Harrell?

3 JUDGE WAGONER: Yes. All right. Mr. Harrell, I
4 believe those are all the questions we have. So I want to
5 thank you very much, and you are released from your
6 subpoena.

7 THE WITNESS: Thank you.

8 JUDGE WAGONER: Thank you. Have a good day.

9 THE WITNESS: (As he was leaving his seat.) Well,
10 I don't guess I was much help, was I?

11 (The video conference connection ended.)

12 (Laughter.)

13 COMMISSIONER GRACE: That sums it -- that sums it
14 up. You've heard it all right here today.

15 (Laughter.)

16 COMMISSIONER FRYE: No truer words have been
17 spoken.

18 COMMISSIONER GRACE: Never been spoken.

19 (Laughter.)

20 JUDGE WAGONER: That is true. Okay.

21 MS. GUICE SMITH: All right. I will recall
22 Catherine Matoian.

23 Oh, let me just -- no one needed Seth Edwards,
24 correct, or --

25 COMMISSIONER BRITT: I would like to -- if we can

1 get him because I want to --

2 MS. GUICE SMITH: Okay.

3 COMMISSIONER BRITT: -- explore this thing about
4 how this plea offer came about.

5 JUDGE WAGONER: Yeah. Seth? yes.

6 MS. GUICE SMITH: If you'll give us just one
7 minute.

8 COMMISSIONER BRITT: That's fine. I apologize.

9 MS. GUICE SMITH: I believe he's available.

10 (Off the record at 9:27 a.m.)

11 (A brief recess was taken.)

12 (Back on the record at 9:31 a.m.)

13 MS. GUICE SMITH: Judge Wagoner?

14 JUDGE WAGONER: Yes.

15 MS. GUICE SMITH: Mr. Edwards is still at his
16 dentist appointment, so I'd like to move forward for now --

17 JUDGE WAGONER: Okay.

18 MS. GUICE SMITH: -- with Ms. Matoian's testimony
19 and --

20 JUDGE WAGONER: That's fine.

21 MS. GUICE SMITH: -- we'll come back to him when
22 he is available this morning.

23 JUDGE WAGONER: That's fine.

24 MS. GUICE SMITH: Okay. We'll re-call Catherine
25 Matoian.

1 JUDGE WAGONER: And you do need to be re-sworn
2 again, please, ma'am.

3 CATHERINE MATOIAN,
4 having been re-called as a witness for the Commission, and
5 having been previously sworn by Judge Wagoner, testified as
6 follows:

7 JUDGE WAGONER: Okay.

8 MS. GUICE SMITH: Commissioners, last night we
9 made a couple of updates to Handout 23 in your Hearing
10 Handout notebooks. That was the DNA --

11 JUDGE WAGONER: Is that it? 23, okay.

12 MS. GUICE SMITH: Yes, 23. The DNA -- I'm sorry,
13 yeah, 23, the Forensic Testing Chart. We were just missing
14 a couple of dates on some of those items, and I wanted to
15 make that clear. So we have -- where you had not written on
16 your testing chart, we simply replaced it. If you had
17 written on it, we left your written copy in there as well as
18 provided a new one.

19 JUDGE WAGONER: And it says "Version 2," correct?

20 MS. GUICE SMITH: It says "Version 2" if you had
21 notes on the first one.

22 JUDGE WAGONER: Did everybody find it?

23 MS. GUICE SMITH: If you didn't have any notes,
24 it's just --

25 JUDGE WAGONER: Wait a minute. Hold on.

1 COMMISSIONER BRITT: Tab 23?

2 JUDGE WAGONER: Tab 23.

3 COMMISSIONER COVER: That's why -- I don't have it
4 written on.

5 COMMISSIONER BRITT: You have two.

6 COMMISSIONER BARROW: Does it say Version 2?

7 MS. GUICE SMITH: Did you have writing on yours?

8 JUDGE WAGONER: Do you have one under the
9 paperclip maybe?

10 COMMISSIONER FRYE: It's written at the top of it.

11 COMMISSIONER COVER: Fine, thank you.

12 MS. GUICE SMITH: If you didn't have any writing
13 on yours, then you just have the new one.

14 COMMISSIONER COVER: Fine, thank you.

15 COMMISSIONER BOSWELL: Okay.

16 MS. GUICE SMITH: And all -- the only differences
17 are -- for example, the very first two blocks didn't have
18 the 2013 and the 2014.

19 JUDGE WAGONER: Okay.

20 MS. GUICE SMITH: We simply added those. There
21 was another one that was missing a 2015 on the latent lifts,
22 I believe, and we added that. And then I think there was a
23 typo that we corrected.

24 EXAMINATION BY MS. GUICE SMITH:

25 Q. Ms. Matoian, yesterday during the hearing, one of

1 the commissioners asked whether anyone had ever seen the cup
2 that was found in the living room or whether it was shown at
3 trial. What do we know about the cup?

4 A. Like we said yesterday, there are no photographs
5 of the cup as it appeared on the den floor. We did show you
6 that picture of the overturned coffee table that it was
7 found underneath.

8 The reports from the crime scene indicate that the
9 cup was printed at the scene. It's not listed in the S.B.I.
10 inventory of items that were collected from the scene, and
11 we haven't received property records from any other law
12 enforcement agency that indicate the cup was collected. We
13 just know that it was processed on the scene for prints --
14 for prints, and it appears that it was not collected. And
15 we have never received this cup in any of the evidence we've
16 received.

17 JUDGE WAGONER: And it was not introduced into
18 evidence?

19 THE WITNESS: No.

20 JUDGE WAGONER: So it was printed at the scene by
21 somebody from that sheriff's department or somebody from the
22 S. B. I. ?

23 THE WITNESS: Dennis Honeycutt printed the cup.

24 JUDGE WAGONER: Okay.

25 BY MS. GUICE SMITH:

1 Q. Ms. Matoian, yesterday Ms. Clement testified about
2 the DNA testing. Can you tell the commissioners why the
3 Commission sought testing on the victim's pockets?

4 A. I can. There was testimony from Dana Maybin that
5 she had been directed by Wallace Brandon Jones to search the
6 victim's pocket -- pockets. She testified that she went
7 into the left pocket only and found and removed money from
8 it and later told Commission staff that she was not wearing
9 gloves when she did so.

10 The Commission tested the pockets to see if
11 Ms. Maybin's DNA was in there to -- in an effort to confirm
12 her testimony. And we also wanted to determine if either
13 Mr. Spruiell or Mr. Jones's DNA was in the pockets.

14 As Ms. Clement testified, Ms. Maybin was excluded
15 from both the left and right front pocket. For the STRmix
16 testing from DNA Labs International, Mr. Spruiell and
17 Mr. Jones were excluded from that right pocket and from the
18 Unknown Number 1 contributor on the left and they are
19 inconclusive with respect to the Unknown Contributors Number
20 3 and Number 4 on the left pocket because the STRmix
21 software could not explain them as being part of that
22 mixture.

23 Q. Other than all of the individuals who were
24 compared to the pants pockets, did the Commission make any
25 other efforts to determine whether the DNA profiles from the

1 pants pockets could have been contamination?

2 A. Yes. There were some questions yesterday about
3 whether standards for law enforcement personnel were
4 compared for purposes of the pants pockets.

5 We obtained a standard for Dennis Honeycutt
6 because he was the S.B.I. agent for the crime scene, and he
7 was the one who located and collected the money from the
8 victim's pockets. And the report related to that can be
9 found on page 28 of your brief.

10 And then additionally, Mr. Honeycutt testified at
11 trial that the money in the left pocket was folded over
12 once. He did not recall how many bills were in -- were in
13 the pocket but testified that it was approximately a half
14 inch thick, and he could not recall of the condition --
15 could not recall the condition of the money that was found
16 in the victim's right pocket.

17 Q. And is there any other indication in the file or
18 in interviews that the Commission's conducted that other law
19 enforcement personnel went into the victim's pockets?

20 A. No. There's no indication that anyone in the
21 sheriff's office or any indication in the S.B.I. file or the
22 trial testimony that anyone other than Agent Honeycutt went
23 into those pockets.

24 Q. And can you tell commissioners how the Commission
25 obtained Agent Honeycutt's profile?

1 A. Yes. Like I testified about yesterday, we
2 requested a voluntary swab from Agent Honeycutt, but he did
3 not respond to our request.

4 The Commission then contacted the N.C. State Crime
5 Lab as they keep agent profiles on file for comparison
6 purposes to items tested at the Crime Lab. The Crime Lab
7 consented to an order, and Judge Wagoner entered an order
8 requiring the Crime Lab to release Agent Honeycutt's paper
9 profile to the Commission for the purposes of comparison in
10 this case.

11 Q. What did Agent Honeycutt tell you his practice was
12 regarding wearing gloves?

13 A. Dennis Honeycutt informed the Commission that it
14 was his practice to wear gloves while collecting evidence.

15 Q. And did anyone else tell you about Agent
16 Honeycutt's practice of wearing gloves?

17 A. Yes. Agent Varnell in his Commission deposition
18 indicated that he had never seen Dennis Honeycutt at a crime
19 scene without gloves on.

20 JUDGE WAGONER: Without gloves.

21 THE WITNESS: (Nods head affirmatively.)

22 BY MS. GUICE SMITH:

23 Q. Did the Commission have reason to believe that the
24 medical examiner's DNA could have been in the victim's pants
25 pockets?

1 A. The -- the Medical Examiner's Office report
2 indicates that he pulled money out of the victim's clothes
3 but only indicates out of the shirt pocket. That's on page
4 39 of your brief.

5 The medical examiner's -- medical examiner also
6 removed the victim's clothing and turned that over to Agent
7 Honeycutt, and there's nothing in his report that indicates
8 that he went into the pants pockets.

9 Q. Did the Commission do any follow-up with respect
10 to the medical examiner?

11 A. We did. We attempted to speak with Dr. Stan
12 Harris and -- who was the medical examiner in this case, and
13 determined that he was deceased. We knew from the autopsy
14 report that Dr. Harris had located the money in the shirt
15 pocket but weren't sure whether or not he had entered or put
16 his hands into the victim's pockets.

17 Had he been living, we would have sought to obtain
18 a DNA standard for him. We were able to speak with the two
19 individuals who are named in the medical examiner's report
20 who witnessed the autopsy, and both stated that the medical
21 examiner always wore gloves and other protective gear while
22 doing an autopsy.

23 Q. And were they specifically -- when you said the
24 medical examiner, were they specifically referring to
25 Dr. Harris?

1 A. They were.

2 Q. Did the Commission have the victim's shirt pocket
3 tested?

4 A. No, we did not.

5 Q. And why not?

6 A. Because the victim's shirt was covered in blood,
7 and Dana Maybin had not reported going into that shirt
8 pocket.

9 Q. And when you say, "covered in blood," do we know
10 whether this was the victim's blood?

11 A. The Crime Lab tested the shirt for blood. I don't
12 believe they went as far as doing blood grouping analysis as
13 his throat had been cut and the shirt was blood-soaked.

14 Q. Did the Commission also have testing on the
15 victim's shirt in 2011 at LabCorp?

16 A. We did.

17 Q. And what was the result of that testing on the
18 stained areas?

19 A. We tested three stains, and they were all -- the
20 DNA profiles developed were all consistent with the victim,
21 and nothing reportable foreign to the victim was detected in
22 those samples.

23 Q. There was some questions yesterday about the
24 condition of the money that was taken out of the pants
25 pockets. Can you explain further what the Commission has

1 found related to the money in the victim's pants pockets?

2 A. I can. As I stated a few minutes ago, Dennis
3 Honeycutt's testimony at trial indicated that the money in
4 the left pocket was folded over once and was approximately a
5 half-inch thick. And he could not recall the condition of
6 the money in the right pocket.

7 Q. And is there any indication in the file about
8 anyone else going in the pockets?

9 A. Dana Maybin testified that the money she took out
10 of the left pocket was in a roll, and she testified that the
11 left pocket was the only pocket she went into.

12 Q. Ms. Matoian, if you can please turn to
13 Ms. Maybin's testimony related to the pocket. Do you have
14 that with you?

15 A. Page 584?

16 Q. Yes, page 584.

17 MS. GUICE SMITH: Commissioners, this is from the
18 trial transcript that you-all took home last night, if you'd
19 like to follow along.

20 BY MS. GUICE SMITH:

21 Q. If you can read --

22 JUDGE WAGONER: Wait one second, Lindsey.

23 MS. GUICE SMITH: Page 584.

24 JUDGE WAGONER: Okay.

25 BY MS. GUICE SMITH:

1 Q. All right. Ms. Matoian, if you can read beginning
2 on page 584, starting with line 17, through page 586, line
3 18.

4 A. Question: "What happened after he rolled off to
5 the floor?"

6 Answer: "Robert told me to get his money or
7 whatever he had in his pocket out."

8 Question: "Did he say anything else to you at
9 that time?"

10 Answer: "I can't remember."

11 Question: "When he told you to get his money out
12 of his pocket, what did you do, Dana?"

13 Answer: "There was a roll of money. I took it
14 out."

15 Question: "Can you describe for us how you came
16 about getting the money out of his pocket?"

17 Answer: "It was the first one I come to. I just
18 picked it up. I just lifted it up and took the money out."

19 Question: "Lifted what up?"

20 Answer: "The lining."

21 Question: "Of the pocket?"

22 Answer: "Witness nods."

23 Question: "Was that the first pocket that you
24 went to?"

25 Answer: "Witness nods."

1 Mr. Vosburgh stated, "I didn't hear her answer."

2 The answer was yes.

3 Question: "Can you describe the money that you
4 found in that pocket?"

5 Answer: "Round. It was a wad."

6 Question: "A wad of money?"

7 Answer: "Yeah."

8 Question: "Was the money folded over at that
9 time?"

10 Answer: "It was like this (indicates) like oval -
11 shaped. It wasn't round."

12 Question: "Oval-shaped, folded over?"

13 Answer: "Uh-huh."

14 Question: "Do you recall what pocket it was that
15 you got it from?"

16 Answer: "Left."

17 Question: "The left pocket?"

18 Answer: "Yeah, the left."

19 Question: "Did you get anything else from the
20 pocket?"

21 Answer: "A small baggie fell out of the money."

22 Question: "Along with the money?"

23 Answer: "Uh-huh."

24 Question: "What did you do with the money, this
25 wad or roll of money and the baggie that came out at that

1 time?"

2 Answer: "Put it in his pocket like he told me
3 to."

4 Question: "Put it in whose pocket?"

5 Answer: "Robert's."

6 Question: "Now, at that time, did Mr. Solis say
7 anything to you?"

8 Answer: "Yeah."

9 Question: "What did he say to you at that time?"

10 Answer: "Well, then I bent over to get the money.
11 He told me if I ever told anybody, I'd end up the same way."

12 Question: "Now, how did you feel at that time,
13 Ms. Maybin?"

14 Answer: "Scared."

15 Question: "After you took the money out of that
16 pocket, did you go through any other pockets of Mr. Swain at
17 that time?"

18 Answer: "No."

19 Q. Thank you, Ms. Matoian. In that transcript,
20 there's a reference to Robert Solis. Can you remind the
21 commissioners who that is?

22 A. Robert Solis is Wallace Brandon Jones. That's the
23 name he was going by during the time that he was living in
24 Plymouth.

25 MS. GUICE SMITH: Commissioners, if I could turn

1 your attention to page 755 in your brief. That's part of
2 the deposition of Ms. Maybin. I'm going to have Ms. Matoian
3 read, starting at page 755, line 11, through page 757, line
4 25, from your brief.

5 JUDGE WAGONER: One second. Okay.

6 ALT. COMMISSIONER NEWTON: While you're doing
7 that, can I ask why there are six pages missing from the
8 transcript?

9 MS. GUICE SMITH: You can. We had printer issues
10 the other night when we were running them off.

11 ALT. COMMISSIONER NEWTON: Actually, it's
12 consecutively Bates-stamped --

13 COMMISSIONER BOSWELL: Yeah, it is, but the page
14 numbers --

15 ALT. COMMISSIONER NEWTON: -- but the page numbers
16 are missing, six pages.

17 MS. GUICE SMITH: We received partial
18 transcripts --

19 THE WITNESS: We'll --

20 MS. GUICE SMITH: -- so --

21 THE WITNESS: -- double-check our other version.

22 MS. GUICE SMITH: -- we can check the other
23 partial transcript we got and see if we got those six pages.

24 THE WITNESS: Which pages are missing?

25 ALT. COMMISSIONER NEWTON: The pages missing are

1 from the original transcript, page numbers 576 through 580.
2 It picks up at 581. The Bates stamp numbers are starting on
3 575, 2237, and it picks up again at 2238, so that's
4 consecutive.

5 THE WITNESS: 576 to 580?

6 ALT. COMMISSIONER NEWTON: Right. And that's as
7 they're traveling.

8 (Pause in proceedings.)

9 MS. GUICE SMITH: Yes. We have them from another
10 version, so we will get those copied and passed out for you.

11 ALT. COMMISSIONER NEWTON: Thank you.

12 MS. GUICE SMITH: Yes, ma'am.

13 COMMISSIONER BOSWELL: We had -- we can't find
14 755, or I can't.

15 MS. GUICE SMITH: 755 will be the page number in
16 the brief, not the page number of the transcript.

17 COMMISSIONER BARROW: Can I ask one question while
18 we're here?

19 MS. GUICE SMITH: Yes.

20 COMMISSIONER BARROW: In -- in reading the -- the
21 testimony, how was it identified as a pants pocket that they
22 were talking about?

23 "When he told you to get the money out of his
24 pocket, what did you do?"

25 "There was a roll of money. I took it out."

1 And then she talks about a lining, but I never see
2 -- I never see that associated with pants in that section.

3 And there was a jacket nearby, as I recall. Is
4 there anywhere where she says she went in a pants pocket as
5 opposed to a jacket pocket?

6 THE WITNESS: I'll have to double-check her
7 testimony and see if she identifies it as the pants pocket.
8 She did say that she -- I think the part we had read right
9 before that, she had indicated that Mr. Jones had pushed her
10 head down close to the victim's body.

11 And when she mentioned the lining, Dennis
12 Honeycutt had testified that the left lining of the pants
13 pocket had been pulled out.

14 COMMISSIONER BARROW: Was the jacket tested?

15 THE WITNESS: We had, I believe, a stain --

16 COMMISSIONER BARROW: No. I mean the jacket
17 pocket.

18 THE WITNESS: The jacket pockets tested? No, they
19 weren't. The jacket was inside out when it was found.

20 JUDGE WAGONER: What page are we supposed to be
21 on?

22 MS. GUICE SMITH: To -- it's 755. It's difficult
23 to see --

24 JUDGE WAGONER: I know.

25 MS. GUICE SMITH: -- because the page numbers are

1 over, so it's page 37 --

2 JUDGE WAGONER: Thank you.

3 MS. GUICE SMITH: -- of the Maybin deposition.

4 JUDGE WAGONER: Okay. Everybody got that?

5 BY MS. GUICE SMITH:

6 Q. Okay. Ms. Matoian, if you will begin reading page
7 755, or that's page 37 of the actual --

8 A. Uh-huh.

9 Q. -- deposition transcript at line 11 through 757,
10 or page 39 of the deposition transcript, line 25.

11 A. Okay.

12 Question: "Ms. Maybin, I'm going to ask you now
13 to read pages 584, which you've just read, through 586, and
14 please let me know when you're done reading."

15 Answer: "So complied with request of counsel."

16 "I even forgot that. It's been so long. Is that
17 to 86, you said?"

18 Question: "Through 86, yes. Ms. Maybin, does
19 that refresh your recollection as to you touching Mr. Swain
20 after he had been killed?"

21 Answer: "Well, yeah. I remember the money, and I
22 remember a money roll. I forgot about that until I seen
23 that."

24 Was it -- question: "Was it rolled into a
25 cylinder?"

1 Answer: "Yeah. It was, like, round."

2 Question: "And can you estimate about how big it
3 was?"

4 Answer: "About this big, I guess (indicating)."

5 Question: "So would that be about two inches?"

6 Answer: "I guess -- as much as I can remember
7 because it was like -- it was like that (indicating.)"

8 Question: "And Ms. Maybin, on page 585, line 21
9 through 24, you testified that you got that roll of money
10 from Mr. Swain's left pocket. Is that correct?"

11 Answer: "I would -- yeah. If that's what I said,
12 yeah. I mean, I wasn't -- I wouldn't have any reason to lie
13 about it."

14 "Do you remember going in any of Mr. Swain's other
15 pockets?"

16 I don't --

17 Answer: "I don't remember."

18 Question: "And on page 586, line 1 and 2 --"

19 Answer: "Yeah."

20 Question: "-- you testified that a small baggie
21 fell out --"

22 Answer, "Yeah."

23 Question: "-- of the money. Did that baggie have
24 anything in it?"

25 Answer: "I don't know. I don't remember. It

1 seems like it would have had something in it. Probably
2 drugs. I don't remember."

3 Question: "Do you recall feeling anything else in
4 Mr. Swain's pocket?"

5 Answer: "I don't remember."

6 Question: "And at that -- and at the time that
7 you got this money and the small baggie fell out of
8 Mr. Swain's left pocket, was the lining completely pulled
9 out of the pocket?"

10 Answer: "I don't know."

11 Question: "Do you remember anything about the
12 fabric of the lining?"

13 Answer: "No, ma'am."

14 "Ms. Maybin, can you explain why the S.B.I.
15 located \$97 in folded-up money in the same pocket you took
16 that roll of money from?"

17 Answer: "I don't know, not unless, you know, it
18 was folded in the bottom of the pocket or something. I
19 don't know. Or got caught in a flap. I don't know."

20 Question: "At the time you were going into
21 Mr. Swain's pocket, can you remember what Mr. Spruill and
22 Mr. Jones were doing?"

23 Answer: "No. Only what these papers say. I
24 don't remember."

25 Question: "Were they close to you while you were

1 going through the pockets?"

2 Answer: "I would say they were. That would be my
3 guess."

4 Q. Thank you. Ms. Matoian, there was just a question
5 about the victim's jacket. Was the victim wearing his
6 jacket --

7 A. It was --

8 Q. -- when his body was found?

9 A. He was not. The jacket was underneath a couch
10 cushion near the victim's feet, and it had been turned
11 inside out.

12 Q. Is there anything else in the files and materials
13 that the Commission staff has reviewed about any other
14 individual going into the victim's pocket -- the pants
15 pockets?

16 A. (Reviewing documents.) Give me one second.
17 Sorry. (Reviewing documents.) No, there's not.

18 Q. And is there anything else in the record about
19 money as it relates to the night of the crime?

20 A. There is. On page 78 of your brief, there's a
21 report from an S.B.I. interview with Lynn Rogers. In that
22 interview, Lynn Rogers describes the money that Mr. Spruiell
23 and Mr. Jones were doing -- were using when they came back
24 to Big Ed's Bar as crumpled. And she also used the word
25 "crumpled" in her testimony to describe the money.

1 Q. Ms. Matoian, there were some questions yesterday
2 about the details surrounding the tire iron. I'm going to
3 put on the screen a photo from the tire iron at the crime
4 scene.

5 ALT. COMMISSIONER NEWTON: Before you go to the
6 tire iron, can I ask a quick question --

7 MS. GUICE SMITH: Sure.

8 ALT. COMMISSIONER NEWTON: -- about the pants?
9 The only last thing that bothered me about this whole pants
10 inquiry was your DNA expert said that the person who
11 typically -- the person who is wearing the clothing would be
12 the highest percentage of DNA found in the clothing.

13 Now, we know that the victim was actually wearing
14 clothing at his death, and he had a very low percent. We
15 know that he likely put money in his pants pocket, and still
16 he had very little percent. And you couldn't identify
17 someone else.

18 Maybin said she went in the pocket. Her DNA was
19 not there. So in response to Mr. Barrow's question, you
20 know, it looks like it may not have come off the money, at
21 least from the victim himself, unless it was that percent.

22 Would there -- and my question is, was there any
23 suggestion through any of the materials that you-all have
24 seen that the man was wearing somebody else's pants?

25 JUDGE WAGONER: I'm sorry. What was the last part

1 of your question? That what?

2 ALT. COMMISSIONER NEWTON: That he was wearing
3 someone else's pants.

4 JUDGE WAGONER: Okay. The victim? The victim?
5 The victim?

6 ALT. COMMISSIONER NEWTON: The victim. Because it
7 was a greater percentage, like in the 80s, that it was some
8 DNA other than the victim. And he was actually wearing the
9 pants and clearly would have put money in his own pocket.

10 So how do you explain that? Did anybody?

11 THE WITNESS: We don't have any indication from
12 the initial files that we read about whether or not those
13 may have been somebody else's pants that the victim was
14 wearing that day.

15 The Commission did recently go back to speak to
16 Wyatt Spruiell, and he indicated that the victim had been
17 wearing those pants all day. And we also asked if he was
18 known to share clothes with anybody, and he was not. He
19 said he did not know enough to know whether or not the
20 victim would share clothes with anybody.

21 ALT. COMMISSIONER NEWTON: He didn't know --
22 didn't know if they came from Good Will or -- okay. Thank
23 you.

24 MS. GUICE SMITH: Are we okay to move on, or does
25 anybody have other questions about the pockets right now?

1 (No response.)

2 MS. GUICE SMITH: Okay. All right. We are going
3 to move on to the photo of the tire iron.

4 BY MS. GUICE SMITH:

5 Q. Ms. Matoian, if you could please describe that
6 photo. And if it's helpful for you to stand up and point
7 things out, you can do that.

8 A. Sure. This is the victim's kitchen. The tire
9 iron is found -- here's the refrigerator. The tire iron is
10 found. Here is the bread bag that's covering it, and the
11 portion of the tire iron goes from about right here to about
12 right here. That was visible.

13 Q. Is there an additional portion of the tire iron
14 under the bread bag?

15 A. There is. And the crime scene reports indicate
16 that the bread bag was covering a portion of the tire iron.

17 Q. And this --

18 COMMISSIONER BRITT: Is that the only photo of the
19 tire iron?

20 THE WITNESS: Yes.

21 COMMISSIONER GRACE: I looked all last night
22 looking, and I -- and I asked two people yesterday about the
23 tire iron. This is the first time I've seen that as a tire
24 iron.

25 BY MS. GUICE SMITH:

1 Q. Ms. Matoian, is there an indication in the trial
2 transcript that State's Exhibit 17 was a photo of the tire
3 iron without the bag around it?

4 A. There was, and that exhibit was not turned over to
5 the Commission from the Clerk's Office. They no longer had
6 that photo.

7 Q. And it's your understanding that the reason that
8 it wasn't turned over is because they don't have it.

9 A. That's correct.

10 COMMISSIONER BRITT: Can I ask a question?

11 MS. GUICE SMITH: Yes.

12 COMMISSIONER BRITT: Where's the tire iron today?
13 Do you also have -- have it?

14 MS. GUICE SMITH: We do.

15 COMMISSIONER BRITT: Okay.

16 JUDGE WAGONER: You have it? You had it?

17 MS. GUICE SMITH: If you'll give me just a minute.

18 JUDGE WAGONER: Okay.

19 COMMISSIONER BRITT: Y'all have custody. That's
20 what I'm trying to -- that's what I want to know. You have
21 custody of the tire iron.

22 MS. GUICE SMITH: The Commission has had custody
23 of the tire iron.

24 COMMISSIONER BRITT: Okay.

25 JUDGE WAGONER: Okay.

1 BY MS. GUICE SMITH:

2 Q. Ms. Matoian, I'm going to put on the screen as
3 well as on this easel here a diagram of the victim's
4 trailer.

5 MS. GUICE SMITH: Commissioners --

6 A. It is. It is on --

7 MS. GUICE SMITH: -- this is also in your brief, if
8 it's easier to see there.

9 THE WITNESS: It should be on page 468 of your
10 brief.

11 BY MS. GUICE SMITH:

12 Q. Ms. Matoian, if you can show the commissioners
13 where in the home the tire tool was located in relation to
14 where the victim's body was located.

15 A. So according to this diagram, the victim is found
16 in this area where the number 3 is. The tire iron and bag
17 are numbers 9 and 10, according to the legend, and they're
18 found here in between the stove and the fridge, like we
19 pointed out on that -- the photo we just showed.

20 And that's where -- that's the area where the tire
21 iron and the bread bag were found.

22 MS. GUICE SMITH: Commissioners, do you have any
23 questions about that diagram?

24 COMMISSIONER THOMPSON: I just want to ask a quick
25 question about the tire iron because I don't use tire irons.

1 I don't know how to change my own tire.

2 What part of that picture was where he was hit?

3 Was it -- was it the non-bagged area?

4 THE WITNESS: We don't know that.

5 COMMISSIONER THOMPSON: You don't know? But the
6 blood was found?

7 THE WITNESS: Well, it -- so according to Dennis
8 Honeycutt's testimony, there was what appeared to be blood
9 in that -- since the blood had been there for a while, it
10 had separated and there was a blood serum. They tested the
11 tire iron and did find blood on it.

12 We don't know how the victim was hit with it. In
13 Ms. Maybin's testimony, she only indicated seeing the victim
14 get his throat slashed. She did not testify to being there
15 during the part where he would have been beat with a tire
16 iron, if he was beat with a tire iron.

17 COMMISSIONER THOMPSON: Okay. I guess I'm just
18 wondering if -- because blood was found on what part of the
19 -- where -- where the little --

20 MS. GUICE SMITH: I'm about to put up a diagram.
21 We'll just move straight to that.

22 COMMISSIONER THOMPSON: Okay.

23 MS. GUICE SMITH: Let me ask one clarifying
24 question of Ms. Matoian.

25 BY MS. GUICE SMITH:

1 Q. I think you just said Dennis Honeycutt's testimony
2 was that it was in blood serum. Was that, in fact, the
3 medical examiner that testified that that substance would
4 have been blood serum?

5 A. That's correct.

6 Q. I believe that Mr. Honeycutt testified that it was
7 found in a liquid.

8 A. Yes.

9 Q. I put up on the screen for you a copy of the bench
10 notes from the 2007 testing by the North Carolina Crime Lab,
11 then the S.B.I. Crime Lab.

12 MS. GUICE SMITH: Commissioners, this is on page
13 548 of your brief, if it's easier for you to see there.

14 BY MS. GUICE SMITH:

15 Q. Ms. Matoian, if you can describe what area of the
16 tire iron was presumptive positive for blood, what areas
17 were swabbed and tested.

18 A. According to this diagram, this area tested
19 presumptive positive for blood right there and that the area
20 that was swabbed for the 2007 DNA testing was from here to
21 here.

22 Q. And does that include the inside of that open area
23 on the end?

24 A. Yes. That's including -- including inside top
25 using two swabs, so it indicated they went into that as

1 well.

2 Q. What is that notation underneath that where they
3 swabbed --

4 A. Right there?

5 Q. -- underneath that that starts with "No"?

6 A. It says, "No obvious stains seen. Tire iron is
7 very rusty."

8 Q. And as far as you are aware, it's rusty in 2007.

9 A. Correct.

10 Q. But the bench notes from the -- 1995 don't
11 indicate whether it's rusty or not at that point.

12 A. That's correct.

13 MS. GUICE SMITH: Does anyone have questions about
14 the tire iron?

15 JUDGE WAGONER: Question. The diagram, as it
16 relates to the photos that y'all showed that was hard for us
17 to see the tire iron in our materials, which end was tested?
18 The way the tire iron is laying there, what was tested?

19 THE WITNESS: It is hard to tell from the photo.
20 This appears to be the straighter end of the tire iron,
21 meaning that the curved end would have been covered by the
22 blood -- or the bread bag.

23 JUDGE WAGONER: Okay.

24 BY MS. GUICE SMITH:

25 Q. Ms. Matoian, what else do we know about the tire

1 iron?

2 A. The medical examiner's report -- report indicates
3 that the victim has injuries from a firm linear object
4 consistent with a tire iron.

5 Q. Okay. And I'm going to hand you the medical
6 examiner's report.

7 MS. GUICE SMITH: Commissioners, this is also
8 found on page 37 of your brief.

9 BY MS. GUICE SMITH:

10 Q. Do you recognize that as the medical examiner's
11 report?

12 A. I do.

13 Q. And have you reviewed that before today?

14 A. I have.

15 Q. Can you read from the medical examiner's report
16 the paragraph in which he discusses the impact injuries?

17 A. I can. It says, "Impact" --

18 Q. What page is that on?

19 A. It is on ---

20 JUDGE WAGONER: Is everybody -- everybody there?

21 A. -- page 3 of the report and 37 of your briefs.

22 JUDGE WAGONER: Okay.

23 A. It says:

24 "Impact injuries. The forehead, top of head,
25 and posterior aspect of head has been repeatedly

1 struck with a firm linear object (consistent with
2 a metal tire iron such as the one noted at the
3 scene of death).

4 "The scalp is reduced to a pulp by these
5 impact injuries which consist of full thickness
6 lacerations of the scalp and linear dimensions
7 measuring up to 1.75 inch in greatest dimension,
8 particularly over the posterior aspect of the
9 cranial bulb.

10 "In subsequent dissection the scalp is
11 reflected in the usual manner, disclosing dense
12 hemorrhage through the substance of scalp. The
13 underlying cranium is free of evidence of
14 fracture, however, in spite of the number of
15 impacts evident over the surface of the head.

16 "Further, after removal of the bony bulb of
17 the cranium, the brain and its membrane show no
18 evidence of significant bleeding."

19 BY MS. GUICE SMITH:

20 Q. And did the medical examiner, Dr. Stan Harris,
21 also testify about Mr. Swain's injuries?

22 A. He did, and he showed the jury a photograph of the
23 victim's injuries that he had associated with an item
24 consistent with the tire iron.

25 Q. And did he describe the wounds that would have

1 been inflicted by a blunt impact?

2 A. He did.

3 Q. I'm handing you the trial testimony of Dr. Stan
4 Harris. Do you recognize that?

5 A. I do.

6 Q. And have you seen that and reviewed it before
7 today?

8 A. I have.

9 MS. GUICE SMITH: Commissioners, you do not have a
10 copy of this testimony. I'm going to ask Ms. Matoian to
11 read, beginning on page 882 of that testimony, lines 1
12 through 10.

13 A. "The nature of one type of wounds were those which
14 we characterized as blunt impact. That is, heavy
15 blows struck over the top of the head over the
16 front of the forehead many times. I can count a
17 minimum of 12 times he was struck on the head with
18 a rigid object that didn't seem to yield when it
19 was used to hit him. In other words, it didn't
20 break. It didn't bend.

21 "At the scene, there was a tire iron, and it
22 seemed to have been stained with blood. So
23 certainly the wounds on the head -- a minimum of
24 12, maybe two more -- were consistent with tire
25 iron impacts. The second set of wounds were stab

1 wounds. "

2 BY MS. GUICE SMITH:

3 Q. And you indicate -- indicated a minute ago that he
4 illustrated this -- the wounds with a picture that was shown
5 to the jury?

6 A. Yes.

7 Q. Is this that picture?

8 A. It is.

9 Q. And was this shown to the jury?

10 A. It was.

11 Q. Do you recall what State's exhibit number it is?

12 A. It is -- I believe it's State's Exhibit 49.

13 Q. 49. And did you -- did the Commission receive
14 this photo from the Clerk's Office?

15 A. We did.

16 Q. Okay.

17 MS. GUICE SMITH: Commissioners, I'm just putting
18 this up for illustrative purposes of the medical examiner's
19 testimony.

20 COMMISSIONER FRYE: And so which injuries on the
21 back of his head here were indicative of being struck by a
22 tire iron and which ones does he say were lacerations caused
23 by a sharp object?

24 THE WITNESS: The lacerations caused by the sharp
25 object, he was talking about the neck wounds and the other

1 stab wounds on the victim's body. He had separated the
2 wounds into two categories of blunt force impact and the
3 knife wounds.

4 COMMISSIONER FRYE: The stabbing, okay.

5 ALT. COMMISSIONER NEWTON: Question. Did the
6 medical examiner, in his testimony indicate, or was he asked
7 whether the victim could have been conscious after these
8 blows?

9 The reason I ask is Maybin -- depending on what
10 those six pages that we don't have say, Maybin did not talk
11 about, after she entered, anyone hitting Mr. Swain with a
12 tire iron or any other blunt object, only the cutting. But
13 she does talk about him appealing to her as if he's
14 conscious.

15 MS. GUICE SMITH: I'm going to ask Ms. Matoian to
16 read some additional portions of his testimony that are
17 related to the tire iron, and that question will be
18 answered.

19 ALT. COMMISSIONER NEWTON: Okay.

20 BY MS. GUICE SMITH:

21 Q. Can you please read to the commissioners from
22 Dr. Harris's testimony beginning on page 885, line 7, going
23 through 886, line 17?

24 A. I can.

25 COMMISSIONER BOSWELL: Lindsey, can you take that

1 down off the --

2 MS. GUICE SMITH: Yes.

3 COMMISSIONER BOSWELL: Thank you.

4 A. Answer: "This is the backside of the dead man's
5 head, and we've shaven the black curly hair from the head.
6 The major areas of impact are these lines of torn scalp with
7 these parallel lines of bruising where the scalp which, in
8 this man, was a quarter-inch thick, had sustained bleeding
9 beneath the sites of impact. This is typical of what a bar
10 of iron will do to the top of the head. And these are
11 individual blows by such a rigid bar of iron."

12 Question: "Dr. Harris, upon autopsy, did you also
13 do an internal examination of the skull area relative to
14 those marks or wounds to the head, sir?"

15 Answer: "Yes, I did."

16 Question: "What effect, if any, was there to the
17 skull of Mr. Swain?"

18 Answer: "Surprisingly, the skull was intact.
19 There was no fracture. There was a good deal of bleeding in
20 the scalp, but the skull bone itself at any of these sites
21 was intact."

22 Question: "Do you have an opinion, satisfactory
23 to yourself, as to whether or not he would have been
24 conscious after having been struck in the head?"

25 Answer: "Yes, I do."

1 Question: "What is that opinion, Dr. Harris?"

2 Answer: "That he would have been unconscious."

3 "The witness returns to the witness stand."

4 Question: "I'll show you what has been marked for
5 identification as State's Exhibit 17 and ask you to take a
6 look at that and see if you recognize that, Dr. Harris."

7 "Witness complies."

8 Answer: "I recognize it as a tire iron. There's
9 nothing particularly characteristic about it to make me
10 remember which one it was. I did see such a tire iron at
11 the scene at the time of my arrival."

12 Question: "Do you have an opinion, satisfactory
13 to yourself, as to whether or not the State's exhibit either
14 could or might have caused the injuries to the head of
15 Mr. William Frank Swain as you described them?"

16 Answer: "Yes, I do."

17 Question: "What is that opinion, Doctor?"

18 Answer: "That it could have done so."

19 BY MS. GUICE SMITH:

20 Q. And Exhibit 17 that Dr. Harris referred to in that
21 testimony we just spoke about a minute ago, that's a
22 photograph, as you understand it, of the tire iron.

23 A. Correct.

24 Q. And we do not have that photo --

25 A. Correct.

1 Q. -- because the Clerk's Office no longer has it.

2 A. That's correct.

3 Q. Can you also turn to page 893 of Dr. Harris's
4 testimony and read from line 3 through that same page, line
5 13?

6 A. I can.

7 Question: "Do you also have an opinion,
8 satisfactory to yourself, as to whether or not the head
9 wounds would have occurred prior to or subsequent to the
10 neck wounds?"

11 Answer: "I have such an opinion. It's not based
12 on any good biology, however. It's simply that --"

13 "Mr. Vosburgh: Objection. Move to strike."

14 "The Court: Overruled."

15 Answer: "It's simply that I have not seen head
16 wounds follow knife wounds ever in 30 years."

17 "Mr. Vosburgh: Motion to strike that answer, Your
18 Honor."

19 "The Court: Denied."

20 Q. And can you now flip to page 900 and read from
21 line 3 through page 901, line 18?

22 A. Question: "I'll show you State's Exhibit Number
23 16. Do you recognize that?"

24 Answer: "Yes, sir."

25 Question: "What is in that exhibit?"

1 Answer: "That includes part of the refrigerator,
2 a set of shelves next to it, and on the floor the tire iron
3 that we've already seen."

4 Question: "Where was that tire iron when you
5 observed it, sir?"

6 Answer: "On your diagram. It was right in a
7 small alcove between the stove and refrigerator right here
8 on the floor (indicates) as illustrated here. This is
9 exactly where I remember seeing it."

10 Question: "When you observed that tire iron and
11 bag over there, did you notice any fluids under it?"

12 Answer: "I didn't pick it up. I don't know."

13 Question: "You didn't notice any fluid under
14 this?"

15 Answer: "No. I didn't look. I don't move those
16 things."

17 Question: "You didn't walk over and look real
18 closely?"

19 Answer: "Well, I walked over and looked, but I
20 didn't move anything."

21 "The Court: He said he didn't observe anything.
22 Mr. Skinner, how many times does he have to say it?"

23 Question: "You indicated that you were surprised
24 that the skull was not fractured. Is that correct?"

25 Answer: "Yes, sir."

1 Question: "Was the encephalon, the membrane
2 inside the skull, fractured from what you observed?"

3 Answer: "The bone was not fractured. Inside of
4 the bone is the membranes of the head. They weren't torn,
5 no. They weren't fractured. There's nothing to fracture
6 after the bone."

7 Question: "When a victim has been hit with a
8 blunt instrument in the head, does it cause profuse
9 bleeding?"

10 Answer: "It all depends on how hard they're hit."

11 Answer [sic]: "If they're hit several times, as
12 the first exhibit the State showed you, does it cause a
13 great deal of bleeding?"

14 Answer: "Inside the head?"

15 Question: "Yes, sir."

16 Answer: "The answer is the same. It all depends
17 on how much each individual blow transmits energy."

18 Am I keeping going? I'm sorry.

19 Q. To line 18.

20 A. Line 18. Okay.

21 Question: "The exhibit I showed you of the
22 refrigerator with the blood splattered on the door, would
23 that be consistent with a tire iron blow being struck to the
24 victim close to that refrigerator?"

25 Answer: "That is consistent with what is called

1 'cast-off blood,' yes, where the striking instrument swung
2 again, swings blood off of it onto some other surfaces.
3 That's typical of cast-off blood."

4 Q. Exhibit 16 -- State's Exhibit 16, that the medical
5 examiner testified about, is that this photo that I had
6 previously put up for the commissioners?

7 A. It is.

8 MS. GUICE SMITH: Commissioners, I am also going
9 to pass around the photo for you-all to take a look at that
10 was marked State's Exhibit 16. It's going to be a little
11 bit more clear than what was on your screen.

12 BY MS. GUICE SMITH:

13 Q. All right. Ms. Matoian, if you can read page 901,
14 line 24, through page 902, line 14, of Mr. -- Dr. Harris's
15 testimony, please.

16 A. Question: "Was there anything you observed that
17 would tend to show that Mr. Swain's body was dragged from
18 the area where the tire tool was to where you first observed
19 him?"

20 Answer: "I do remember the presence of what I
21 think were smear marks of blood on the linoleum floor near
22 the front of the fridge. But I don't recall enough of that
23 evidence to suggest definitely that someone was dragged
24 there."

25 Question: "There was no evidence of profuse

1 bleeding near where the refrigerator area was. Is that
2 correct?"

3 Answer: "That is true."

4 Question: "Now, you stated earlier that the blows
5 to the head would render someone unconscious, and it was
6 your opinion that Mr. Swain would have been rendered
7 unconscious by such a blow. Is that correct?"

8 Answer: "After two or three of those, yes, he
9 would have been unconscious, in my opinion."

10 Q. Thank you. Did the medical examiner testify as to
11 anything else regarding the tire iron?

12 A. No, he did not.

13 Q. Yesterday, Ms. Clement testified that the DNA
14 profile from the tire iron was uploaded into CODIS. Did the
15 Commission do anything to follow up on that?

16 A. We did. We confirmed on multiple occasions with
17 the Crime Lab that there had been no subsequent CODIS hits
18 to that profile, and we also confirmed with the Crime Lab
19 that the Commission would be notified of any such hits. And
20 of this date, the Commission has not been notified of any
21 hit.

22 Q. And did the Commission do anything else to try to
23 determine whose DNA might be on the tire iron?

24 A. Yes, we did. We went back and interviewed Wyatt
25 Spruiell again on September 18th, 2018. We were aware that

1 there were some other tools, such as jumper cables, found in
2 the victim's living room, and we wanted to ask him whether
3 or not he had seen anyone using a tire tool that day and
4 whether he was aware of the victim having a tire tool.

5 Q. And what did you learn from Wyatt Spruiell?

6 A. He stated that he did not see anyone using a tire
7 tool that day or any other tools on cars. He also stated
8 that he did not recall seeing any tools inside the victim's
9 house and did not know where the victim would have kept his
10 tools. He only remembered a sponge and hose being used to
11 wash cars that day.

12 Q. Was he washing cars with the victim that day?

13 A. He was.

14 Q. Did the Commission become aware of any new DNA
15 technology in the last couple of months?

16 A. Yes, we did. The Commission recently became aware
17 of an emerging technology called "Genetic Genealogy." And
18 this testing is compatible with other genetic genealogy
19 sites such as GEDmatch, 23 and me, and Ancestry.com.

20 And we also became aware that the Lab Parabon
21 NanoLabs in Virginia and learned that they had had recent
22 success in identifying perpetrators who were not otherwise
23 in CODIS, and this includes cold cases such as the Golden
24 State Killer in California and other current cases as well.

25 So after DNA testing is conducted, Parabon will

1 then conduct genealogical research to narrow down the
2 familial connections to that DNA sample that they've run
3 through those other sites.

4 Q. What did the Commission do with respect to this?

5 A. The Commission contacted Parabon and sought
6 information about submitting the DNA extract from the tire
7 iron for this type of testing. The type of testing used
8 with genetic genealogy is not compatible with the type of
9 testing that had already been conducted on the tire iron, so
10 they would have needed to conduct additional testing.

11 Since there was a CODIS-eligible DNA profile
12 developed on that tire iron, which included the victim and
13 an unknown person, and since this mixture was approximately
14 a 50-50 mixture, Parabon indicated that they thought it was
15 a good candidate for this type of testing.

16 Q. And who told the Commission that this was a 50-50
17 mixture?

18 A. The Crime Lab.

19 Q. What else did this contact with Parabon result in?

20 A. Parabon requested that the private lab make a
21 subsample of the remaining DNA extract from that tire iron
22 and submit only 25 percent of it to Parabon for their
23 genetic genealogy testing.

24 Q. And was this related to the amount of DNA that the
25 Crime Lab reported was remaining in that extract?

1 A. It was. And the Commission asked DNA Labs
2 International to subsample the remaining extract from the
3 tire iron. However, when they quanted that, there was no
4 human DNA present in the extract.

5 Q. Did DNA Labs International give any explanation
6 for why DNA extracts which were showing a significant amount
7 of human DNA at the time of the 2007 testing were now
8 showing no human DNA?

9 A. The analyst indicated that it was possible that
10 something occurred during what's called the drying-down
11 process of the extracts, and that caused the DNA to become
12 degraded, or that the way the DNA extracts were stored could
13 have also caused the degradation.

14 Q. Do you know how the DNA extracts were stored
15 between 2007 and when the Commission took possession of them
16 in 2017?

17 A. According to former Special Agent Mac Warner, each
18 S.B.I. field office has a secure evidence room in the office
19 that is accessed through a double key system. And when --
20 within that evidence room, each agent has their own locker
21 that only that agent has the key to. And so each agent will
22 keep evidence assigned to them in that locker.

23 In this case, the evidence, including those
24 extracts, were originally stored at the Fayetteville field
25 office where it was assigned to Agent Jay Tilley.

1 About ten years ago, Mac Warner indicated that the
2 evidence was transferred to him at the Jacksonville field
3 office upon Jay Tilley's retirement, and it remained there
4 until he turned it over to the Commission in 2017.

5 Q. And is it your understanding from other
6 conversations Commission staff has had with the S.B.I. that
7 this is the standard practice?

8 A. That's correct.

9 Q. How have the extracts been stored since the
10 Commission took possession of them in 2017?

11 A. The Commission maintains an evidence room that's
12 climate-controlled in accordance with evidence handling best
13 practices, and the DNA extracts have been in that room since
14 the Commission took possession of them until they were
15 shipped to DNA -- shipped via overnight FedEx to DNA Labs
16 International in August 2018.

17 Q. Prior to the Commission's involvement in this
18 case, were there any discussions regarding law enforcement
19 with a crime lab conducting further testing on a tire tool?

20 A. Yes. Chris Mumma contacted James Coman by e-mail
21 in August 2008 and requested to get a profile from the
22 gripped end of the tire iron because she said it, quote,
23 "may make it easier to distinguish that profile," end quote.

24 Q. And what profile is she referring to?

25 A. The profile already obtained from the tire iron

1 that was a mixture including the victim and an unknown
2 person.

3 Q. And was that profile that was obtained eligible
4 for CODIS?

5 A. It was.

6 Q. And has it been uploaded to CODIS?

7 A. It was.

8 Q. And is that what Ms. Clement testified about
9 yesterday?

10 A. It was.

11 Q. And is that profile continually being routinely
12 queried?

13 A. It is.

14 Q. And have there been any hits as of today?

15 A. No, there have not.

16 Q. Did Mr. Coman ever respond to Ms. Mumma?

17 A. He did. He wrote her back on October 23rd, 2008,
18 and the letter indicates that Ms. Mumma had approached
19 Mr. Coman about conducting additional testing on the tire
20 tool and that the S.B.I. Crime Lab's opinion was that a
21 complete profile was generated from the tire tool and that
22 Leroy Spruiell had been excluded. It was the position of the
23 lab that they did not believe any further testing would
24 enhance the DNA profile or give any additional information,
25 and they also noted that that mixture was entered into the

1 database and was being routinely queried.

2 MS. GUICE SMITH: Commissioners, I am passing
3 around the e-mail from Ms. Mumma and the letter from James
4 Coman to Ms. Mumma. These will be marked Handout 80 in your
5 Hearing Handout notebooks. You actually don't have your
6 second Hearing Handout notebook yet, so you don't get to an
7 80, so we'll just pass them around at this point.

8 (Handout Number 80 was identified for the
9 record and passed to each commissioner.)

10 MS. GUICE SMITH: If you'll take a moment to
11 review them. Just note that the e-mails start at the bottom
12 of page 2 and go backwards because it's an e-mail chain.

13 (Pause in proceedings.)

14 BY MS. GUICE SMITH:

15 Q. Ms. Matoian, the letter from Mr. Coman only states
16 that Mr. Spruiell was excluded. Based on Ms. Clement's
17 testimony yesterday, who else is excluded from that mixture
18 on the tire iron, according to that 2007 Crime Lab report?

19 A. Mr. Jones, Ms. Maybin, Maurice Wilkins, and Lee
20 McPhatter.

21 Q. And we now know that everyone the Commission has
22 had compared is also excluded from that mixture as well?

23 A. That's correct.

24 Q. Based on the commissioners' questions yesterday
25 regarding the tire tool and -- and some of the confusion

1 about which portion may have been used on -- as the weapon
2 portion of the tire tool, is the Commission having
3 additional testing conducted on the tire tool today?

4 A. Yes, we are. We shipped the tire tool to Bode
5 Cellmark Forensics last night. They're swabbing the
6 previously unswabbed portion, according to that diagram we
7 showed you earlier, and conducting STR testing on those
8 swabs. And they'll have test results on that area by
9 tomorrow morning.

10 And Meghan Clement has agreed to conduct the
11 comparisons between any profiles that they develop and the
12 previously submitted standards for those other individuals
13 and all the other unknown profiles from the Commission's
14 other testing, and she'll be available to testify tomorrow
15 afternoon.

16 Q. Can you explain to the commissioners why the
17 Commission tested the envelope that originally contained the
18 blood scrapings from the exterior of the victim's front
19 door?

20 A. Yes. Agent Honeycutt had testified that he
21 collected the blood scrapings from the door because he
22 thought there might have been a second bleeder at the crime
23 scene. The Commission's investigation showed that the
24 contents of the envelope had been consumed during the Crime
25 Lab's initial testing in that case.

1 The Commission consulted with Meghan Clement
2 about the possibility of testing the inside of the envelope
3 that had originally contained the blood scrapings, and
4 Ms. Clement informed the Commission that testing the inside
5 of that envelope would be a longshot but would be something
6 that she would consider.

7 So as she testified, they obtained a partial DNA
8 profile that is a mixture of at least two individuals,
9 including at least one male, and the victim could not be
10 excluded as a possible contributor to that mixture.
11 Mr. Spruiell and Mr. Jones and Ms. Maybin, as well as others,
12 were excluded as contributors.

13 Like Ms. Clement testified yesterday, assuming
14 that there were two contributors, Mr. Honeycutt would be
15 excluded. Assuming there were three contributors,
16 Mr. Honeycutt would be inconclusive to that mixture. And
17 assuming two contributors, Tim Swain would also be excluded;
18 but assuming that there were three contributors, he would be
19 included in the mixture.

20 As Ms. Clement testified yesterday, the
21 probability of randomly selecting an unrelated individual
22 who would be included in that mixture is approximately one
23 in 140 for the Caucasian population; one in 450 for the
24 African-American population, and one in 170 for the Hispanic
25 population.

1 Q. Can you explain to the commissioners why the
2 Commission tested the plastic bag -- the Ziploc bag that --
3 the bread bag from -- the tire tool was in?

4 A. We tested that because the bread bag that had been
5 over the tire tool did not produce any results in DNA
6 testing, so we again consulted with Meghan Clement about the
7 possibility of testing that plastic bag that previously
8 housed that bread bag.

9 And she, again, informed us that it would be a
10 longshot but would be something she would consider. So as
11 she also testified yesterday, that there -- amount of human
12 DNA in that sample was insufficient for further testing.

13 Q. Can you explain to the commissioners why the
14 Commission sought testing on the victim's socks and shoes?

15 A. Yes. The Commission was trying to determine if
16 any DNA foreign to the victim was present based on the crime
17 scene photos because it appeared to be possible that the
18 victim had been dragged at some point. So we wanted to test
19 his ankle area, the bottom parts of his pants, and the tops
20 of his shoes. And as Ms. Clement testified, no DNA foreign
21 to the victim was found.

22 Q. Can you explain to the commissioners why the
23 Commission sought testing on the lace found in Mr. Spruiell's
24 woodpile?

25 A. We did. Dana Maybin had testified that she,

1 Mr. Spruiell, and Mr. Jones had burned their clothing in
2 Mr. Spruiell's wood heater after the murder. The lace -- the
3 piece of lace was collected in April 1994, which was about
4 four months after the murder, and we tested it to see if we
5 could confirm Ms. Maybin's story. However, as Ms. Clement
6 testified, no human DNA was found on the lace.

7 Q. Can you explain to the commissioners why the
8 Commission sought testing on the two knives found in the
9 duffle bag belonging to Mr. Jones?

10 A. We did. The knives were collected in April 1994
11 from the Champs' house where Mr. Jones had been living
12 around the time of the crime. Since the victim had been
13 killed with a knife and the knife was never recovered, the
14 Commission tested these knives to confirm that the victim's
15 blood was not on them. And as Ms. Clement testified
16 yesterday, no human DNA was found on the knives.

17 MS. GUICE SMITH: Commissioners, any follow-up
18 questions for Ms. Matoian?

19 COMMISSIONER FRYE: As I read through the brief
20 and everything, they done some Lumenol testing at Spruiell's
21 home. The couch and a couple of other things were positive.
22 Was any of that taken for DNA sampling?

23 THE WITNESS: Not the couch. From Mr. Spruiell's
24 home, I believe they collected some scrapings from the
25 bathroom, a shirt, and a sheet. But as far as the other

1 Lumenol reactions in the home, they did not take any
2 sampling to confirm whether or not it was, in fact, blood.

3 JUDGE WAGONER: Was not the tub found to be rust
4 or something, or was that someone else's house? I'm not
5 sure if I'm confused.

6 THE WITNESS: That is the Champs' house.

7 JUDGE WAGONER: Thank you. That's it.

8 THE WITNESS: Yes.

9 ALT. COMMISSIONER NEWTON: From the prior pages
10 that we still don't have 575 of Dana Maybin's deposition, I
11 guess that was her testimony, excuse me -- Bates Stamp
12 number 2238 through -- I'm sorry, between 2237 and 38, those
13 pages that are missing. Did --

14 THE WITNESS: Those are going to have different
15 Bates stamp numbers, but the page numbers of the transcript
16 are the ones they should need, yes.

17 MS. GUICE SMITH: We're going to go ahead and pass
18 those around, Ms. Newton.

19 ALT. COMMISSIONER NEWTON: Okay. Was there any
20 explanation that you could discover as to why Dana Maybin
21 never mentioned any facts around a beating prior to the
22 killing with the knife?

23 THE WITNESS: So Ms. Maybin's testimony was that
24 she had stayed in the truck while Mr. Spruill and Mr. Jones
25 initially went into Mr. Swain's home and that she had seen

1 -- I think she gives conflicting statements. Sometimes she
2 says she had heard a noise. Sometimes she says she saw a
3 light. It's not -- it looked like someone moving in front
4 of a light, and that is when she decided to approach the
5 door.

6 And the door was partially open and she entered.
7 And that's where she saw the victim near the couch, and
8 Mr. Spruiell and Mr. Jones were on either side of the victim,
9 and then they cut his throat. So she does not describe
10 seeing a beating of the victim while she was in the house.

11 ALT. COMMISSIONER NEWTON: She -- to be clear, she
12 didn't describe hearing a yelling or a beating. She didn't
13 describe blood splatter on either of the defendants, the
14 wall, couch, floor, anything from the beating.

15 It appears she didn't describe that the victim was
16 unconscious. She said he was actually appealing to her.
17 She didn't talk about any blood on his face, which the
18 medical examiner indicated that that tire iron would have
19 been over his forehead so you would think there was some
20 bleeding related to that.

21 Did anybody develop that with regard to the
22 complete absence of anything related to the tire iron in her
23 testimony implicating the two defendants?

24 THE WITNESS: I can't recall anything about that
25 in her testimony. But I can look back at her previous

1 statements and her testimony and see if she mentions
2 anything about seeing blood or anything about the tire iron
3 in the house.

4 COMMISSIONER BOSWELL: Deb, what was just passed
5 out is, in fact, testimony about the time that you're asking
6 about.

7 ALT. COMMISSIONER NEWTON: I saw that. One -- one
8 other thing. The defense lawyer said -- whose name escapes
9 -- that they did not develop any alternate theory of who did
10 it, a whodunit kind of thing, in order to clear the
11 defendant. And of course, his defendant pled, right?

12 Did anyone make anything of the fact that the
13 girlfriend, nine months later, was killed in the same way,
14 the girlfriend of the victim?

15 THE WITNESS: I don't believe that that happened
16 at the trial.

17 ALT. COMMISSIONER NEWTON: Right. So subsequently
18 there's never been any connection between the two. That's
19 an unsolved crime, right?

20 THE WITNESS: That's still an unsolved crime, yes.

21 ALT. COMMISSIONER NEWTON: There was a knife that
22 killed her.

23 THE WITNESS: Her throat was slashed. She was
24 found -- she was killed during the daytime. And she was
25 found -- she had been tied to her bed, and she had been

1 beaten, and her throat was cut as well.

2 ALT. COMMISSIONER NEWTON: So just one more
3 question, then. Did anyone ask the medical examiner, or did
4 you-all uncover any questions and answers related to whether
5 the tire iron beating was a separate incident from the
6 killing with the throat slash? In other words, was the
7 blood older, or was there any indication that there was two
8 separate incidents?

9 THE WITNESS: Let me look at the medical
10 examiner's report quickly. (Reviewing documents.)

11 MS. GUICE SMITH: While she's looking at that, we
12 have passed around the missing five pages from Dana Maybin's
13 testimony -- trial testimony. If you want to review those,
14 you can look at those.

15 THE WITNESS: The medical examiner's report does
16 not give any indication that he thought that those were old
17 wounds, and there were also some -- some blunt force impacts
18 on the front of his head.

19 He did note in the body diagram where old burn
20 scars were present, so he does appear to distinguish in that
21 between what he -- he saw to be old injuries. But there's
22 no indication of that in there where he says what time that
23 those blunt force impacts were inflicted.

24 MS. GUICE SMITH: Go ahead.

25 COMMISSIONER BRITT: I just want to ask a question

1 about the tire iron. Do we have a photograph other than
2 what we've seen of the tire iron?

3 THE WITNESS: We have asked the lab that we sent
4 it to, to take photographs of it for us today, and as soon
5 as we have those --

6 COMMISSIONER BRITT: Okay. Let me ask you this.
7 A handle or the grip portion, is it a round piece of metal?

8 THE WITNESS: I'm not able to tell from that
9 picture, but --

10 COMMISSIONER BRITT: You haven't actually examined
11 it.

12 THE WITNESS: No. We haven't opened that item.

13 COMMISSIONER BRITT: Okay.

14 JUDGE WAGONER: But we'll -- hopefully we'll know
15 tomorrow --

16 THE WITNESS: Yes, ma'am.

17 JUDGE WAGONER: -- exactly what it looks like.

18 COMMISSIONER BRITT: That's all I have.

19 MS. GUICE SMITH: Okay. Anyone else have
20 questions?

21 (No response.)

22 MS. GUICE SMITH: I've got just a few more things
23 to clean up with Ms. Matoian, and then I'm going to
24 recommend a break after that.

25 JUDGE WAGONER: Okay.

1 BY MS. GUICE SMITH:

2 Q. Ms. Matoian, I am handing you one of -- or two,
3 actually, reports from statements with Ms. Maybin. The
4 first is dated June 25th, 1994. The second is dated
5 December 15th, 1994. Have you seen those reports before?

6 A. I have.

7 Q. Have you reviewed them before today?

8 A. Yes.

9 Q. I believe one of the commissioners was asking -- I
10 believe Mr. Barrow was asking whether or not there was any
11 indication that Dana Maybin had said she went through the
12 pants pockets specifically.

13 If I can refer you to, first, the report dated
14 June 25th, 1994, page 2 of that report. Can you read what
15 the report says there?

16 A. In that bottom paragraph?

17 Q. In the bottom paragraph, yes.

18 A. "Ms. Maybin said she took a baggie (plastic) from
19 Frank's pants pocket. Said there was a lot of
20 crack in the bag. Said Robert told her to put the
21 bag in his pocket of the camouflaged coat that he
22 was wearing. Said Robert told her to go get in
23 the truck and let go of her hair."

24 Q. Okay. And if you will turn to page 11 of the
25 second report dated December 15th, 1994. Is this an S.B.I.

1 report?

2 A. It is.

3 Q. And if you will read the statements on page 11,
4 related to the pockets --

5 COMMISSIONER GRACE: Madam Director --

6 BY MS. GUICE SMITH:

7 Q. -- in a -- in the first paragraph.

8 COMMISSIONER GRACE: -- before that question is
9 answered, may I ask a question prior --

10 MS. GUICE SMITH: Of course.

11 COMMISSIONER GRACE: -- related to the prior
12 statement?

13 MS. GUICE SMITH: Yes.

14 COMMISSIONER GRACE: Who took that first statement
15 you read from?

16 THE WITNESS: The first statement was taken by the
17 Washington County Sheriff's Office.

18 COMMISSIONER GRACE: Any particular person?

19 THE WITNESS: That interview, Janice Spruill and
20 Donnie Varnell were -- I'm sorry. Janice Spruill and Willie
21 Williams. It's not indicated on this report. I believe
22 it's indicated in the officer's notes.

23 JUDGE WAGONER: And is that -- is that when she
24 was being transported back in the car with them, or do you
25 know?

1 THE WITNESS: No. This is the June 25th, 1994,
2 interview. This is the interview that starts at 11 p.m. I
3 think it's in your brief they indicated they interviewed her
4 in the morning, did the polygraph at lunchtime, and then
5 this second interview that begins at 11 p.m.

6 JUDGE WAGONER: Okay. All right.

7 COMMISSIONER GRACE: Thank you.

8 BY MS. GUICE SMITH:

9 Q. All right. If you'll turn to page 11 of that
10 second report, the S.B.I. report, and read what's related to
11 pants pockets there -- or the pocket, rather, there.

12 A. And this report indicates that this interview was
13 taken by Agent Varnell and Janice Spruiell. And this was the
14 one that happens while she's being transported back to
15 Plymouth. Quote:

16 "Ms. Maybin stated that she went to the body
17 and pulled out one of his pockets and got what
18 seemed like a large wad of money out. Ms. Maybin
19 stated that she only pulled out one pocket and got
20 the money. Ms. Maybin stated that part of the
21 money was rounded like a wad, and part of it was
22 folded flat. Ms. Maybin stated that she gave the
23 money to Robert Solis," end quote.

24 New quote:

25 "Ms. Maybin stated that Robert Solis told her

1 while she was getting the money that if she ever
2 told anything, the same thing would happen to her
3 also."

4 MS. GUICE SMITH: Are there any questions about
5 that?

6 COMMISSIONER BARROW: I'm sorry. I -- I was
7 listening. Did -- did that distinguish what kind of pocket?

8 THE WITNESS: She said that Mr. Jones told her to
9 get the money. Ms. Maybin stated that Frank Swain was still
10 at the couch with his head laid back on the couch.

11 Ms. Maybin stated that she went to the body and pulled out
12 one of his pockets. So she doesn't distinguish what kind of
13 pocket it is. In the June 25th interview, she says that the
14 bag came out of the victim's pants.

15 COMMISSIONER BARROW: Right. That the crack came
16 out of the left pocket.

17 THE WITNESS: That's correct. She did not state
18 which pocket it was in that one. She just said that she
19 took a baggie (plastic) from Frank's pants pocket.

20 COMMISSIONER BARROW: Pants pocket, yeah.

21 COMMISSIONER BOSWELL: During the break -- oh, I'm
22 sorry. Go ahead.

23 COMMISSIONER BARROW: Go ahead.

24 COMMISSIONER BOSWELL: During the break, would you
25 guys check on something? You said that -- that she put the

1 money in his camouflaged coat. And I may be misremembering
2 this, but I thought that he -- that she previously testified
3 that he put the camouflaged coat on after they changed
4 clothes.

5 Would you -- would you check that, please?

6 THE WITNESS: We'll double-check that. Uh-huh.

7 COMMISSIONER FRYE: Just clarification for my
8 mind. She said she pulled the -- in so many words, pulled
9 the left front pocket out. And the S.B.I. agent confirmed
10 it. When he got there, the left front pocket was pulled out.

11 THE WITNESS: In Dennis Honeycutt's initial
12 report, he does not indicate that that left pocket was
13 pulled out. He does testify to that at trial.

14 Again, let me check the medical examiner's report
15 because I think he may mention that, but let me check.

16 (Reviewing documents.) There's nothing in the
17 medical examiner's report about --

18 COMMISSIONER FRYE: But he did testify, if I
19 remember correctly, at trial that the pocket was pulled out.

20 THE WITNESS: It was.

21 COMMISSIONER BARROW: Do any of the pictures of
22 the body show whether the pocket was pulled out?

23 THE WITNESS: There are none that we've been able
24 to see where it clearly looks pulled out. We can pull some
25 together for you, for you to view to make your own

1 determination.

2 JUDGE WAGONER: I think your pictures are probably
3 better. The ones that we have are sort of -- not quite as
4 good.

5 THE WITNESS: We can --

6 MS. GUICE SMITH: We can pull the originals and
7 pass them around.

8 JUDGE WAGONER: Yeah. That'd be good.

9 COMMISSIONER BOSWELL: Thank you.

10 MS. GUICE SMITH: If there are no other questions,
11 now would be a great time for us to take a ten- or 15-minute
12 break.

13 JUDGE WAGONER: Okay. 15, you said? 15 or 10?

14 MS. GUICE SMITH: Give us 15 so we can pull stuff.

15 JUDGE WAGONER: 15.

16 (Off the record at 10:46 a.m.)

17 (A recess was taken.)

18 (Back on the record at 11:05 a.m.)

19 JUDGE WAGONER: Mr. Edwards, can you hear us?

20 MR. EDWARDS: (No audible response.)

21 JUDGE WAGONER: Well, we can't hear you.

22 MR. EDWARDS: Yes. Yes, I can hear you.

23 JUDGE WAGONER: Gotcha. Okay. Would you please
24 place your left hand on the Bible? Do you have a Bible?

25 MR. EDWARDS: I do.

1 (Laughter.)

2 JUDGE WAGONER: All right. Left hand on the
3 Bible; raise your right hand.

4 SETH EDWARDS,
5 having been called as a witness for the Commission and
6 appearing via video conference, was sworn by Judge Wagoner
7 and testified as follows:

8 JUDGE WAGONER: Okay. Thank you, sir.

9 Now, thank you. I hope your dentist appointment
10 went well. And I believe some commissioners had questions.
11 Or do you want to start off --

12 MS. GUICE SMITH: Yes.

13 JUDGE WAGONER: -- Lindsey? Okay.

14 EXAMINATION BY MS. GUICE SMITH:

15 Q. Good afternoon, Mr. Edwards -- morning.

16 A. Good -- good morning.

17 Q. As you're aware, I'm Lindsey Guice Smith, the
18 executive director of the North Carolina Innocence Inquiry
19 Commission. The commissioners here have some questions for
20 you, but before they ask, I just have a few questions for
21 you for the record. You're --

22 A. Okay.

23 Q. -- currently the District Attorney in --

24 A. Yes.

25 Q. -- Washington County?

1 A. Yes.

2 Q. Okay. And at the time of Mr. Spruill's case, you
3 were representing him as a defense attorney, correct?

4 A. That is correct.

5 Q. And you also serve as an alternate commissioner on
6 the Innocence Inquiry Commission. Is that correct?

7 A. Yes.

8 Q. And you are recused from this case with respect to
9 your roles on the Commission and as District Attorney,
10 correct?

11 A. That is correct.

12 Q. Okay. I have one question for you, and then I'm
13 going to turn it over to the commissioners.

14 Do you recall at any point during your
15 representation of Mr. Spruill whether or not you touched the
16 tire iron outside of its packaging?

17 A. I do not recall. I do not believe I did.

18 Q. Do you recall the tire iron --

19 A. But I do not know.

20 Q. Do you recall the tire iron in this case?

21 A. Yes, vaguely.

22 Q. Would it have been your practice to handle
23 evidence that was related to an individual you were
24 representing during that time?

25 A. It would not have been -- it would not have been

1 my practice.

2 Q. Okay. Do you recall whether any of the other
3 attorneys in the case, in your presence, handled the tire
4 iron?

5 A. I do not recall.

6 Q. Do you recall whether any of the District
7 Attorney's Office staff at the time -- that would be then
8 District Attorney Norton or Assistant District Attorney
9 Anglim or Assistant District Attorney Hensley -- handled the
10 tire iron in your presence?

11 A. I do not recall.

12 Q. Were you present at Mr. Jones's trial?

13 A. Yes.

14 Q. Do you recall anyone taking the tire iron out of
15 the packaging at that trial?

16 A. I honestly do not recall.

17 MS. GUICE SMITH: Okay. Those are my questions.

18 Commissioners, you may ask Mr. Edwards questions.
19 Most of you know him or he knows you, but please just
20 introduce yourself for the record before you ask your
21 questions.

22 JUDGE WAGONER: I believe Mr. Britt had questions.

23 EXAMINATION BY COMMISSIONER BRITT:

24 Q. Hey, Seth. How are you?

25 A. Hey. Good morning. Doing well.

1 Q. Let me go to your conversations with Mr. Spruiell
2 during your representation. Did he ever indicate his
3 involvement in this crime in any way or admit?

4 A. I do not -- I do not recall Leroy Spruiell ever
5 admitting any type of guilt or involvement in the case.

6 Q. During the course of Mr. Jones's trial, were you
7 communicating with Mr. Spruiell about what was happening in
8 court?

9 A. I don't recall communicating with him during
10 Mr. Jones's trial. If I recall correctly, you know, the
11 trial, of course, was in Washington County, which is the
12 Town of Plymouth. And I believe Mr. Spruiell was being
13 housed in the Dare County jail or somewhere outside of
14 Washington County. And I don't recall during the trial
15 traveling to Dare County to meet with him. It's possible,
16 but it's very doubtful.

17 I do remember after Mr. Jones's trial, after he
18 was convicted, we went and discussed the case with
19 Mr. Spruiell about where to go from there.

20 Q. Did the D.A.'s Office ever offer Mr. Spruiell a
21 plea?

22 A. Do you mean -- do you mean prior or -- or prior to
23 Mr. Jones's trial --

24 Q. Yes.

25 A. -- or --

1 If they did, I don't recall, Mr. Britt. If it was
2 going to -- if it was going to be a plea offer, I don't
3 think it would have been much of a plea offer.

4 Q. So you don't recall whether or not Mr. Spruill was
5 offered a plea to testify against Mr. Jones?

6 A. I do not -- I do not recall. You know, just
7 strictly from memory, I do not recall.

8 Q. How do you recall the topic of him entering a plea
9 occurring? Is that something that Mr. Norton initiated?
10 Was that something that you and Mr. Maynard initiated? Or
11 did you go to Mr. Spruill and talk to him?

12 A. I think it might have been a combination of all
13 that. I -- I just remember sitting through the trial of
14 Mr. -- of Wallace Brandon Jones, and then after he was
15 convicted, Mr. Harrell and I were talking with Leroy Spruill
16 and essentially coming to an agreement that it was in his
17 best interest at that time, you know, to take the plea as
18 opposed to going to trial and, of course, facing a first-
19 degree murder conviction with a potential death penalty.

20 Q. Was there any -- excuse me. Was there any
21 hesitation or reluctance on the part of Mr. Spruill to enter
22 a plea?

23 A. I would -- the best way I could answer that
24 question would be that he felt that it was in his best
25 interest at that time to take the plea, considering what had

1 happened in Wallace Brandon Jones's trial.

2 Again, I don't ever remember him even during that
3 time frame admitting guilt, admitting his involvement. It
4 was more that he felt it was in his best interest to take
5 the plea.

6 COMMISSIONER BRITT: Okay. All right. Thank you.

7 JUDGE WAGONER: Okay.

8 COMMISSIONER GRACE: I have one question. Go
9 ahead.

10 EXAMINATION BY JUDGE WAGONER:

11 Q. Were you present when Ms. Maybin testified at the
12 trial -- at Mr. Jones's trial?

13 A. Yes.

14 Q. Okay. What were your impressions of her
15 testimony, if you recall?

16 A. That's probably the one thing that I recall the
17 most about the trial. And I don't -- I don't remember all
18 the details of her testimony, but I do know and recall that
19 she changed her story a number of different times leading up
20 to the trial.

21 And I -- I do recall her taking the stand in the
22 trial and, under oath, making some statement that
23 Mr. Harrell had been to see her prior to the trial to
24 interview her, and I was not with Mr. Harrell when that
25 interview took place.

1 But I do remember her testifying that -- something
2 along the lines of, you know, "Prior to Mr. Harrell turning
3 on the tape recorder, Mr. Harrell told me to" -- some
4 misrepresentation -- it was something that -- essentially
5 that she said that Mr. Harrell told her to lie or something
6 like that, and then he turned on the tape recorder and she
7 made a statement.

8 And as I said, I was not present for that meeting
9 and don't know for a fact what -- what went on during that
10 meeting. But my impression was at that time -- I said to
11 myself, "There -- there's no way, knowing what I know about
12 Maynard Harrell, that he ever would have said that to her or
13 would have asked her to misrepresent something, you know,
14 prior to him turning on the tape recorder."

15 Again, I was not there. I don't know what
16 happened, as a matter of fact, but that -- that struck me --
17 I was shocked that she made those allegations against
18 Mr. Harrell.

19 All that being said, you know, she put her hand on
20 the Bible and swore to tell the truth, and the jury
21 obviously believed her when she testified. And so I think
22 she -- my -- my personal opinion would have been -- like --
23 like most witnesses, and, you know, sometimes they tell the
24 complete truth. Sometimes they don't. They totally lie, or
25 sometimes it's a little bit of both.

1 And I still don't believe in my heart of hearts
2 that Maynard Harrell asked her to misrepresent anything.
3 But the jury -- the jury believed her testimony. So, you
4 know, we're left with that.

5 Q. Okay.

6 JUDGE WAGONER: Mr. Grace?

7 EXAMINATION BY COMMISSIONER GRACE:

8 Q. Good morning, Mr. Solicitor. I'm Mike Grace. I'm
9 the defense lawyer on the panel. How are you?

10 A. Yes, sir. Good morning. Well.

11 Q. Did -- did you and co-counsel have any reason to
12 believe after you sat through the Jones' trial that -- that
13 your trial would go any differently?

14 A. Well, other than the fact that we already had a --
15 a test run, you know, so we -- we had seen the State's case
16 play out, so, you know, that -- that was one point that we
17 would be able to prepare better now that we had seen the
18 witnesses and those kinds of things.

19 But the flip side of that argument is that he --
20 while -- I mean, Leroy Spruiell was still facing a first-
21 degree murder, you know, charge and, you know, a potential
22 death penalty, so I guess to answer your question, is we
23 were not convinced that we would receive a different result
24 in the trial.

25 Q. Did -- did that weigh heavily in your advice to

1 your -- your -- your client and your decision-making
2 process, the fact that it had gone badly for co-defendant?

3 A. I would say so, yes. I mean, that -- that -- that
4 was -- I would say that would be the major factor in
5 Mr. Spruiell taking the plea.

6 Q. Would it be safe to say that regardless of who
7 initiated talks about a plea that it was clearly in your
8 client's best interest to take one?

9 A. We felt so at the time, yes, sir.

10 Q. The -- the decision or the request of the D.A. to
11 allow you to plead under Alford, was -- was that something
12 you initiated or something that your client insisted upon?
13 Most D.A.s don't offer that without it first being
14 requested.

15 A. Mr. Grace, I -- I don't recall whether that was at
16 our insistence or whether that was at the offer of the
17 District Attorney. But I do know that that would -- that
18 would have been consistent with -- with our client's wishes.
19 That's for sure.

20 Q. In that your client had maintained his innocence
21 throughout this, would he have been reluctant to stand
22 before a judge and allocate that he had actually committed
23 this crime?

24 A. I think so. I think he would have been reluctant
25 to say that on the record.

1 Q. Thank you, sir.

2 COMMISSIONER GRACE: Those would be my questions.

3 JUDGE WAGONER: Others? Yes, Mr. Boswell.

4 EXAMINATION BY COMMISSIONER BOSWELL:

5 Q. I'm John Boswell. I'm a lawyer here in Raleigh on
6 the Commission.

7 Do you have -- have you come up with any theory as
8 to why Ms. Maybin would have testified so many different
9 ways or would have given so many different statements and
10 why at the trial she -- if we believe --

11 If you believe that these gentlemen didn't commit
12 the crime, do you have a theory as to why Ms. Maybin would
13 have testified that she was involved and they were
14 involved?

15 A. Not really. I mean, I -- again, I'd have to
16 really wrack my brain to go back that far. It seems like
17 there was a lot of mention of drug use at the time back in
18 -- back in those days. And I want to say that, you know,
19 over the years, she's had her share of substance abuse
20 problems.

21 But as to why she would just make something up --
22 and I -- and I guess that would be one of the key arguments
23 that the State would have made at the time is, you know, why
24 implicate yourself in a crime like this if you -- if you had
25 nothing to do with it?

1 So -- but to answer your question, I don't have --
2 I don't have a theory.

3 COMMISSIONER BOSWELL: Thank you.

4 EXAMINATION BY COMMISSION BARROW:

5 Q. Mr. Edwards, I'm Tex Barrow, a member of the
6 Commission and a lawyer; therefore, I have to ask a
7 question.

8 First of all, do you remember Ms. Maybin's lawyer
9 giving permission to you and Mr. Harrell to interview
10 Ms. Maybin without her present?

11 A. Can you -- I know I'm not supposed to ask
12 questions. I can't even recall who her lawyer was.

13 Q. I believe it was Ms. Moore.

14 JUDGE WAGONER: A female.

15 THE WITNESS: Regina Moore.

16 A. Mr. Barrow, I -- I do not recall that -- whether
17 there was a specific conversation. I certainly -- where I
18 sit now, just looking back, I would certainly hope that we
19 would obtain permission to go speak with someone who was
20 represented by counsel, but I don't have a specific
21 recollection of that, no.

22 BY COMMISSIONER BARROW:

23 Q. Going back to the '90s when you were in private
24 practice, do you recall it being a practice in your area to
25 give counsel for co-defendants permission to interview your

1 client without you being present?

2 A. I don't recall that being the general practice. I
3 mean, I -- that's always been the rule. I would never go
4 speak with someone that was represented by counsel without
5 that counsel's permission. But at the same time, I want to
6 say way back then, I mean, the Second Judicial District Bar
7 has always been fairly congenial. It still is today.
8 There's a lot of professional courtesy extended among
9 attorneys here. But at the same time, we would want --
10 wanted to maintain to the proper ethical standards, too.

11 So I -- I don't -- but as to whether Regina Moore
12 specifically authorized it, I just can't recall. I would
13 certainly hope so, but I can't recall.

14 Q. Do you recall the testimony of Lynn Rogers, the
15 bartender?

16 COMMISSIONER BRITT: The bartender?

17 BY COMMISSIONER BARROW:

18 Q. The bartender?

19 A. I do not.

20 Q. The bartender?

21 A. Not really.

22 Q. Okay. Do you recall interviewing Lynn Rogers?

23 A. I don't.

24 Q. Okay. Thank you.

25 JUDGE WAGONER: Ms. Newton?

1 EXAMINATION BY ALT. COMMISSIONER NEWTON:

2 Q. Good morning, Mr. Edwards. My name is Deb Newton.
3 I'm a criminal defense attorney in Raleigh.

4 A. Good morning.

5 Q. Good morning. Do you know Janice Spruiell?

6 A. I do.

7 Q. And how long -- how long -- at the time of the --
8 the trials in this case, how long had you known Janice
9 Spruiell?

10 A. Not very long. I mean, I got to know her much
11 better after I became the D.A., but at that time during this
12 trial, I mean, I knew of her. I knew her name, but I did
13 not know her well.

14 Q. Okay. And what was her function, if you remember?

15 A. I think she was an investigator for the Washington
16 County Sheriff's Office.

17 Q. Was she the lead investigator on this case?

18 A. If I -- if I recall, she was heavily involved in
19 it, yes.

20 Q. Okay. Did you know her to be an experienced
21 investigator at that time?

22 A. I would -- I would say at that time in the early
23 '90s, probably not too experienced.

24 Q. Okay. Did you then or have you since known her to
25 have a practice of incenting a witness to testimony by

1 offering money or a result in their particular criminal
2 case?

3 A. I had no knowledge of that particular thing. I
4 will say, as I said, once I became the D.A. in 2003, I had
5 to remove the sitting sheriff in Washington County in around
6 2004. And to make a long story short, she at that time in
7 2004, she was the then most experienced deputy in the
8 Washington County Sheriff's Office. And since there was not
9 a named chief deputy, she ended up on the same day I removed
10 the elected sheriff, she ended up being appointed sheriff.

11 And she was a -- she was a school resource officer
12 at the time and she goes to work that day at school and ends
13 up being named the sheriff, and so I ended up working with
14 her in a much closer capacity after that.

15 So I don't know that that's relevant to your
16 question, but when I've been dealing with her as District
17 Attorney, I've never known her to do that or have heard any
18 stories of her doing that, so I certainly don't have any
19 knowledge of her doing that prior to the Leroy Spruiell case.

20 Q. Without telling me why you removed the sheriff of
21 Washington County, did it have anything to do with this
22 inquiry, incenting witnesses by money or a result in their
23 case?

24 A. Oh, no. And it's all public record. I mean, he
25 was removed for embezzlement.

1 Q. I see. Okay. Did you find out during the course
2 of prosecuting this case that, in fact, Janet Spruiell was
3 someone -- one witness did say Dana Maybin did say that
4 Janice Spruiell offered her \$5,000, and that she could go
5 free within 30 days?

6 A. I have a vague recollection of hearing something
7 about that. I just -- I certainly don't have any proof of
8 it, or it's never been confirmed to me.

9 Q. And that would not have been something that you
10 would have known?

11 A. No. I mean, honestly, for one thing, I don't
12 think Joe Hill. I was an officer promising something that
13 they can't deliver, number one. And especially any type of
14 I guess concession if -- if they testify truthfully that
15 they are just going to walk free, I mean so -- so, no, I
16 would not have condoned that.

17 Q. In your opinion would that have made -- if the
18 witness had believed that that would occur, would, in your
19 opinion, that have affected your witness's credibility on
20 the stand -- Dana Maybin?

21 A. I think so. I think so. It certainly would have
22 been an issue in the case, you know, for a jury to consider
23 so that comes out in evidence.

24 Q. Thank you, sir.

25 JUDGE WAGONER: I have one more question.

1 FURTHER EXAMINATION BY JUDGE WAGONER:

2 Q. Did you at the time you were representing Mr.
3 Spruiell or since then -- and I'm stealing your question, Ms.
4 Newton, from a while ago -- have an alternative theory of
5 suspects or anyone who might or could have done this?

6 THE WITNESS: Judge, I think since this trial --
7 since 1994, whenever the case was tried -- I can't
8 specifically recall -- I've heard theories over the years of
9 other folks that may have been involved. It seems like I
10 recall when I had to recuse myself from this matter, the
11 late Jim Cumbert being involved in it. I seem to recall an
12 issue with the Plymouth Police Chief whom I also had to
13 remove from office, if that tells you something about
14 Washington County.

15 (Laughter.)

16 JUDGE WAGONER: I won't say what I'm thinking.

17 THE WITNESS: He went -- he went to a potential
18 suspect in this case with a falsified crime lab report or
19 something, and he went to the prison and tried to show him a
20 false report in order to try to get him to make some
21 confession.

22 You know, so I -- I've heard a few names thrown --
23 thrown about over the years that may have been involved in
24 this crime and that Wallace Brandon Jones and Leroy Spruiell
25 didn't do it, but other than just really hearsay on my part,

1 I don't have any specific knowledge of that. And,
2 obviously, since I recused myself, I mean, a lot of these
3 details I've -- I've long since forgotten. And I wish I
4 could be of more benefit to your committee today.

5 JUDGE WAGONER: Okay. What --

6 COMMISSIONER GRACE: Can I ask one more question
7 before you finish?

8 JUDGE WAGONER: Sure, go ahead.

9 COMMISSIONER GRACE: Are you finished? No, I
10 don't want to go --

11 JUDGE WAGONER: You answer -- maybe you're going
12 to ask him my question. That's fine, Mr. Grace.

13 FURTHER EXAMINATION BY COMMISSIONER GRACE:

14 Q. Mr. D.A., one -- one follow-up question to a
15 statement you made, and the statement you made was a result
16 of a question I asked, that Ms. Maybin certainly wouldn't
17 have any incentive to -- to implicate herself in a crime
18 that she didn't commit. She was a suspect before she
19 implicated herself, wasn't she?

20 A. I believe so, Mr. Grace. I'm not a hundred
21 percent certain, but I -- I think so.

22 Q. She didn't walk --

23 A. As I recall.

24 Q. -- she didn't walk in off the street and say, "I
25 know something about this crime and I was involved in it,

1 and I want to tell all." It wasn't that scenario, was it?

2 A. I -- I don't believe so. I mean, I think that she
3 knew she was a suspect and -- and the -- you know, the
4 pressure -- I mean, obviously she -- they -- maybe the key
5 witness. I don't know if she -- if you'd consider her the
6 key witness. It's been a long time for me, but she
7 certainly was a very key witness in the case.

8 And I'm sure that there was some pressure put on
9 her. And as -- as really any -- any potential witness or
10 suspect, you know, for her to tell the truth and to -- to
11 admit her involvement, if any.

12 Q. Thank you, sir.

13 COMMISSIONER GRACE: Thank you, Judge.

14 FURTHER EXAMINATION BY JUDGE WAGONER:

15 Q. I just have one question about the Sondra [sic]
16 Day murder. It's still unsolved. Is that right? Sonja?
17 Was that her name?

18 A. The what?

19 Q. Sonya? Sonja?

20 COMMISSIONER BRITT: Sonja.

21 BY JUDGE WAGONER:

22 Q. Sonja Day. Did you yourself notice similarities
23 between her murder and the murder of Mr. --

24 JUDGE WAGONER: Swain?

25 COMMISSIONER GRACE: Swain.

1 BY JUDGE WAGONER:

2 Q. -- Swain?

3 A. Judge, I -- I honestly don't recall. I mean,
4 those names are familiar to me, But as far as the specific
5 details of the crimes, it seems like I recall there being a
6 comparison of the two, but I don't remember the specifics.

7 Q. Okay. Thank you.

8 JUDGE WAGONER: Anybody?

9 (No response.)

10 JUDGE WAGONER: All right. I think -- any -- do
11 y'all have any questions?

12 MS. GUICE SMITH: I do not have any further
13 questions.

14 JUDGE WAGONER: I think we're going to thank you
15 very much and wish you a good morning.

16 THE WITNESS: Well, you're welcome. And, again,
17 I'm sorry. I wish I had better details.

18 JUDGE WAGONER: Oh. Thank -- thank you for
19 speaking to us. We appreciate it. And you're released
20 from --

21 THE WITNESS: Thank you.

22 JUDGE WAGONER: -- whatever. Okay.

23 THE WITNESS: Okay.

24 JUDGE WAGONER: Thank you. Have a good day.

25 THE WITNESS: See you -- see you, Tommy.

1 MR. ROUTTEN: See you, Seth.

2 (Laughter.)

3 (The video conference connection ended.)

4 COMMISSIONER GRACE: Madam Director, I had one
5 inquiry to throw out on the floor. And it follows up on
6 what Tex was asking.

7 I thought I read something last night that
8 indicated that Mr. Harrell had received permission to talk
9 with -- and had followed up and confirmed it with a letter.
10 And he sent it to counsel saying "thank you" or "This is to
11 confirm you've allowed me permission to speak with your
12 client."

13 JUDGE WAGONER: I thought I read that last night,
14 too.

15 MS. GUICE SMITH: If you'll give us one moment,
16 I'll call Ms. Matoian, and she can clear that up for you.

17 COMMISSIONER GRACE: All right. You're right. It
18 -- it's not often done, and -- and it's always suspect, but
19 -- but apparently he did have permission and confirmed that
20 permission with -- with a letter.

21 COMMISSIONER BARROW: I was sort of coming at it
22 from the back end side.

23 COMMISSIONER BRITT: You don't want to get the
24 other letter.

25 JUDGE WAGONER: No, you --

1 COMMISSIONER BARROW: The one from the Bar?

2 JUDGE WAGONER: No, you don't.

3 COMMISSIONER BRITT: Certified from the bar.

4 (Laughter.)

5 MS. GUICE SMITH: Judge Wagoner, while she's
6 looking that up, we did locate some photos from the crime
7 scene that show the victim.

8 JUDGE WAGONER: Okay.

9 MS. GUICE SMITH: I would like to just pass around
10 a single copy of those. They are graphic in nature. They
11 have never been made public record before. These were not
12 introduced at trial.

13 I'm just requesting that they not become public
14 record here given their graphic nature, but we'll allow the
15 commissioners to look at those photos and draw any
16 conclusions that they wish to draw.

17 JUDGE WAGONER: Any objection?

18 (No response.)

19 JUDGE WAGONER: So ordered.

20 COMMISSIONER GRACE: And Tex, when we go into
21 deliberations, I'll tell you why their lawyer allowed their
22 client to --

23 COMMISSIONER BARROW: Really? That's what I was
24 really after.

25 MS. GUICE SMITH: Judge Wagoner, we're going to

1 mark these as Handouts 81, 82, and 83.

2 JUDGE WAGONER: 81, 82, and 83.

3 MS. GUICE SMITH: And for your purposes you can --
4 you will be, I suppose, ordering that 81, 82, and 83 not
5 become public.

6 (Handout Numbers 81, 82, and 83 were
7 identified for the record and are not to be
8 made public.)

9 JUDGE WAGONER: Each commissioner may look at 81,
10 82, and 83, but they are not to be made public.

11 MS. GUICE SMITH: Commissioners, there also was --
12 were some questions during Mr. Harrell's testimony about the
13 audio of his interview with Ms. Maybin. We do have that
14 audio. It is 39 minutes long, if that is something that
15 you-all want to hear.

16 I will have a whole section where we talk about
17 Dana Maybin. I'm happy to cue that up then. I can cue it
18 up after lunch today; whatever your preference is.

19 I do not anticipate that we will get to this
20 section on Ms. Maybin today given where we're at right now,
21 so that will just be your preference if anyone wants to hear
22 that.

23 (Pause in proceedings.)

24 COMMISSIONER BRITT: While we're looking at these
25 photos, may I ask a question about -- do we have the jacket?

1 Was it collected?

2 MS. GUICE SMITH: Ms. Matoian, will you please
3 take the witness stand and answer Mr. Britt's question?

4 CATHERINE MATOIAN,
5 having been re-called as a witness for the Commission and
6 having been previously sworn by Judge Wagoner, testified as
7 follows:

8 THE WITNESS: The Commission -- the Commission did
9 collect the jacket.

10 COMMISSIONER BRITT: You do have the jacket.

11 THE WITNESS: Uh-huh.

12 COMMISSIONER GRACE: Sheriff?

13 COMMISSIONER FRYE: (No audible response.)

14 (Pause in proceedings while the Commission
15 reviewed photographs.)

16 EXAMINATION BY MS. GUICE SMITH:

17 Q. Another question came up over the break. No.
18 It just came up now about Regina Moore, the attorney for
19 Ms. Maybin, and whether she had provided any kind of
20 permission to Mr. Harrell or other attorney to interview her
21 client with or without her presence.

22 Ms. Matoian, can you tell the commissioners what
23 you know about that?

24 A. Yes. Mr. Vosburgh's fee application for his work
25 in this case indicates that on March 7th, 1995, he made a

1 call to Regina Moore where he asked permission to go see
2 Ms. Maybin, which was granted.

3 There is a letter also dated March 7th, 1995,
4 which states, quote, "During the course of this
5 conversation, I informed you" --

6 I'm sorry. This letter is from James Vosburgh to
7 Regina Moore.

8 And it says, quote:

9 "During the course of this conversation, I
10 informed you that since it was necessary for me to
11 be in Raleigh, that I was again seeking permission
12 to talk with your client, Dana Maybin, and you
13 told me over the phone that if she wanted to talk
14 to me that you had no objection to her doing so."

15 It also indicates that they were going to Raleigh
16 for unrelated reasons -- Mr. Vosburgh and Maynard Harrell,
17 and that Maynard Harrell would be there as well.

18 COMMISSIONER BRITT: Thank you.

19 MS. GUICE SMITH: Any follow-up questions?

20 JUDGE WAGONER: I think they're still looking at
21 pictures, so --

22 MS. GUICE SMITH: Okay. The photos are still
23 going around.

24 Just going back to Mr. Harrell's interview with
25 Ms. Maybin, does anyone want to hear that audio? If you

1 would like time to think about it, that's fine; if you'll
2 just let me know after the lunch break. But if we know now
3 someone does --

4 COMMISSIONER BARROW: I just want to think about
5 it.

6 MS. GUICE SMITH: You want to think about it.
7 Perfect.

8 JUDGE WAGONER: And I want to think about it, too.
9 It's 45 minutes, you said?

10 MS. GUICE SMITH: It's 39 minutes.

11 JUDGE WAGONER: But it's the interview --

12 MS. GUICE SMITH: It's the interview that
13 Mr. Harrell did when Ms. Maybin -- while she was in prison.

14 JUDGE WAGONER: I think I would like to hear it.

15 MS. GUICE SMITH: Okay.

16 COMMISSIONER BRITT: Lindsey, you said that we
17 have a section on Ms. Maybin?

18 MS. GUICE SMITH: We do.

19 COMMISSIONER BRITT: I would suggest it's probably
20 more appropriate to hear that combined with the other
21 information about Ms. Maybin.

22 COMMISSIONER BOSWELL: That -- that would be my
23 preference.

24 JUDGE WAGONER: Yes.

25 MS. GUICE SMITH: Okay.

1 JUDGE WAGONER: With Ms. Maybin. All of
2 Ms. Maybin's stuff together.

3 MS. GUICE SMITH: All right. We will make sure to
4 have it ready as part of that presentation.

5 BY MS. GUICE SMITH:

6 Q. Over the break, Ms. Newton had a question about
7 who Robert Spruiell is. Ms. Matoian, can you tell the
8 commissioners who Robert Spruiell is?

9 A. Sure. Robert Spruiell was Sherry Honea's
10 boyfriend. Robert Solis is the name that Wallace Brandon
11 Jones was going by.

12 I believe Ms. Newton had some questions related to
13 the private investigator's interview of Stacy Allen on, I
14 think, page 166 of your briefs. There are several Roberts
15 named in that, and there was some question as to a boyfriend
16 who may have been abusing Dana. Our understanding is that
17 Dana Maybin was dating Jones at the time leading up to this
18 crime. And although she dated other men while she lived in
19 the Plymouth area, none of the other ones were named Robert.
20 And Robert Spruiell was dating Sherry Honea.

21 Q. And, again, to clarify, Robert Solis is Wallace
22 Brandon Jones.

23 A. Yes.

24 MS. GUICE SMITH: Did that clear your question,
25 Ms. Newton?

1 ALT. COMMISSIONER NEWTON: One second. Did she
2 get the name wrong maybe? Robert and Sherry Honea were
3 living with Allen and stated that Robert actually had
4 clothes at the Champs' residence. Further stated that
5 Sherry Honea moved in with Robert Spruiell within a couple of
6 weeks after she moved in with Stacy Allen. Stated that
7 while Nicki was residing at her, Allen's, residence, Nicki
8 would come into Ms. Allen's bedroom with bruises all over
9 her body. Nicki made the statement to Ms. Allen that Robert
10 did not rape her but was rough during sex.

11 So she's talking about Honea dating Robert
12 Spruiell, but the Robert who apparently was rough with Nicki,
13 Dana Maybin, was Solis, Jones.

14 THE WITNESS: That's correct.

15 ALT. COMMISSIONER NEWTON: Okay.

16 JUDGE WAGONER: Yes.

17 ALT. COMMISSIONER NEWTON: That's what I was
18 trying to nail down.

19 MS. GUICE SMITH: I believe we have at least one
20 more commissioner looking at the photos. After she is done
21 with that, I will let the commissioners ask questions of
22 Ms. Matoian about those photos, if there are any.

23 COMMISSIONER BOSWELL: Lindsey, did you have a
24 chance to check on the camouflaged jacket question?

25 MS. GUICE SMITH: I have that on my list.

1 COMMISSIONER BOSWELL: Okay.

2 MS. GUICE SMITH: We haven't had a chance to --

3 COMMISSIONER BOSWELL: That's fine.

4 MS. GUICE SMITH: -- check that out, but we will
5 do it over the lunch break --

6 COMMISSIONER BOSWELL: That's fine.

7 MS. GUICE SMITH: -- and we'll have an answer for
8 you after lunch.

9 ALT. COMMISSIONER NEWTON: Can I ask one quick
10 question before you break? So when Maybin is talking in her
11 -- with the jail lady from the church in her letter about
12 being -- having a reason to implicate Jones, this gives some
13 support for the fact that -- do you understand that she was
14 mad at him because he beat her?

15 THE WITNESS: I believe in several of those
16 letters that Ms. Maybin had indicated she said what she did
17 because she was angry with Mr. Jones. I don't know that she
18 specifically said that it was because he beat her, but
19 because she was angry with him.

20 ALT. COMMISSIONER NEWTON: And then Ms. Allen was
21 saying that she saw evidence of bruising.

22 THE WITNESS: That's what she says in that
23 interview, yes.

24 ALT. COMMISSIONER NEWTON: Thank you.

25 THE WITNESS: Uh-huh.

1 JUDGE WAGONER: Okay. I think everybody is done
2 looking at the photos.

3 MS. GUICE SMITH: Does anyone have questions for
4 Ms. Matoian about these photos?

5 (No response.)

6 MS. GUICE SMITH: No? Okay. All right.

7 COMMISSIONER BRITT: Wait a minute. I have one
8 question.

9 MS. GUICE SMITH: Okay.

10 COMMISSIONER BRITT: The photograph of Mr. Swain
11 where it shows his entire body, is the jacket depicted near
12 his leg?

13 MS. TANNER: Do you need me to go ahead and mark
14 this for clarity?

15 (Staff conferred.)

16 THE WITNESS: So these are going to be marked as
17 handouts and given to the commissioners. Handout Number 81:
18 The jacket is right there. There are some jumper cables
19 surrounding the jacket and a couch cushion partially
20 covering it. I believe we have a picture that better shows
21 the condition of the jacket that we can pull for you as
22 well.

23 COMMISSIONER BRITT: The photograph that you're
24 showing us, in the center top portion of the photograph, is
25 that Mr. Swain's head?

1 THE WITNESS: Right -- right here?

2 COMMISSIONER BRITT: Right there where you have
3 your finger.

4 THE WITNESS: Yes. From what I'm able to tell
5 based on the coloring of the carpet, Mr. Swain's head goes
6 to right there.

7 COMMISSIONER BRITT: Okay. Thank you.

8 MS. GUICE SMITH: All right. We are going to turn
9 our attention to alternate suspects in this case. These are
10 individuals who have been identified as potential alternate
11 suspects.

12 As Ms. Matoian testifies about each individual,
13 she is going to just reiterate and identify individuals from
14 whom we obtained buccal swabs or latent lift exemplars.
15 Latent lift print expert Marty Ludas and forensic biology
16 expert Meghan Clement have already testified in depth about
17 the results of those examinations.

18 You may want to refer to Handout 23 as she goes
19 through this if you need to remind yourselves of those
20 results. She will not go into depth in that again because I
21 don't want to continue to go through the same thing over and
22 over.

23 BY MS. GUICE SMITH:

24 Q. Ms. Matoian, the Commission staff interviewed
25 individuals who were identified as potential alternate

1 suspects?

2 A. We did. We interviewed several individuals who
3 were identified as potential alternate suspects either
4 through the initial law enforcement investigation, post-
5 conviction reinvestigations, or the Commission's
6 investigation.

7 Q. Can you remind the commissioners, who is David
8 Mixon?

9 A. David Mixon was initially investigated by the
10 sheriff's office based off information provided by a man
11 named Ricky Weathersby. Mr. Weathersby had told law
12 enforcement that while taking David Mixon to rehab on
13 December 25th, 1993, that Mr. Mixon told Weathersby that he
14 had been to the victim's trailer on the Saturday night -- on
15 a Saturday night to buy drugs and saw a white man having a
16 confrontation with the victim.

17 The white man took a knife away from the victim
18 and, quote, "cut the victim to death with it," end quote.
19 Mixon told Weathersby that the man worked at B&E&K
20 Construction but could not provide any further information.

21 MS. GUICE SMITH: Commissioners, as we go through
22 each of these individuals, if they have a criminal record,
23 we've provided that for you in your Hearing Handout
24 notebooks so that you can take a look at that.

25 Mr. Mixon's criminal record is provided as Number

1 twenty -- Handout 24 in the Hearing Handout notebook.

2 (Handout Number 24 was identified for the
3 record.)

4 MS. GUICE SMITH: Just take a moment to look at
5 that.

6 (Pause in proceedings.)

7 COMMISSIONER BARROW: What number is the tab
8 again?

9 JUDGE WAGONER: 24.

10 MS. GUICE SMITH: So that you're aware, we have
11 attempted to include everything outside of minor traffic
12 infractions.

13 (Pause in proceedings.)

14 MS. GUICE SMITH: Okay?

15 BY MS. GUICE SMITH:

16 Q. Ms. Matoian, was Mr. Mixon interviewed by law
17 enforcement?

18 A. He was. And in that interview, he denied knowing
19 anything about the murder or telling Ricky Weathersby
20 anything about the murder.

21 Q. Was he interviewed by anyone else prior to the
22 Commission's involvement?

23 A. No.

24 Q. Did the Commission interview Mr. Mixon?

25 A. No. We determined that he died on March 14th,

1 2014.

2 Q. Did the Commission ultimately collect a DNA sample
3 from Mr. Mixon's son, David Mixon, Jr.?

4 A. We did.

5 Q. And did he provide that voluntarily?

6 A. He did. And during the time when we were
7 collecting that swab, we asked him if his father had made
8 any statements to him about the murder, and he said that his
9 father had never talked to him about it.

10 Q. Did the Commission have David Mixon, Jr.'s DNA
11 compared to the unknown profiles from the scene?

12 A. We did. However, as the DNA expert testified
13 earlier, although Mr. Mixon's son is excluded, we cannot
14 exclude Mr. Mixon.

15 Q. Did the Commission have Mr. Mixon's latent prints
16 compared to the unidentified identifiable latent lifts from
17 the crime scene?

18 A. We did, and he was eliminated from all the unknown
19 identifiable latent lifts.

20 Q. Who is Edward Beaver Fields?

21 COMMISSIONER BOSWELL: Before we go, could I ask
22 about Mr. Mixon? My interpretation of what the forensic --
23 the DNA person testified was that testing the son, if there
24 was a complete exclusion -- if it wasn't close, suggested
25 that the father wasn't -- you know, wouldn't have been

1 included.

2 So what you just said was different than that. So
3 did I misunderstand? The reason to do the son is to see if
4 it's close, and that it wasn't close. The DNA was close?

5 MS. GUICE SMITH: I think we can have the DNA
6 expert explain that again when she's here tomorrow anyway if
7 that --

8 COMMISSIONER BOSWELL: Okay.

9 MS. GUICE SMITH: -- would be helpful.

10 COMMISSIONER BOSWELL: Well, we can save it for
11 tomorrow.

12 MS. GUICE SMITH: Any other questions about
13 Mr. Mixon?

14 (No response.)

15 BY MS. GUICE SMITH:

16 Q. Who is Edward Beaver Fields?

17 A. Edward Beaver Fields was someone who dated Dana
18 Maybin while she was in Plymouth. And in June 1994, the law
19 enforcement file indicates that several -- several witnesses
20 began providing information about Beaver and his involvement
21 with Maybin to law enforcement, and they attempted to locate
22 him.

23 MS. GUICE SMITH: Commissioners, if you will refer
24 to Handout 25. That is the criminal record of Mr. Fields.

25 (Handout Number 25 was identified for the

1 record.)

2 JUDGE WAGONER: And where is Mr. Fields now?

3 THE WITNESS: His home is in Lumberton, but he
4 travels for work.

5 BY MS. GUICE SMITH:

6 Q. Was Mr. Fields interviewed by law enforcement?

7 A. He was. He was interviewed in June 1994 and said
8 that he had met Dana Maybin and Sherry Honea in November
9 1993, and that Ms. Maybin had told him she was running from
10 the law because of bad checks.

11 In that interview, his employment is listed as TK
12 Construction, and he stated that no one had talked to him
13 about the murder. And he left Plymouth and went back to
14 Lumberton in the middle of March 1994.

15 Q. Was he interviewed by anyone else prior to the
16 Commission's involvement?

17 A. No.

18 Q. Did the Commission interview Mr. Fields?

19 A. We did. We interviewed him over the phone on
20 April 26th, 2018.

21 Q. And was this interview recorded and transcribed?

22 A. It was.

23 Q. And why did the Commission interview Mr. Fields?

24 A. Because Mr. Fields had Dana Maybin -- had dated
25 Dana Maybin. And information provided by another witness,

1 Jackie Craddock Smith, had indicated that Ms. Maybin had
2 committed this crime with a boyfriend other than Wallace
3 Brandon Jones.

4 And, additionally, Mr. Fields was a construction
5 worker who worked for TK Construction. And David Mixon had
6 said the man he saw kill the victim was a man who worked for
7 B&E&K Construction.

8 Q. What did Mr. Fields tell Commission staff?

9 A. He stated that he didn't really know Mr. Spruiell,
10 but had gone to his house with Dana Maybin and Sherry Honea
11 one night. He didn't know anyone named David Mixon. And he
12 remembered deputies questioning him about the murder, but he
13 didn't know anything about it and didn't know the victim.

14 He denied ever going to a trailer park the entire
15 time he was in Plymouth and said he didn't hear anything
16 about the murder during the time that he was in Plymouth.

17 He also said that he didn't remember Mr. Jones and
18 didn't recall getting into an argument with anyone about
19 Maybin during the time he was dating her. He denied any
20 involvement in the murder, and he agreed to provide a
21 voluntary DNA sample.

22 Q. And did the Commission have Mr. Fields' DNA
23 compared to the unknown profiles from the crime scene?

24 A. We did.

25 Q. Did the Commission have Mr. Fields' latent prints

1 compared to the unidentified identifiable latent lifts from
2 the crime scene?

3 A. We did, and he was eliminated from all the unknown
4 identifiable latent prints.

5 MS. GUICE SMITH: Commissioners, do you have
6 questions for Ms. Matoian about Mr. Fields?

7 COMMISSIONER BRITT: Is Mr. Fields one of the
8 individuals who's referred to as a Robeson County Indian or
9 Indian as a --

10 THE WITNESS: It's my understanding that when
11 they're discussing the Robeson County Indian that they are
12 talking about Mr. Fields.

13 COMMISSIONER BRITT: Okay.

14 BY MS. GUICE SMITH:

15 Q. Ms. Matoian, I want to turn your attention now to
16 Ray Hurst and Tommy Garrett.

17 MS. GUICE SMITH: Commissioners, you can find a
18 summary related to Mr. Hurst and Mr. Garrett on page 49 and
19 50 of your brief.

20 BY MS. GUICE SMITH:

21 Q. Can you remind the Commissioners who Ray Hurst is?

22 A. Ray Hurst had a blue truck that looked similar to
23 Leroy Spruiell's dad's truck. And law enforcement began
24 looking into Hurst after Maurice Wilkins said he saw Ray
25 Hurst driving that truck and said that that truck that Ray

1 Hurst was driving was the same truck that Mr. Wilkins had
2 seen on the night of the murder.

3 MS. GUICE SMITH: Commissioners, if you will refer
4 to Handout 26, that is the criminal record of Ray Hurst.

5 (Handout Number 26 was identified for the
6 record.)

7 BY MS. GUICE SMITH:

8 Q. Was Mr. Hurst interviewed by law enforcement?

9 A. He was. He was interviewed by law enforcement on
10 December 26th, 1993; January 11th, 1994; January 12th, 1994,
11 which is also the same day that he was polygraphed; and May
12 16th, 1994.

13 Q. Was he interviewed by anyone else prior to the
14 Commission's involvement?

15 A. No.

16 Q. Did the Commission interview Mr. Hurst?

17 A. We did, in person, on March 11th, 2015.

18 Q. And was that interview recorded and transcribed?

19 A. It was.

20 Q. What did he tell Commission staff?

21 A. He stated that he had known Mr. Spruill from
22 growing up in the Plymouth area and that they had worked
23 together and lived together for a time. He stated that when
24 he met Mr. Jones, Mr. Jones and, quote, "the girl," end
25 quote, were talking about robbing the Mayor of Roper, and

1 that Ray Hurst told Mr. Spruiell he should stay away from
2 Mr. Jones and the girl.

3 He recalled giving Mr. Spruiell and Mr. Jones a
4 ride to the bar one time when it was dark out but doesn't --
5 didn't know the time frame of when he had given them that
6 ride.

7 He recalled having met Frank Swain a few times and
8 sitting in his driveway drinking wine, but stated that he
9 didn't think he had ever gone inside the victim's home.

10 He recalled law enforcement coming to ask him
11 questions and taking him for a polygraph. He stated that he
12 passed it. However, according to the file, the results of
13 his polygraph were actually inconclusive.

14 When confronted with that discrepancy, he stated
15 that the S.B.I. told him that he had passed. He also denied
16 being near the victim's home on the night of the murder, and
17 he agreed to provide a voluntary DNA sample, which we took
18 that same day.

19 Q. And did the Commission have Mr. Hurst's DNA
20 compared to the unknown profiles from the crime scene?

21 A. We did.

22 Q. And did the Commission have Mr. Hurst's latent
23 prints compared to the unidentified identifiable latent
24 lifts from the crime scene?

25 A. We did, and he was eliminated from all the unknown

1 identifiable latent prints.

2 MS. GUICE SMITH: Commissioners, do you have any
3 questions about Ray Hurst?

4 (No response.)

5 BY MS. GUICE SMITH:

6 Q. Who is Tommy Garrett?

7 A. Tommy Garrett was a friend of Ray Hurst. And he
8 was also investigated by law enforcement because a man named
9 Ernest Norman had told law enforcement that Kerry Baldwin,
10 who was the victim's brother-in-law, who is married to the
11 victim's sister -- had picked up Tommy Garrett covered in
12 blood on the night of the crime.

13 During those initial law enforcement interviews,
14 both Mr. Baldwin and Mr. Garrett denied that what Mr. Norman
15 had said happened.

16 Mr. Garrett was interviewed again after Leroy
17 Spruiell had told law enforcement that he had heard that the
18 victim had gone to Tommy Garrett's trailer to get money that
19 he was owed by Hurst and Garrett.

20 MS. GUICE SMITH: Commissioners, you can find a
21 summary related to Mr. Garrett on pages 49 and 50 of your
22 brief. And if you'll refer to Handout 27, that is the
23 criminal record of Mr. Garrett.

24 (Handout Number 27 was identified for the
25 record.)

1 BY MS. GUICE SMITH:

2 Q. When was Mr. Garrett interviewed by law
3 enforcement?

4 A. He was interviewed by law enforcement on December
5 23rd, 1993, and January 4th, 1994.

6 Q. Was he interviewed by anyone else prior to the
7 Commission's involvement?

8 A. No.

9 Q. Did the Commission interview Mr. Garrett?

10 A. We did. We interviewed him in person on March
11 11th, 2015.

12 Q. And was that interview recorded and transcribed?

13 A. It was.

14 Q. What did Mr. Garrett tell Commission staff?

15 A. He said that he was friends with Leroy Spruiell and
16 that he knew Mr. Jones but did not like or trust him --
17 meaning Mr. Jones.

18 He indicated that based on things that Mr. Jones
19 had said to him, that he stayed away from Mr. Jones. He
20 said that those things were unrelated to the case, did not
21 involve killing people, but did involve Jones getting money,
22 and he would not provide any additional details to the
23 Commission staff when he was asked for them.

24 He said that he didn't know whether Mr. Spruiell or
25 Mr. Jones had committed the crime as he had never heard

1 either way. He also said that he did know the victim well.

2 He recalled being interviewed by law enforcement
3 and referred to it as, quote, "quite a hassle," end quote.

4 He stated that he knew Ray Hurst and they were living
5 together around the time of the crime, but that he had
6 kicked Hurst out the day before the crime.

7 He said that he had not gone to the victim's house
8 -- excuse me. Mr. Garrett said that he had been to the
9 victim's house before but not with Ray Hurst. And he stated
10 on the day of the crime he was at a pig picking, passed out
11 in a car, with his family around him. He stated that he
12 told police if he knew anything, he would tell them, but he
13 didn't, and he agreed to provide a voluntary DNA sample to
14 the Commission, which we collected that day.

15 Q. Did the Commission have Mr. Garrett's DNA compared
16 to the unknown profiles from the crime scene?

17 A. We did.

18 Q. And did the Commission have Mr. Garrett's latent
19 prints compared to the unidentified identifiable latent
20 lifts from the crime scene?

21 A. We did, and he was eliminated from all unknown
22 identifiable latent lifts.

23 Q. Okay.

24 MS. GUICE SMITH: Commissioners, do you have any
25 questions of Ms. Matoian about Tommy Garrett?

1 COMMISSIONER BARROW: Did you confront Garrett
2 about whether Swain had come to him to collect money that
3 day?

4 THE WITNESS: Let me find his interview.
5 (Reviewing documents.)

6 (Pause in proceedings.)

7 THE WITNESS: We did not ask him about that.
8 However, during the initial law enforcement investigation,
9 the -- the story regarding the money owed to the victim by
10 Hurst and Garrett was that they had pawned a gun to the
11 victim, and that the victim was trying to collect on the
12 money that was owed and was not giving back the gun. They
13 determined that they had pawned that gun to another person
14 so not the victim. So they weren't able to determine
15 whether or not they had actually owed the victim money.

16 COMMISSIONER BRITT: So in short, they pawned that
17 to another drug dealer.

18 THE WITNESS: Yes.

19 BY MS. GUICE SMITH:

20 Q. Ms Matoian, who is Curtis Furlough?

21 A. Curtis Furlough was investigated by law
22 enforcement after Sherry Honea said in her April 24th, 1994
23 interview that Spruiell, Jones, and Maybin did not have
24 access to a vehicle and that Curtis Furlough would drive
25 them around in his truck.

1 In Ms. Maybin's April 25th, 1994 interview, she
2 stated that Mr. Spruiell, Mr. Jones, and Curtis Furlough had
3 left the bar on the night of the crime and come back wearing
4 different clothes.

5 MS. GUICE SMITH: Commissioners, you can find a
6 summary related to Curtis Furlough on page 55 to 58 of your
7 brief. And if you'll refer to Handout 28 in your Hearing
8 Handout notebooks, that is the criminal record of Curtis
9 Furlough.

10 (Handout Number 28 was identified for the
11 record.)

12 BY MS. GUICE SMITH:

13 Q. Was Mr. Furlough interviewed by law enforcement?

14 A. He was, on May 21st, 1994, and on May 22nd, 1994.
15 Then again on June 22nd, 1994, Mr. Furlough showed law
16 enforcement the video of him at the hospital the day of and
17 the day after the murder because he had had a child who was
18 born.

19 Q. Can you remind the Commissioners what the videos
20 show?

21 A. The videos showed him at the hospital around 4:30
22 p.m. on the day of the murder, which was December 18th,
23 1993, and then it showed him again at 12:15 p.m. on December
24 19 -- 19 -- December 19th, 1993, and he was wearing the same
25 clothes in both clips of the video.

1 Q. And what is your understanding of the date that
2 his child was born?

3 A. That it was December 17th, 1993.

4 Q. Was Mr. Furlough interviewed by anyone else prior
5 to the Commission's involvement in the case?

6 A. He was interviewed by the North Carolina Center on
7 Actual Innocence, but we don't know the date of that -- that
8 interview.

9 Q. And what does he say in that interview with the
10 Center?

11 A. In that interview he mostly described being
12 interviewed by law enforcement and then his -- the report
13 indicates that his wife kind of took over the interview and
14 continued speaking from there on.

15 Q. Did the Commission interview Mr. Furlough?

16 A. We did. We interviewed him in person on July
17 31st, 2013.

18 Q. And was that interview recorded and transcribed?

19 A. It was.

20 Q. What did he tell the Commission staff?

21 A. He recalled meeting Mr. Jones through Ed Champ,
22 Jr., and said that he knew Dana Maybin as Mr. Jones'
23 girlfriend. He stated that he didn't have a clue as to why
24 Ms. Maybin had named him as leaving Big Ed's Bar with
25 Spruiell and Jones on the night of the crime. He remembered

1 sitting with the S.B.I. and showing them the video of the
2 hospital. He stated that he never took Mr. Jones to the
3 victim's house to buy drugs. And when I asked him if he had
4 ever gone to the victim's house, he said, quote, "I am going
5 to probably plead the Fifth on that one," end quote.

6 Q. Did the Commission go back to Mr. Furlough at a
7 later date?

8 A. We did. The Commission went back to Mr. Furlough
9 on May 11th, 2015, and he declined to provide a voluntary
10 DNA standard to us and said that he absolutely refused. He
11 said that he had already been exonerated because his first
12 child was born that day.

13 Q. And did the Commission do anything further as it
14 related to obtaining a DNA standard from Mr. Furlough?

15 A. The Commission then sought and obtained a Non-
16 Testimonial Identification Order for Mr. Furlough's DNA
17 standard. We served that N.T.I.O. on him on March 23rd,
18 2016. He refused to comply with it at that time.

19 Mr. Furlough's mother later contacted the
20 Commission and indicated that Mr. Furlough would, in fact,
21 comply with the court order, and we collected the standard
22 from him on April 6th, 2016, pursuant to that order.

23 Q. Did the Commission have Mr. Furlough's DNA
24 compared to the unknown profiles from the crime scene?

25 A. Yes.

1 Q. And did the Commission have Mr. Furlough's latent
2 prints compared to the unidentified identifiable latent
3 lifts from the crime scene?

4 A. Yes, and he was eliminated from all the unknown
5 identifiable latent lifts.

6 MS. GUICE SMITH: Commissioners, do you have any
7 questions of Ms. Matoian as it relates to her testimony
8 regarding Curtis Furlough?

9 (No response.)

10 BY MS. GUICE SMITH:

11 Q. Who is Russell Buffy Knowles?

12 A. Mr. Knowles was arrested with the victim in New
13 Jersey in October 1993 and was named by several individuals
14 as a suspect in this crime.

15 MS. GUICE SMITH: Commissioners, there is a
16 summary related to Buffy Knowles or Mr. Knowles on page 53
17 to 54 in your brief. If you refer to Handout 29 in your
18 notebooks, that is the criminal record of Mr. Knowles.

19 (Handout Number 29 was identified for the
20 record.)

21 COMMISSIONER BRITT: What was the date of that
22 arrest when he was arrested with the victim?

23 THE WITNESS: It's in the handouts. I think it's
24 October 13th.

25 JUDGE WAGONER: I think it's the next page.

1 MS. GUICE SMITH: October 13th, 1993.

2 JUDGE WAGONER: '93.

3 BY MS. GUICE SMITH:

4 Q. Was Mr. Knowles interviewed by law enforcement?

5 A. He was. He was interviewed by law enforcement on
6 January 10th, 1994.

7 Q. Was he interviewed by anyone else prior to the
8 Commission's involvement?

9 A. No, he was not.

10 Q. Did the Commission interview Mr. Knowles?

11 A. We did. We interviewed him twice: Once by phone
12 on March 4th, 2016, and again in person on February 9th,
13 2018.

14 Q. What did he tell the Commission staff during that
15 interview?

16 A. Mr. Knowles said that he was a suspect until a
17 witness came forward and said that he was nowhere near the
18 murder. Mr. Knowles said he was at the McCray's barn
19 playing cards all night on the night of the crime.

20 JUDGE WAGONER: He was what? I'm sorry.

21 THE WITNESS: He was at -- it's a family named the
22 McCray's --

23 JUDGE WAGONER: Oh, okay.

24 THE WITNESS: -- M-c-C-r-a-y.

25 JUDGE WAGONER: All right.

1 A. -- playing cards all night on the night of the
2 crime. And he said that law enforcement went down to the
3 McCrays' and interviewed two or three people and said they
4 thought he was there that night.

5 BY MS. GUICE SMITH:

6 Q. Does the law enforcement file received by the
7 Commission indicate that anyone was ever interviewed
8 regarding Mr. Knowles' whereabouts on the night of the
9 crime?

10 A. It does not.

11 Q. What did the -- what did Mr. Knowles tell the
12 Commission staff about what happened in New Jersey?

13 A. Mr. Knowles said that he did not know the victim
14 well but knew some of his family. He said that the victim
15 had told Knowles that he would pay him to drive the victim's
16 car up to New Jersey to visit family, including a sick aunt.

17 The victim had actually brought drugs with him,
18 which Mr. Knowles said he did not know about. Mr. Knowles
19 said the car didn't have the right plates on it and that
20 they got arrested. Mr. Knowles said he stayed in New Jersey
21 for a few weeks, but the victim was let out. And then when
22 he returned to North Carolina, Mr. Knowles didn't actually
23 know where the victim lived.

24 He did remember saying that he would kill the
25 victim if he saw him, but the statement was made to others,

1 not the victim. And he said he never saw the victim again
2 after they were arrested together, and that he later found
3 out about the murder.

4 Mr. Knowles told the Commission that he didn't
5 think he would have gone so far as killing the victim but
6 might have tried to fight him if he had seen him because he
7 thought that the victim had done him wrong.

8 Q. Did the Commission do anything further with
9 respect to Mr. Knowles?

10 A. We did. We obtained the arrest reports from the
11 New Jersey State Police related to the arrest that
12 Mr. Knowles discussed in his interview with the Commission.

13 MS. GUICE SMITH: Commissioners, if you will refer
14 to Handout 30 in your notebook. This is the arrest reports
15 from the New Jersey State Police.

16 (Handout Number 30 was identified for the
17 record.)

18 MS. GUICE SMITH: Take a few minutes to review
19 that.

20 (Pause in proceedings.)

21 JUDGE WAGONER: I think everybody's done.

22 Did -- did you say that Mr. Knowles said that
23 Mr. Rankin -- Mr. Swain was released before he was in New
24 Jersey?

25 THE WITNESS: We did. We also checked on those

1 records. It -- based on New Jersey's records, Mr. Knowles
2 was released on bail on October 15th, 1993, and the victim
3 was released on bail on October 16th, 1993, so the victim
4 was, in fact, kept a day longer --

5 JUDGE WAGONER: Okay.

6 THE WITNESS: -- than Mr. Knowles.

7 BY MS. GUICE SMITH:

8 Q. Ms. Matoian, can you summarize what you learned
9 from the reports from New Jersey?

10 A. Yes. From those reports we learned that the
11 arrest had happened on October 13th, 1993, and the vehicle
12 was actually stopped for failing to use a signal, and the
13 officers noted that the victim and Mr. Knowles both smelled
14 of alcohol.

15 The victim signed a consent to search form, and
16 law enforcement searched his vehicle. They located a
17 folding knife in the glove box and a stolen gun in the
18 victim's groin area.

19 And in the trunk they found a Uncle Ben's rice box
20 filled with rice. There was a black container inside that
21 box with two bags of crack and cocaine, and both were
22 arrested at that time.

23 Q. Did the Commission do anything else with respect
24 to Mr. Knowles?

25 A. We interviewed him in person again on February

1 9th, 2018.

2 Q. Was that interview recorded and transcribed?

3 A. Yes.

4 Q. And I think I forgot to ask you about the first
5 interview the Commission had with Mr. Knowles. Was it also
6 recorded and transcribed?

7 A. It was.

8 Q. What did -- what did Mr. Knowles tell the
9 Commission staff during that second interview?

10 A. During that interview we read him the New Jersey
11 arrest report, and he said that the victim had hired him to
12 take him, meaning the victim, to New Jersey to visit his
13 sick aunt, and the victim was supposed to pay all expenses
14 and also pay Mr. Knowles \$200. He stated that he never saw
15 a dime of that money, and that when Mr. Knowles got out of
16 jail, he said he sent word to the victim that if he didn't
17 get his money, he was going to do something to him.

18 He stated that he never saw the victim after he
19 was arrested and that they never had any kind of
20 confrontation about this. He also said that he had never
21 been to the victim's house, had never been inside the
22 victim's house, and did not know where he lived.

23 Q. Did the Commission request a voluntary standard
24 from Mr. Knowles during the second interview?

25 A. We did.

1 Q. And did he provide that?

2 A. Yes.

3 Q. Did the Commission have Mr. Knowles' DNA compared
4 to the unknown profiles from the crime scene?

5 A. We did.

6 Q. And did the Commission have Mr. Knowles' latent
7 prints compared to the unidentified identifiable latent
8 lifts from the crime scene?

9 A. We did, and he was eliminated from all the unknown
10 identifiable latent lifts.

11 MS. GUICE SMITH: Commissioners, do you have any
12 additional questions of Ms. Matoian about Mr. Knowles?

13 (No response.)

14 BY MS. GUICE SMITH:

15 Q. Who is Alfred Armstrong?

16 A. Alfred Armstrong was a friend of the victim, and
17 he was investigated during the initial law enforcement
18 investigation after the victim's family had received an
19 anonymous phone call in which the caller stated that
20 Mr. Armstrong had killed the victim.

21 MS. GUICE SMITH: Commissioners, you can find a
22 summary related to Alfred Armstrong on pages 51 to 52 of
23 your brief. If you'll refer to Hearing Handout 31, this is
24 a summary of Alfred Armstrong's criminal record.

25 (Handout Number 31 was identified for the

1 record.)

2 (Pause in proceedings.)

3 BY MS. GUICE SMITH:

4 Q. Was Mr. Armstrong interviewed by law enforcement?

5 A. He was. He was interviewed by law enforcement on
6 December 20th, 1993, and December 21st, 1993.

7 Q. Was he interviewed by anyone else prior to the
8 Commission's involvement?

9 A. He was. He was interviewed by the S.B.I. during
10 the post-conviction investigation -- reinvestigation on
11 March 20th, 2008, and by the North Carolina Center on Actual
12 Innocence on April 4th, 2008.

13 MS. GUICE SMITH: Commissioners, you can find a
14 summary related to the interview conducted by the S.B.I. on
15 page 521 to 522 of your brief. There is no summary of the
16 Center's 2008 interview in the brief. However, the
17 information provided by Mr. Armstrong in that interview is
18 consistent with the information that he provided to the
19 S.B.I. in that 2008 interview.

20 BY MS. GUICE SMITH:

21 Q. Did the Commission interview Mr. Armstrong?

22 A. We did, in person, on July 31st, 2013.

23 Q. Was that interview recorded and transcribed?

24 A. It was.

25 Q. What did he tell Commission staff?

1 A. Mr. Armstrong stated that on the night of the
2 murder, he rode a bike to the victim's house. Both he and
3 Mr. Swain were involved with drug dealing, and he bought
4 drugs from the victim that night, and the victim told him
5 that he would be at his house all night.

6 After leaving the victim's house, Mr. Armstrong
7 went to another trailer park on Folly Road, which is the
8 same road that the victim lived on, and he left the second
9 trailer park with the intent to go back to the victim's
10 house to buy more drugs. However, when he went back towards
11 the victim's house, everything was taped off, and the police
12 were there.

13 He did say that he had spoken to Leroy Spruiell
14 while they were in prison together in the 2000s, and he said
15 that he knew Leroy Spruiell from selling drugs to him.

16 Q. Did the Commission go back to Mr. Armstrong at a
17 later date?

18 A. He [sic] did. We interviewed him again on April
19 24th, 2017.

20 Q. And was that interview in person or on the phone?

21 A. It was in person.

22 Q. Was it recorded and transcribed?

23 A. It was.

24 Q. What did Mr. Armstrong tell the Commission staff
25 during that interview?

1 A. He again provided a description of his whereabouts
2 on the night of the crime which was consistent with the
3 earlier interview with the Commission in 2013.

4 We also asked him if he recalled being with Wyatt
5 Spruill on the day of the murder, and he said that he did
6 not. That is inconsistent with his original statements to
7 law enforcement closer in time to the murder.

8 Mr. Armstrong stated that he recalled being a
9 suspect early on in the investigation because of the -- of
10 an argument that Mr. Armstrong and the victim had had over
11 Mr. Armstrong's girlfriend. And during the argument,
12 Mr. Armstrong had threatened to kill the victim.

13 When law enforcement interviewed him, he told him
14 -- he told them that he wouldn't have hurt the victim like
15 that over that type of argument, and he said that they were
16 just friends arguing amongst friends.

17 Q. Did the Commission request a voluntary swab from
18 Mr. Armstrong?

19 A. We did, and he agreed to provide one.

20 Q. And that was during the second interview?

21 A. It was.

22 Q. Was Mr. Armstrong's DNA compared to the unknown
23 profiles from the crime scene?

24 A. It was.

25 Q. And did the Commission have Mr. Knowles' latent

1 prints compared to the unidentified identifiable latent
2 lifts from the crime scene?

3 A. Yes, and he was eliminated from all the unknown
4 identifiable latent lifts.

5 MS. GUICE SMITH: Commissioners, do you have
6 questions for Ms. Matoian about Alfred Armstrong?

7 (No response.)

8 BY MS. GUICE SMITH:

9 Q. Who is Michael Lassiter?

10 A. Michael Lassiter was a suspect during the initial
11 investigation based on statements named -- made by Alfred
12 Armstrong that a, quote, "white guy," end quote, had left
13 P.J.'s house heading in the direction of the victim's
14 trailer on the night of the crime.

15 P.J. lived in the other trailer park on Folly
16 Road, and law enforcement later determined that the white
17 guy was Michael Lassiter from Mr. Armstrong's sister, Niecey
18 Armstrong.

19 MS. GUICE SMITH: Commissioners, you can find a
20 summary related to Michael Lassiter on pages 50 to 51 of
21 your brief. If you'll refer to Hearing Handout 32, that is
22 the criminal record of Michael Lassiter.

23 (Handout Number 32 was identified for the
24 record.)

25 BY MS. GUICE SMITH:

1 Q. Was Mr. Lassiter interviewed by law enforcement?

2 A. He was. He was interviewed by law enforcement on
3 December 20th, 1993, and his girlfriend Judy Davenport also
4 provided an alibi for him for the night of the crime.

5 Q. Was he interviewed by anyone else prior to the
6 Commission's involvement?

7 A. Mr. Lassiter wasn't. However, in Alfred
8 Armstrong's 2008 interview with the S.B.I., he again
9 mentioned the story about the white guy who had been
10 previously identified as Michael Lassiter, and then it
11 appears that a follow-up interview of Michael Lassiter -- it
12 -- was conducted by the S.B.I. during the 2008
13 reinvestigation.

14 MS. GUICE SMITH: As a reminder, Commissioners,
15 the interview of Mr. Armstrong from 2008 was summarized in
16 your brief on pages 521 to 522.

17 BY MS. GUICE SMITH:

18 Q. Ms. Matoian, during the Commission's interviews
19 with Alfred Armstrong, did Mr. Armstrong mention Michael
20 Lassiter?

21 A. He did not mention Mr. Lassiter by name, but he
22 made statements to the Commission that were consistent with
23 the statements he made to law enforcement during the
24 original investigation and in -- to the S.B.I. in 2008 about
25 the white guy who had been determined to be Michael

1 Lassiter.

2 Q. Did the Commission interview Niecey Armstrong?

3 A. No. The Commission determined that she had passed
4 away on August 10th, 2001.

5 Q. Did the Commission obtain a court order to obtain
6 Mr. Lassiter's DNA?

7 A. We did. We had attempted to locate Mr. Lassiter
8 on several occasions over a lengthy period of time, without
9 success. So in an effort to ensure that when the Commission
10 actually did locate him we would be able to obtain a DNA
11 standard from him, we sought an order for collection of DNA
12 sample, and Judge Wagoner issued that order on March 28th,
13 2017.

14 Q. Did the Commission ultimately locate and serve
15 that order on Mr. Lassiter?

16 A. Yes. We located him at a probation violation
17 hearing he had in Washington County on April 3rd, 2017, and
18 we served the order on him at that time, and he provided his
19 standard pursuant to the order.

20 Q. Did the Commission interview Mr. Lassiter?

21 A. Yes. The Commission interviewed him in person at
22 the same time we served the order on him and collect that
23 swab, and then we also had a subsequent phone call with him
24 later that day.

25 Q. Were those interviews and phone call recorded and

1 transcribed?

2 A. They were.

3 Q. What did Mr. Lassiter tell the Commission staff?

4 A. Mr. Lassiter remembered being in the trailer park
5 that day, but said he had not gone to the victim's house.
6 He stated that he did not see Niecey Armstrong that day and
7 further stated that Niecey Armstrong had never taken money
8 from him or ripped him off.

9 He said that he had been to the victim's house
10 before to buy drugs and believes it was one time and was
11 probably the week before the murder.

12 He said that law enforcement had questioned him
13 and took all of his clothing that he had in the house the
14 week after the murder and then those clothes were later
15 returned to him. He said they did not tell him why they
16 were taking the clothes.

17 Q. Is there any documentation in the law enforcement
18 files as they were provided to the Commission that
19 Mr. Lassiter's clothing was collected by law enforcement?

20 A. No, there is not.

21 Q. Did you provide Mr. Lassiter with a copy of a
22 statement that he gave to law enforcement?

23 A. I did. And when he reviewed it, he said nothing
24 in it was accurate. He stated he did not recall the
25 interview with law enforcement and reiterated that he only

1 remembered them coming to take his clothes and him telling
2 them they wouldn't find any blood on them because he hadn't
3 done anything, law enforcement actually taking his clothes,
4 and then finally he remembered law enforcement returning his
5 clothes a week later.

6 Q. Did Mr. Lassiter provide any additional relevant
7 information in that subsequent phone call that you had with
8 him later that day?

9 A. He was upset about the Commission's earlier
10 interview and indicated that he did not commit this crime
11 and did not know anything about it.

12 Q. Did the Commission interview Judy Davenport?

13 A. We did. We interviewed her by phone on April
14 25th, 2017.

15 Q. And was that interview recorded and transcribed?

16 A. A recording was attempted. However, due to a
17 malfunction with it, it was not recorded, and so we could
18 not transcribe it.

19 Q. What did Ms. Davenport tell Commission staff?

20 A. Ms. Davenport initially did not recall speaking to
21 law enforcement about a murder in 1993. She did say that
22 she was dating Michael Lassiter at the time, and that in
23 general he would take her car while she was at work.
24 Ms. Davenport then said she did remember the police coming
25 to her home and wanting to know about her car, but she

1 couldn't recall any additional details about that encounter.

2 She did not recall the police ever coming and
3 taking clothes from Michael Lassiter. And I then read her
4 statement to law enforcement to her, and she said the
5 statement sounded right as to the times when he usually
6 picked her up from work, and she also stated that she would
7 not have lied to the police.

8 MS. GUICE SMITH: Commissioners, you can find the
9 summary related to Ms. Davenport's original statement in
10 your brief on page 51.

11 BY MS. GUICE SMITH:

12 Q. Ms. Matoian, I want to go back for just a minute.
13 There have been a couple of times in the hearing where
14 you've indicated that the interviews were not recorded,
15 sometimes because of malfunction. How does the Commission
16 document interviews even when they're recorded but also when
17 they're not recorded?

18 A. We document interviews in what we call F.S.R.s,
19 which are our reports that will describe the interviews, and
20 then also we will attach our notes to the back of that
21 report so the report together will have all of that. And we
22 also will note when we've interviewed someone in our
23 journal.

24 Q. And the notes that you're talking about, are those
25 taken contemporaneously with the interview?

1 A. They are.

2 Q. Did the Commission have Mr. Lassiter's DNA
3 compared to the unknown profiles from the crime scene?

4 A. We did.

5 Q. And did the Commission have Mr. Lassiter's latent
6 prints compared to the unidentified identifiable latent
7 lifts from the crime scene?

8 A. We did, and he was eliminated from those.

9 MS. GUICE SMITH: Commissioners, do you have any
10 questions as it relates to Michael Lassiter?

11 (No response.)

12 MS. GUICE SMITH: Judge Wagoner, we can continue
13 on, or now would be an appropriate time to take a break for
14 lunch. Either way.

15 JUDGE WAGONER: What do y'all want to do? Lunch
16 or come back? Are you sure?

17 (No audible response.)

18 JUDGE WAGONER: 45 minutes or 30 minutes or what?

19 MS. GUICE SMITH: We would like at least 45
20 minutes so we --

21 JUDGE WAGONER: 45 minutes. 45 minutes.

22 MS. GUICE SMITH: Thank you.

23 (Off the record at 12:25 p.m.)

24 (A lunch recess was taken.)

25 (Back on the record at 1:28 p.m.)

1 MS. GUICE SMITH: Commissioners, I'm going to
2 re-call Beth Tanner.

3 JUDGE WAGONER: Okay.

4 MS. TANNER: Do I need to be re-sworn, or am I
5 good?

6 JUDGE WAGONER: I guess we'll swear you again.

7 MS. TANNER: Okay.

8 BETH TANNER,

9 having been re-called as a witness for the Commission and
10 having been sworn by Judge Wagoner, testified as follows:

11 MS. GUICE SMITH: Commissioners, we are going to
12 go back and discuss some questions you-all had yesterday
13 before we get back into alternate suspects.

14 EXAMINATION BY MS. GUICE SMITH:

15 Q. Ms. Tanner, yesterday there was a question from, I
16 believe, Commissioner Michael Grace regarding the interviews
17 that the District Attorney's Office had with Dana Maybin.

18 A. Yes.

19 Q. Can you tell the commissioners what, if anything,
20 we now know about the interviews the prosecution had with
21 Dana Maybin?

22 A. Sure. There are indications in the file that
23 there may have been more than one conversation between Dana
24 Maybin and the District Attorney's Office. However, there's
25 only one document that we have received in the file that has

1 the date and the content of any conversations between Dana
2 Maybin and the District Attorney's Office.

3 There were some reports of just law enforcement
4 going and meeting with Dana Maybin leading up to trial, but
5 we could not see that anyone from the District Attorney's
6 Office had participated except for this one date, which is
7 February 8th, 1995.

8 MS. GUICE SMITH: Commissioners, Ms. Matoian is
9 going to pass around what's going to become Handout 79.

10 JUDGE WAGONER: Okay.

11 MS. GUICE SMITH: This is the S.B.I. report of the
12 meeting between Assistant District Attorney Rob Hensley and
13 Defendant Dana Maybin from February 8th, 1995. Special
14 Agent Inscoe was also present at this meeting. I just ask
15 that you take a few minutes to review it.

16 (Handout Number 79 was identified for the
17 record.)

18 JUDGE WAGONER: I need a magnifying glass.

19 MS. GUICE SMITH: I do the best I can with the
20 copies.

21 (Laughter.)

22 JUDGE WAGONER: They need to buy y'all a new copy
23 machine.

24 MS. GUICE SMITH: No, this is how it came.

25 COMMISSIONER BRITT: This is blue paper that's

1 been copied.

2 MS. TANNER: Yeah.

3 JUDGE WAGONER: Shew. It's rough.

4 (Commissioners discussed blue paper.)

5 (Pause in proceedings.)

6 BY MS. GUICE SMITH:

7 Q. Ms. Tanner, did you follow up with Assistant
8 District Attorney Tom Anglim yesterday?

9 A. I did. I talked to him twice on the phone.

10 Q. And why'd you do that?

11 A. I contacted him because he actually took the case
12 over from Mr. Hensley when Mr. Hensley left, and Mr. Anglim
13 confirmed that that was correct.

14 Q. What did Mr. Anglim tell you about the District
15 Attorney's Office's practices at that time?

16 A. So he let me know that he was actually trained by
17 Mr. Hensley, so he was familiar with the practices, and he
18 said that it was their practice to take a law enforcement
19 officer with them when they would do an interview like this.

20 I actually provided him with this report
21 because this is what we could find, and he said he was not
22 surprised to see that it was done this way. He said the
23 District Attorney's Office would not then make a separate
24 report, that they would rely that the law enforcement had
25 made a report of the interview.

1 Q. And what did he say with respect to discovery?

2 A. He indicated that the discovery rules were
3 different back then, and it would have depended on --
4 whether he would have produced something would have depended
5 on what statements would have been made by Ms. Maybin. If
6 she was recanting her statement, he indicated that they
7 would have notified the defendants.

8 I asked him about this particular document and
9 said, "Is this something that you would have notified the
10 defendants of?"

11 He said, "No, because Ms. Maybin was not changing
12 her statement."

13 Q. Did he say anything else with respect to
14 Ms. Maybin's statement?

15 A. Sure. He independently recalled that there were a
16 number of times that there was a report by -- that
17 Ms. Maybin had changed her story. Each of the times, as he
18 recalled, that was precipitated by a visit to Ms. Maybin by
19 a defense attorney in the case. He also said that what she
20 always told the District Attorney's Office was consistent.

21 MS. GUICE SMITH: Are there any questions -- any
22 further questions about the discovery and the interviews
23 between the District Attorney's Office and Ms. Maybin?

24 JUDGE WAGONER: Let me ask a question. But he was
25 told some of that by other people, correct?

1 THE WITNESS: Yes. Told --

2 JUDGE WAGONER: He did not hear her --

3 THE WITNESS: Yes.

4 JUDGE WAGONER: -- always being consistent --

5 THE WITNESS: That's right.

6 JUDGE WAGONER: -- with whatever she told the

7 D. A. s.

8 THE WITNESS: That's right. We do not have
9 anything in the file where Mr. Anglim participated in an
10 interview with Ms. Maybin, and he did not independently
11 recall --

12 JUDGE WAGONER: Okay.

13 THE WITNESS: -- his personal participation.

14 MS. GUICE SMITH: Other questions?

15 (No response.)

16 MS. GUICE SMITH: Okay.

17 BY MS. GUICE SMITH:

18 Q. Ms. Tanner, I want to turn your attention to the
19 tire tool.

20 A. Yes.

21 Q. Do we also -- did we also have staff reach out to
22 Mr. Anglim this morning about whether he had any
23 recollection of anyone at the D.A.'s Office or defense
24 counsel that would have handled the tire tool outside of its
25 packaging?

1 A. We did.

2 Q. And what did he tell Commission staff?

3 A. He reported that he does not specifically recall
4 the handling of the tire tool at trial, but it was customary
5 at the time for the District Attorney, the bailiff, and the
6 Clerk to handle physical evidence like the tire tool.

7 He said it would also be customary to allow
8 defense counsel to inspect and handle physical evidence. He
9 said it was possible that he had handled it as well because
10 he assisted with the case.

11 He indicated that the list he provided them was
12 Mr. Norton, himself, the bailiff, the Clerk, Mr. Harrell,
13 Mr. Skinner, if not more could have handled the tire iron
14 before and at or after trial.

15 He said they would not have been wearing gloves
16 most likely back then. They might have worn gloves when
17 handling clothing if they thought there was a biohazard but
18 not for the tire iron.

19 He followed up -- to clarify, I had sent him an
20 e-mail and then I asked a staff member to call because I was
21 here. He followed up with me in an e-mail after his
22 conversation with our staff member and said "other people
23 that I'm pretty positive that handled the tire iron during
24 trial and pretrial" that I did not mention to him was Dennis
25 Honeycutt, the S.B.I. crime scene officer -- that's who

1 Dennis Honeycutt was -- Janice Spruiell with W.C.S.O., and
2 Willie Williams with W.C.S.O.

3 Q. And Ms. Tanner, is there any information in the
4 trial transcript about how the tire iron was handled at
5 trial?

6 A. Sure. In reviewing the trial transcript, Dennis
7 Honeycutt was provided the tire tool as a piece of physical
8 evidence on pages 417 to 418 of the trial transcript.
9 However, when he is given the tool, it indicates that it is
10 in a bag. He said -- he's asked, "Does this tire tool look
11 the same except for the fact that it's in a bag?" And he
12 says yes.

13 On page 432, it has been labeled as Exhibit 17.
14 Let me clarify that. On page 432, it is published to the
15 jury. There is no indication that it is removed from the
16 bag at that time. There's just nothing said but that it's
17 published to the jury.

18 On page 886, that same Exhibit 17 is noted as
19 being shown to Dr. Harris, who was the medical examiner, and
20 he identifies it about whether or not the tool was in the
21 bag, but there's no indication it's removed.

22 Q. Ms. Tanner, let me stop you for a second.

23 A. Sorry.

24 Q. I believe that State's Exhibit 17 is a photo --

25 A. I'm so sorry. I have that wrong.

1 Q. -- of the tire iron with the bag covering it. Do
2 you know who's testifying about the tire iron --

3 A. Yes, I do. I just wrote that down.

4 Q. -- being covered with the bag?

5 A. I'm sorry?

6 Q. I mean, the photo.

7 A. I wrote that down wrong. I'm sorry about that.

8 On page 1275, the request for -- there is a
9 request for all the physical evidence to go back to the jury
10 room.

11 And then there is a closing by Mr. Norton on page
12 1221, where he is talking about the tire iron. And there's
13 a notation in the closing by the court reporter that he
14 swings an object, but it doesn't describe what that object
15 is.

16 Q. Have you been able to find anything in the files
17 that the Commission has been provided that would indicate
18 that there have been individuals who have directly handled
19 the tire iron other than Dennis Honeycutt when he collected
20 it?

21 A. No.

22 Q. Is Commission staff doing anything right now with
23 respect to DNA standards?

24 A. Yes. As it relates to the -- this piece?

25 Q. Yes.

1 A. Yes. We have a Commission staff member who has
2 collected, this morning, a standard from Mr. Skinner and
3 Mr. Harrell. He is on his way to collect a standard from
4 Mr. Anglim, Mr. Norton, and Mr. Edwards.

5 MS. GUICE SMITH: Commissioners, before we send
6 all of these standards off to be tested, I would like you-
7 all to weigh in as to whether or not you believe those five
8 individuals should be compared to the profile on the tire
9 iron and/or whether you believe that the profiles -- the
10 standards for Janice Spruill and Willie Williams should be
11 collected and compared based on everything that we've
12 presented to you about what we know about the handling of
13 the tire iron.

14 COMMISSIONER BOSWELL: We don't know if there's
15 any DNA on the handle of the tire iron. So if there isn't
16 any, I wonder if it makes any sense to send off --

17 MS. GUICE SMITH: We have the unknown profile on a
18 portion of the tire iron that does not belong to the victim.
19 And then there is, of course, testing happening today on the
20 other portion of the tire iron. We do not know how that
21 tire iron was handled by whoever handled it.

22 COMMISSIONER BOSWELL: Right. But if the portion
23 -- the handle portion doesn't have any DNA on it, then we're
24 relatively certain none of these people who would've handled
25 it committed the crime. So sending their DNA off --

1 MS. GUICE SMITH: I think the question would be,
2 do you want it compared to the current profile that is on
3 there, the unknown profile that is on there?

4 COMMISSIONER GRACE: The -- the unknown, for sure
5 -- if you'd like my experience, in trial, in the Clerk's
6 Office, if that object has any biologicals on it at all,
7 nobody's going to touch it without gloves or without it
8 being in a bag.

9 Do you have any different experience, D.A.?

10 COMMISSIONER BRITT: No.

11 COMMISSIONER GRACE: No. If it -- if it came to
12 the -- to the courtroom as evidence with biologicals on it,
13 nobody's going to touch it. But I've seen some strange
14 things and --

15 ALT. COMMISSIONER NEWTON: Didn't the lawyer say
16 that they handled it?

17 THE WITNESS: I can repeat what he said. He said
18 it was -- he doesn't specifically recall. He said that it
19 was customary for them to -- the D.A., the bailiff, and the
20 Clerk to handle physical evidence and to allow defense
21 counsel to inspect and handle physical evidence.

22 He also said they most likely would not have been
23 wearing gloves in handling the tire iron back then. They
24 might have worn gloves for the clothing if they thought it
25 was a biohazard, but not for the tire iron.

1 ALT. COMMISSIONER NEWTON: Coupled with the court
2 reporter noting defense lawyer was swinging something. I
3 have a question.

4 THE WITNESS: Swinging an object.

5 ALT. COMMISSIONER NEWTON: I don't know that we
6 closed the loop on who all might have handled it. We don't
7 know if it went back to the jury and what the jury did with
8 it, do we?

9 THE WITNESS: We know it -- we know that the
10 physical evidence in the case, in the transcript, is noted
11 as going back to the jury.

12 ALT. COMMISSIONER NEWTON: Right.

13 THE WITNESS: We do not know what happened when it
14 went back to the jury room. There is no indication that the
15 tire iron was ever removed from the bag.

16 JUDGE WAGONER: They sent it back --

17 ALT. COMMISSIONER NEWTON: For either way.

18 JUDGE WAGONER: -- to the jury room?

19 THE WITNESS: It says that the physical evidence
20 is sent back to the jury room at one point in the
21 transcript.

22 ALT. COMMISSIONER NEWTON: And so if the defense
23 lawyer was, in fact, waving the tire iron and the tire iron
24 went back in the bag, it's possible that someone -- at least
25 12 people had an opportunity to handle it.

1 THE WITNESS: So let me just clarify. It is noted
2 in Mr. Norton, who is the District Attorney's -- I'm sorry,
3 I may not have said that -- statement that he waved -- swung
4 -- "swings object" is what it says. Doesn't tell us what
5 that is. He is talking about the tire iron when he does
6 that. But that's all the -- it's correct that we don't have
7 any other information about that from the trial transcript
8 or from anywhere else.

9 COMMISSIONER BRITT: Can I ask a question to
10 clarify something?

11 MS. GUICE SMITH: Uh-huh.

12 COMMISSIONER BRITT: When the Commission received
13 or took custody of the tire iron, was it in a sealed bag?

14 MS. GUICE SMITH: I don't know if you want to
15 swear me for this. I'm the evidence custodian and I can
16 tell you the condition it's in.

17 JUDGE WAGONER: Yes.

18 THE WITNESS: We'll just do that real quick.

19 LINDSEY GUICE SMITH,
20 having been called as a witness for the Commission and
21 having been sworn by Judge Wagoner, testified as follows:

22 THE WITNESS: I believe the question is, what is
23 the condition that the --

24 COMMISSIONER BRITT: When you -- when the
25 Commission received or took custody of the tire iron, was it

1 in a sealed bag?

2 THE WITNESS: It is in a sealed, like, mailing
3 envelope for a common carrier, either USPS or FedEx.

4 COMMISSIONER BRITT: So it's just loose in there.

5 THE WITNESS: I don't -- so we have not -- it is
6 individually packaged in that envelope. The Commission
7 staff has not opened that envelope. We try to avoid opening
8 evidence unless it's necessary. It is currently at the lab,
9 and they are supposed to be taking pictures for us today.
10 I'll have a staff member check in with them now to see if we
11 have those to see if it's in anything else inside of that
12 envelope.

13 JUDGE WAGONER: And if it's wrapped in a package
14 inside of the envelope.

15 THE WITNESS: I -- I don't know, because I --

16 JUDGE WAGONER: Yeah, that's what I mean.

17 THE WITNESS: -- haven't seen it, but that's what
18 we're going to find out: When they opened it today, whether
19 it was packaged inside of any kind of other package within
20 that envelope. But it came to us in a sealed envelope.
21 It's like a padded envelope.

22 ALT. COMMISSIONER NEWTON: Chain of custody -- if
23 -- if it was in a sealed envelope for a -- I'm asking you
24 because the law enforcement -- if it was in an envelope at
25 trial, there would have been initials and markings on it.

1 JUDGE WAGONER: Yes.

2 COMMISSIONER FRYE: Should have been, yes.

3 JUDGE WAGONER: Yep.

4 COMMISSIONER GRACE: Or -- or a tag on the -- on
5 the iron itself. So I'm -- I'm betting it's been in a
6 sealed bag. We'll -- we'll probably never know who opened
7 and looked in it or touched it, but not many people around
8 the courtroom are going to -- there's just no reason for you
9 to take out a tire iron to -- to --

10 JUDGE WAGONER: Not now --

11 ALT. COMMISSIONER NEWTON: Think --

12 JUDGE WAGONER: -- but back then --

13 ALT. COMMISSIONER NEWTON: -- David Rudolph in the
14 Peterson case swinging something around. I mean, I hate to
15 mention it, but --

16 JUDGE WAGONER: Yeah.

17 ALT. COMMISSIONER NEWTON: -- we tend to do that
18 sort of thing.

19 (Laughter.)

20 COMMISSIONER BARROW: Except this was -- this was
21 a '95 trial. And, you know, I think people appreciated the
22 danger of blood in '95.

23 COMMISSIONER GRACE: They -- they did. And we
24 were doing DNA testing, and we understood the danger of
25 putting your hands on a biological.

1 THE WITNESS: May I step down?

2 COMMISSIONER BRITT: Sure.

3 JUDGE WAGONER: Okay. Thank you.

4 (The witness left the stand.)

5 MS. GUICE SMITH: Commissioners, if you are not
6 ready to make that decision yet, if you'd like to see
7 that --

8 COMMISSIONER GRACE: I think --

9 MS. GUICE SMITH: -- photo --

10 COMMISSIONER GRACE: -- I think -- I think John --
11 I think John's statement was -- was right on it. Let's see
12 what's on it before we --

13 MS. GUICE SMITH: Okay.

14 COMMISSIONER GRACE: -- get all these standards
15 from other people.

16 MS. GUICE SMITH: I will caution that we will have
17 those results tomorrow morning at 10 a.m. We will not be
18 able to get results of the other standards, unless we ship
19 them today, before the end of this hearing. But you-all are
20 always welcome to continue this hearing.

21 We have another hearing November 14 through 16.
22 This entire group of commissioners, I believe, will be here
23 for that. So we can carve out some time to continue this
24 one to, if that is your decision, and that is -- that's
25 perfectly acceptable to us.

1 COMMISSIONER GRACE: Well, that's a bit of a game-
2 changer for me, John. What about you? I -- if --

3 COMMISSIONER BOSWELL: Well, let me ---

4 COMMISSIONER GRACE: -- if we don't do it now, we
5 don't get it done?

6 COMMISSIONER BOSWELL: Well, let me ask a
7 question, though. None of the people -- let's assume that
8 we -- that -- that there was DNA and all of the people that
9 were in the -- the list of suspects is excluded from that
10 DNA.

11 If we -- you know, if we could take -- if there is
12 enough DNA to run it through CODIS and CODIS doesn't hit
13 anything, what difference does it make if we find that some
14 member of the jury or some member of the prosecution or some
15 member of the defense's DNA is on there? 'Cause they're not
16 like -- they're not suspects. That won't speak to whether
17 or not Mr. Spruill and Mr. Jones were innocent or guilty.

18 ALT. COMMISSIONER NEWTON: Isn't it a little late
19 to --

20 COMMISSIONER BOSWELL: Now, I might be msthinking
21 that, so that's why I'm saying it out loud.

22 COMMISSIONER FRYE: I think -- I think what --
23 what they're saying is we have an unknown source of DNA on
24 the tire iron now. If we could clear up where that source
25 came from, that may clear up some things. I don't think --

1 I agree with you. I don't think it's -- in the grand scheme
2 of things, I don't think it's going to help us very much.

3 JUDGE WAGONER: I just -- I would hazard a guess
4 that whoever the clerk was then is long gone; has probably
5 retired. I think even if we said go on and do it, we're not
6 going --

7 COMMISSIONER GRACE: We're going to miss
8 something.

9 JUDGE WAGONER: -- to get everybody today. So I
10 say no.

11 MS. GUICE SMITH: Okay.

12 JUDGE WAGONER: That's what I vote.

13 COMMISSIONER BOSWELL: I think it's a -- it's a
14 long shot that we would find --

15 JUDGE WAGONER: It's a very long shot.

16 COMMISSIONER BOSWELL: -- something on the handle
17 of the tire iron that's DNA. I mean, my goodness. Let's
18 assume we did and it was one of these people. That would be
19 -- that would be crazy, but I'm not sure that tracking down
20 all the -- all the people who might have touched it 25 years
21 ago at the trial --

22 COMMISSIONER FRYE: I think --

23 COMMISSIONER BOSWELL: -- I don't think you're
24 going to be able to do it. And if you can -- if you can do
25 it, I'm not sure if -- I think it might be a wild goose

1 chase.

2 MS. GUICE SMITH: I think it's a correct statement
3 to say that while we may be able to collect standards for
4 the defense attorneys, the prosecutors, and the original two
5 investigators, I do not anticipate that we would be able to
6 determine who the bailiff was that day and obtain that one.
7 I'm not sure --

8 JUDGE WAGONER: Or the Clerk.

9 MS. GUICE SMITH: -- about the Clerk or the jurors
10 if the jurors may have handled it.

11 COMMISSIONER FRYE: I think we have made a valiant
12 effort at identifying any possible suspects. As long as --
13 as long as the match does not come back to those suspects,
14 we may never know whose other part of DNA -- and I don't
15 think it really matters. I don't think we've got -- I don't
16 think we've got some lone killer out there that's wandering
17 around that's not been identified in some of the suspect --

18 COMMISSIONER BOSWELL: But how could you --

19 ALT. COMMISSIONER NEWTON: Well, I -- I guess I
20 would just add, if I -- if I could, to that, the lone voice
21 of the other side of the table, that elimination of those
22 prints would leave us with an unknown profile. And if Dana
23 Maybin is, in fact, not reliable, then there's a possibility
24 of an alternative theory of the killing, and that is one
25 piece of that puzzle.

1 So I'm just putting that out there. Until you
2 eliminate everybody who touched it and there's still an
3 unknown, you still have one piece of evidence that it might
4 support an alternative theory of the killing.

5 COMMISSIONER BOSWELL: That's a good point, but I
6 don't think we can eliminate everybody who might have
7 touched it, even if we get these --

8 ALT. COMMISSIONER NEWTON: That's a good point.

9 COMMISSIONER BOSWELL: -- three or four people.

10 ALT. COMMISSIONER NEWTON: I agree with the jury,
11 too, because there's a possibility they all took it out.

12 JUDGE WAGONER: Would it -- would it be all right
13 with y'all if we say for now do not go out and try to find
14 all these people today? After we find out what the tire --
15 if we feel tomorrow morning after we hear about the tire
16 iron, we can always go back and change our minds and come
17 back another day.

18 COMMISSIONER GRACE: That would be my vote.

19 JUDGE WAGONER: Do y'all want to vote for that?
20 All in favor say "aye."

21 COMMISSIONER BOSWELL: Aye.

22 COMMISSIONER THOMPSON: Aye.

23 COMMISSIONER FRYE: Aye.

24 COMMISSIONER GRACE: Aye.

25 COMMISSIONER BRITTT: Aye.

1 COMMISSIONER COVER: Aye.

2 COMMISSIONER BARROW: Aye.

3 JUDGE WAGONER: Opposed?

4 ALT. COMMISSIONER NEWTON: I can't vote.

5 JUDGE WAGONER: Oh, that's right. Okay. All
6 right. So we'll -- that will be the plan. We'll see what
7 happens tomorrow. We will not do anything today. See what
8 happens tomorrow with the tire iron, and then we'll decide
9 at that point if we need to try to --

10 COMMISSIONER BOSWELL: Have your investigator turn
11 around.

12 MS. GUICE SMITH: No, he's there for -- he's
13 helping us get people on the screen and like.

14 I -- and I apologize for kind of the unprecedented
15 impromptu vote and -- and questions there --

16 COMMISSIONER BOSWELL: No.

17 MS. GUICE SMITH: -- but I felt like there were
18 enough questions from you-all about this tire iron that I
19 just wanted to make sure that we had done what you-all
20 wanted us to do as a staff.

21 I am going to put Ms. Tanner back up for one
22 moment. We --

23 JUDGE WAGONER: All right.

24 MS. GUICE SMITH: -- have misstated something on
25 the record, and I want to make sure that's clear.

1 JUDGE WAGONER: All right. You're still under
2 oath.

3 BETH TANNER,
4 having been re-called as a witness for the Commission and
5 having been previously sworn by Judge Wagoner, testified as
6 follows:

7 EXAMINATION BY MS. GUICE SMITH:

8 Q. Ms. Tanner --

9 A. Yes.

10 Q. -- Exhibit -- State's Exhibit 17: Have you now
11 confirmed whether or not that was, in fact, the tire iron
12 rather than a photo?

13 A. It is the tire iron.

14 Q. Thank you.

15 COMMISSIONER BRITT: It's the object.

16 THE WITNESS: It's the object.

17 JUDGE WAGONER: Object, yeah.

18 THE WITNESS: Uh-huh.

19 MS. GUICE SMITH: That is all for you.

20 (The witness left the stand.)

21 MS. GUICE SMITH: I'm re-calling Catherine
22 Matoian.

23 COMMISSIONER FRYE: When she takes two books
24 up --

25 (Laughter.)

1 JUDGE WAGONER: Does it mean we're going to get
2 more books tonight, I bet?

3 COMMISSIONER BRITT: That's kind of the working
4 agreement we have.

5 (Laughter.)

6 MS. GUICE SMITH: All right. Also before our
7 lunch break, there was a question, I believe, from
8 Commissioner Barrow about Ms. Maybin and what she said about
9 the camouflaged attire.

10 COMMISSIONER BARROW: Actually --

11 COMMISSIONER BOSWELL: That was from me.

12 MS. GUICE SMITH: That was from Mr. Boswell.

13 COMMISSIONER BARROW: Yeah.

14 MS. GUICE SMITH: I'm sorry.

15 CATHERINE MATOIAN,
16 having been re-called as a witness for the Commission and
17 having been previously sworn by Judge Wagoner, testified as
18 follows:

19 EXAMINATION BY MS. GUICE SMITH:

20 Q. Ms. Matoian, can you tell the commissioners what
21 Ms. Maybin says related to camouflaged clothing?

22 A. I can. In her April 25th, 1994 interview -- I'm
23 sorry. Give me one second. (Reviewing documents.)

24 (Pause in proceedings.)

25 Q. Ms. Matoian, can I direct you to Bates stamp page

1 197 of that report?

2 A. I think my pages on my Bates stamps in this may be
3 a little different. Can you direct me to the -- there's an
4 S.B.I. number on the top of the page.

5 Q. Yep.

6 (Pause in proceedings.)

7 MS. GUICE SMITH: Sorry, guys. I thought I had
8 the right Bates stamp.

9 COMMISSIONER GRACE: Maybe if you give her what
10 you have, Lindsey.

11 (Pause in proceedings.)

12 BY MS. GUICE SMITH:

13 Q. Go to the next one.

14 A. Okay.

15 Q. Okay. Can you, instead, tell them what she said
16 in her June 25th, 1994 interview on page 3, paragraph 2, at
17 the top of the page?

18 A. I can. Ms. Maybin stated Robert was wearing acid-
19 washed jeans, loafers, a camouflaged jacket, and a shirt,
20 and couldn't recall what kind of shirt. And that Leroy was
21 wearing blue jeans and some type of shirt and tennis shoes.
22 And that was as they were going to the victim's house.

23 COMMISSIONER BOSWELL: Okay. Well, that -- that
24 answered my question.

25 THE WITNESS: Okay.

1 BY MS. GUICE SMITH:

2 Q. What did she say in the April 25th, 1994
3 interview?

4 A. My apologies. Ms. Maybin stated that when Robert
5 left, Lynn, the bartender, saw him and Leroy leave also.
6 Ms. Maybin stated that when Robert left, he was wearing a
7 brown set of dock or deck shoes and acid-washed jeans with
8 no jacket. Ms. Maybin stated that when he got back, he had
9 on a pair of white tennis shoes and a camouflaged army
10 jacket. Ms. Maybin stated that Robert had also put on his
11 dark blue jeans.

12 Q. And do you have the trial transcript in front of
13 you?

14 A. I do.

15 Q. If you would refer to page 592. What does
16 Ms. Maybin testify to regarding clothing?

17 A. Question: "At this time was he wearing any type
18 of jacket that you recall?"

19 "Mr. Vosburgh: Objection."

20 "The Court: Overruled."

21 Answer: "Yeah. He had the jacket on when we were
22 at Frank's because I put the money in his jacket. It was
23 kind of a camouflaged jacket."

24 Question: "Do you know if that was the same one
25 he put back on or where that jacket came from?"

1 Answer: "I don't know because I was in the
2 bathroom when they were changing."

3 And sorry. Earlier up on the page, she is being
4 asked questions directly about Mr. Jones.

5 Q. Okay. And does Lynn Rogers, in her law
6 enforcement statement to -- in her statement to law
7 enforcement, discuss anything about a camouflaged shirt?

8 A. She does. In her statement, which is from May
9 3rd, 1994, Ms. Rogers states that:

10 "When Spruill and Robert (LNW) [sic], last
11 name unknown, returned to Big Ed's Bar that
12 evening, she observed Robert to be wearing an old
13 pair of blue jeans and a camouflaged army long-
14 sleeved shirt, having the sleeves rolled part of
15 the way up."

16 Q. And does that say when they returned to the bar
17 that night?

18 A. That's correct.

19 Q. And did Mr. Spruill, in an interview with the
20 Commission, say anything related to a camouflaged shirt?

21 A. In an interview with the Commission, Mr. Spruill
22 indicated that camouflaged clothing was taken from his home.
23 A shirt was taken from Mr. Spruill's home. However, the
24 bench notes from the description of that indicate it's a
25 blue and white rugby-type shirt and not a camouflaged shirt.

1 Q. And prior to Mr. Spruill's interview, everything
2 that we know about a camouflaged shirt or jacket is related
3 to Mr. Jones. Is that correct?

4 A. That's correct.

5 Q. And was any camouflaged clothing collected from
6 Mr. Jones?

7 A. No.

8 MS. GUICE SMITH: Does that address your question?

9 COMMISSIONER BOSWELL: Yeah. My -- my question
10 was -- and where I -- where I was confused is this -- she
11 seems to say he was wearing a camouflaged shirt or jacket
12 when he was at the bar and also when he came back.

13 And I thought the testimony was that they burned
14 all the clothes when they went -- after the -- after the
15 murder. And so that -- that's where I was confused as to
16 what they were saying about the camouflaged coat.

17 THE WITNESS: And in that testimony, she had
18 stated she wasn't sure if that was the same one he had been
19 wearing earlier that night because she was in the bathroom
20 when Mr. Spruill and Mr. Jones were changing their clothes.

21 COMMISSIONER BOSWELL: Okay. Thank you.

22 BY MS. GUICE SMITH:

23 Q. All right. We're going to turn our attention now
24 back to the alternate suspects in this case.

25 Ms. Matoian, who is Alton "BoJack" Clagon?

1 A. Mr. Clagon was a higher-level drug dealer in the
2 Washington County area around the time of the crime. He was
3 not mentioned, interviewed, or investigated during the
4 initial investigation of this crime.

5 MS. GUICE SMITH: Commissioners, Handout 33 in
6 your Hearing Handout notebooks is the criminal record of
7 Mr. Clagon.

8 (Handout Number 33 was identified for the
9 record.)

10 BY MS. GUICE SMITH:

11 Q. Why, Ms. Matoian, was Mr. Clagon investigated
12 post-conviction as an alternate suspect in this case?

13 A. Mr. Spruiell has indicated before that he believes
14 that Mr. Clagon is the father of Maurice Wilkins. He also
15 believed that Mr. Clagon was having an affair with Janice
16 Spruiell, who was the lead investigator in this case, and
17 that due to that affair, Janice Spruiell tried to cover up
18 for Maurice Wilkins in this murder.

19 He also believes that Janice Spruiell destroyed a
20 blood sample for Mr. Wilkins, and he also believes that the
21 victim and Sonja Day owed Mr. Clagon money and that he had
22 someone kill them to make an example.

23 Q. Is Mr. Clagon the father of Maurice Wilkins?

24 A. No, he's not.

25 Q. Was the blood sample from Mr. Wilkins destroyed?

1 A. The initial sample that was taken from Mr. Wilkins
2 was run over by Investigator Janice Spruiell. However, he
3 consented to and did provide a second sample which was used
4 for comparison --

5 COMMISSIONER GRACE: I'm sorry, was run over?

6 THE WITNESS: Yes.

7 JUDGE WAGONER: You mean dropped? She ran over it
8 in the driveway or something?

9 THE WITNESS: My understanding of it is that on
10 the way back from collecting the sample, they had stopped
11 somewhere, and the blood sample somehow fell out of the car
12 and was run over.

13 COMMISSIONER GRACE: Oh. That happens all the
14 time.

15 (Laughter.)

16 BY MS. GUICE SMITH:

17 Q. Ms. Matoian, was the second sample collected?

18 A. It was.

19 Q. And was that at the consent of Mr. Wilkins?

20 A. It was.

21 Q. And was that tested during the initial
22 investigation?

23 A. It was.

24 Q. Did the Commission's investigation uncover a
25 relationship between Janice Spruiell and Mr. Clagon?

1 A. As we testified to earlier, Janice Spruiell has
2 denied this relationship in an interview with the
3 Commission, and Mr. Clagon also denied this relationship.

4 We also interviewed Greg Hassell who worked on
5 that drug task force, and he stated that BoJack had told him
6 that he and Janice Spruiell had a sexual relationship and
7 that he could get any information he wanted out of her.

8 The Commission also interviewed Willie Williams,
9 the other detective in this case, and he said he was aware
10 of the rumors, that he didn't think Janice Spruiell was
11 involved with BoJack, and that he believed that these were
12 just rumors.

13 Q. Was he interviewed by anyone else prior to the
14 Commission's involvement?

15 A. Former Prisoner Legal Services attorney Marcus
16 Jimison told the Commission that while he was at P.L.S., he
17 had interviewed Mr. Clagon. However, there's no
18 documentation of that in their file.

19 Q. And did the Commission --

20 MS. GUICE SMITH: Or Commissioners, you've already
21 been provided that portion of Mr. Jimison's interview that
22 was back on Handout 8, if you need to refer back.

23 BY MS. GUICE SMITH:

24 Q. Did the Commission interview Mr. Clagon?

25 A. The Commission attempted to interview Mr. Clagon

1 on May 11th, 2011.

2 Q. What happened during that attempt?

3 A. Commission staff went to an automotive shop owned
4 by Mr. Clagon and asked for BoJack. At that time we only
5 knew him as BoJack. We didn't have his full name.

6 A black male who was at the shop said, "Who?" And
7 then stated that Bojack was not there but may be back later.

8 Commission staff left a number with the man and
9 asked him to have BoJack call them. At this time Commission
10 staff believed that the unidentified black male that they
11 had spoken to was BoJack and later determined that it was
12 him through D.M.V. photos.

13 Q. Did the Commission then have further contact with
14 Mr. Clagon?

15 A. We did. We served him with a subpoena for a
16 deposition on June 15th, 2011, and then deposed him on June
17 27th, 2011.

18 Q. And was that deposition recorded and transcribed?

19 A. It was recorded via video and audio-visual means
20 and was transcribed.

21 Q. And what relevant information did Mr. Clagon
22 provide in that deposition?

23 A. Mr. Clagon stated that he was not related to
24 Maurice Wilkins at all and has no relationship with him but
25 did know his mother. He said that Mr. Wilkins did not sell

1 drugs for him, work for him, or settle his debts for him.

2 He said he knew Frank Swain and had known him all
3 of his life. He knew that Mr. Swain sold drugs but that
4 Mr. Swain did not sell for Mr. Clagon, but the victim had
5 bought drugs from him before.

6 Mr. Clagon indicated he'd heard about the victim
7 being killed while he was in Butner on unrelated charges.
8 And he denied having any relationship with Investigator
9 Janice Spruiell but said that she had tried to arrest him
10 many times, and he said he would always get away from her.
11 He also denied telling Greg Hassell that he had an affair
12 with Janice Spruiell.

13 Q. Can you remind the commissioners again who Greg
14 Hassell is?

15 A. Greg Hassell was the man who worked on that task
16 force.

17 Q. And did the Commission confirm that Mr. Clagon was
18 incarcerated at the time of the crime?

19 A. We did. We weren't able to locate jail records
20 for Mr. Clagon during this period of time, but the federal
21 criminal docket for Mr. Clagon indicates that he was
22 arrested on October 1st, 1993 on drug charges and was
23 ordered to remain locked up pending trial on October 15th,
24 1993. He did not plead guilty until January 31st, 1994, and
25 was sentenced on May 12th, 1994.

1 MS. GUICE SMITH: Commissioners, do you have any
2 questions of Ms. Matoian about Mr. Clagon?

3 JUDGE WAGONER: And do we know for sure he did not
4 make bond or post any kind of bail after he was arrested?

5 THE WITNESS: After -- between October 1st when he
6 was arrested --

7 JUDGE WAGONER: And the time he pled guilty.

8 THE WITNESS: -- and October 15th, we do not know,
9 but he was -- there was a --

10 JUDGE WAGONER: Federal --

11 COMMISSIONER BRITT: He was detained.

12 JUDGE WAGONER: -- hold?

13 THE WITNESS: -- there was a hearing held, and the
14 PACER documents indicate that he was ordered to be held
15 without bail pending his trial.

16 BY MS. GUICE SMITH:

17 Q. Ms. Matoian, did the PACER documents have a place
18 on them where bail would have been indicated if it had, in
19 fact, been granted or made?

20 A. It did, and those spaces were empty.

21 ALT. COMMISSIONER NEWTON: I'm sorry. Did you say
22 he went to federal prison in '94, April?

23 THE WITNESS: Yes. He was -- that October 1st
24 arrest was on federal drug charges.

25 ALT. COMMISSIONER NEWTON: You said it was Handout

1 33, right? That's the same Alton Clagon, Jr.? That's him?

2 THE WITNESS: Yes.

3 ALT. COMMISSIONER NEWTON: It says a date of
4 offense of June 3rd, '94, a federal drug charge. How is
5 that possible if he's being sentenced --

6 THE WITNESS: We can double-check those PACER
7 documents and see when -- what they have listed as the
8 offense date. We do know that he was -- I believe they
9 obtained the warrant a few days before he was arrested, but
10 we'll pull those documents.

11 ALT. COMMISSIONER NEWTON: Well, it looks like
12 from what you just said, he went to prison before this date
13 of offense, and that doesn't make sense because he would be
14 in jail. Okay.

15 THE WITNESS: We'll pull --

16 ALT. COMMISSIONER NEWTON: So it could be a typo.

17 THE WITNESS: -- we'll pull them and check.

18 ALT. COMMISSIONER NEWTON: Okay, okay.

19 MS. GUICE SMITH: Any other questions?

20 (No response.)

21 BY MS. GUICE SMITH:

22 Q. Who is Joseph Lynn?

23 A. Joseph Lynn was investigated --

24 JUDGE WAGONER: Let me just stop. Just for the
25 conversation, DNA -- even though he's allegedly in prison,

1 no DNA and no --

2 THE WITNESS: We did not collect fingerprints or
3 DNA from Mr. Clagon because, based on the PACER documents,
4 he was not -- he was locked up at the time of the murder.

5 COMMISSIONER FRYE: Can I ask one more question
6 about this? As I read through the brief, Janice Spruiell,
7 who was working the case, said that she was giving
8 information to the drug task force about Alton Clagon,
9 correct?

10 THE WITNESS: That's what she says in her
11 Commission interview, yes.

12 COMMISSIONER FRYE: Now, the guy that's running
13 the task force says that he was told that she had been
14 having an affair with him?

15 THE WITNESS: By BoJack.

16 COMMISSIONER FRYE: By BoJack. BoJack denies
17 that. Did -- did he ever admit or deny -- the guy that's
18 over the task force -- what was his name?

19 THE WITNESS: Greg Hassell.

20 COMMISSIONER FRYE: Hassell. Did Hassell ever say
21 whether Janice Spruiell had ever gave him any information
22 about BoJack?

23 THE WITNESS: Can I grab something real quick,
24 Your Honor?

25 JUDGE WAGONER: What? I'm sorry?

1 THE WITNESS: Can I grab something real quick to
2 answer his question?

3 JUDGE WAGONER: Sure.

4 THE WITNESS: (Reviewing documents.)

5 COMMISSIONER FRYE: Oh, man, I'm gonna have to get
6 three books up to the table now.

7 JUDGE WAGONER: Have to get a bigger table.

8 (Laughter.)

9 (Pause in proceedings.)

10 THE WITNESS: I know exactly where it is. Okay.

11 Mr. Hassell was asked if there was any truth or if
12 it was just rumor in regards to Janice Spruill tipping off
13 BoJack about raids. And Mr. Hassell said:

14 "We interviewed BoJack. We were trying to get
15 him to -- to actually roll on -- on Janice because
16 we were getting a lot of information that she --
17 and at the time she was also involved with another
18 deputy that was there. His name is Willie
19 Williams. He's now the captain for the Plymouth
20 Police Department."

21 JUDGE WAGONER: Williams?

22 THE WITNESS: "Ms. Stelatto: Yep. Yeah."

23 COMMISSIONER GRACE: You can't make this stuff up.

24 THE WITNESS: Mr. Hassell said:

25 "But Janice had a relationship with him and

1 both of those names were continuously coming up in
2 tipoffs to BoJack and stuff. And we just -- and
3 we had to just basically shun local law
4 enforcement altogether to work the case.

5 "And we actually interviewed BoJack on that
6 and spoke with him about it. BoJack denied
7 anything other than, you know, Janice -- and I'm
8 going to come right out and say it, you know, so
9 please don't take offense to it."

10 "Ms. Stelatto: Sure."

11 "Mr. Hassell: He just basically said that,
12 you know, he wasn't paying her any money or
13 anything for information, that she was just
14 stupid, that he was fucking her, and he could get
15 about what he wanted out of her, and that was
16 about the gist of the conversation."

17 JUDGE WAGONER: I'm just -- did I misunderstand?
18 I know -- no, no, I know what -- I know what --

19 (Laughter.)

20 JUDGE WAGONER: -- said to that. Mr. Williams and
21 Mr. -- did she -- what about the task force officer? Was
22 she having something with him, too?

23 THE WITNESS: The task force officer seemed to
24 indicate that Janice Spruiell and Willie Williams were having
25 a --

1 JUDGE WAGONER: Yeah.

2 THE WITNESS -- relationship with each other --

3 JUDGE WAGONER: Okay.

4 THE WITNESS: -- as well.

5 JUDGE WAGONER: Okay. Okay.

6 ALT. COMMISSIONER NEWTON: Could -- could I go
7 back to this record? And -- and I understand you want to
8 double-check. But as I understand what you've -- what
9 you've testified to, the reason that Alton Clagon, BoJack,
10 was not printed and tested against the standards or against
11 the DNA was that he was apparently in federal custody at the
12 time of the crime on December 18th, '93. Is that accurate?

13 THE WITNESS: Correct.

14 ALT. COMMISSIONER NEWTON: Okay. The record that
15 I have in this notebook shows that he was not in federal
16 custody. His last federal charge was a B&E that -- it says,
17 "D.O.O.," which I take to mean date of offense, January 15th
18 of 1969, and an unknown date of conviction.

19 THE WITNESS: Sure.

20 ALT. COMMISSIONER NEWTON: The next charge is a
21 misdemeanor, a State charge in Washington County, and that's
22 a conviction date of '92 September, which means he couldn't
23 possibly have been in jail longer than 120 days for that
24 misdemeanor, if he got the -- maybe 150. I don't know if
25 it's an A1. But then, so he would not have possibly been in

1 custody in '93 December.

2 And the next most recent crime shows date of
3 offense, June 3rd of '94, which would have been six months
4 after the killing, a little short of that, and it shows
5 unknown date of conviction. So he, in fact, could not have
6 been in custody -- even on the charge, not the conviction --
7 unless the dates are wrong.

8 THE WITNESS: I believe that is a mistake in your
9 handout. I have the criminal docket for Mr. Clagon.

10 ALT. COMMISSIONER NEWTON: Okay.

11 THE WITNESS: The case was filed on 9/29/1993. He
12 was charged with conspiracy to distribute cocaine and crack
13 cocaine. He was also charged with distribution of crack
14 cocaine and aiding and abetting. And he was also -- there's
15 a forfeiture charge on that. He is -- an arrest warrant was
16 issued on 9/30/1993.

17 On 10/1/1993 he was arrested. On 10/12/1993 there
18 was a detention hearing, and it said, "Government and
19 counsel argue as to detention. Defendant is detained."

20 On 10/15/1993 an order of detention pending trial
21 is issued. And as we said before, the part on the side of
22 this document where they would have indicated where bail was
23 available, is empty. It's not filled in with any bail
24 amounts.

25 ALT. COMMISSIONER NEWTON: It's presumptive, so it

1 would have -- yeah.

2 THE WITNESS: So he takes a plea on January 31st,
3 1994. And then I'm just seeing if anything happened on this
4 June 1st date.

5 ALT. COMMISSIONER NEWTON: So it looks like just
6 your record needs to be changed, date of offense, 6/3/94.

7 THE WITNESS: Correct.

8 ALT. COMMISSIONER NEWTON: There's nothing wrong
9 with that. Okay. Probably '93.

10 THE WITNESS: Correct.

11 ALT. COMMISSIONER NEWTON: Something like that.
12 Okay.

13 BY MS. GUICE SMITH:

14 Q. Ms. Matoian --

15 ALT. COMMISSIONER NEWTON: Thank you.

16 BY MS. GUICE SMITH:

17 Q. -- I'm handing you some additional records for
18 Mr. Clagon. Do you understand this to be the D.C.I.N.
19 printout for him?

20 A. Uh-huh.

21 Q. Can you let the commissioners know what that says?

22 A. Yes. The D.C.I.N. does indicate that on 10/1/1993
23 he was charged with the conspiracy to distribute cocaine and
24 crack cocaine, distribution of crack cocaine, aiding and
25 abetting, and forfeiture.

1 And then on 6/3/1994 he was charged with
2 conspiracy to possess -- I'm sorry. I don't know what some
3 of these acronyms are.

4 ALT. COMMISSIONER NEWTON: Maybe with intent?

5 COMMISSIONER BRITT: He was sentenced, too?

6 JUDGE WAGONER: Hmm? Yeah.

7 THE WITNESS: It --

8 JUDGE WAGONER: It looks like he was sentenced --

9 THE WITNESS: It says --

10 JUDGE WAGONER: -- January? Well, I don't know if
11 he'd have been sentenced by then. I'm thinking March.

12 ALT. COMMISSIONER NEWTON: It looks like it was
13 supposed to be "with intent to distribute," but there is a D
14 instead of an I.

15 THE WITNESS: The charge says, "Conspiracy to
16 possess WDTDCOC and COC base crack FORF."

17 ALT. COMMISSIONER NEWTON: It looks like --

18 JUDGE WAGONER: That's forfeiture.

19 ALT. COMMISSIONER NEWTON: -- conspiracy with
20 intent to distribute cocaine and crack cocaine. That's what
21 we have on this record with 6/3/94. So he was charged again
22 in jail?

23 COMMISSIONER BRITT: 6/3/94, is that when he was
24 sentenced?

25 THE WITNESS: Let me pull it back up.

1 ALT. COMMISSIONER NEWTON: No. She said he was --
2 oh, yeah. That could have been.

3 COMMISSIONER BOSWELL: Well, he pled guilty in --

4 ALT. COMMISSIONER NEWTON: He pled in, yeah. That
5 was sentencing. They've got it under date of offense.

6 THE WITNESS: It look -- according to the docket,
7 judgment and commitment happened on May 12th, 1994. On May
8 12th, 1994, a presentence report was sealed as well. He was
9 sentenced to 168 months and remanded into custody.

10 I don't see anything on this for --

11 ALT. COMMISSIONER NEWTON: The two are --

12 BY MS. GUICE SMITH:

13 Q. Ms. Matoian, can you read for the 6/3/1994 arrest,
14 the arresting agency?

15 A. The arresting agency is N.C.O. 3901C, F.C.I.,
16 Male.

17 Q. And is F.C.I. an acronym for Federal Correctional
18 Institute?

19 A. It is.

20 COMMISSIONER FRYE: So he --

21 ALT. COMMISSIONER NEWTON: So he was charged in
22 jail with something.

23 COMMISSIONER FRYE: Yes.

24 ALT. COMMISSIONER NEWTON: Okay.

25 COMMISSIONER FRYE: Which happens.

1 ALT. COMMISSIONER NEWTON: But then you're missing
2 another charge.

3 MS. GUICE SMITH: Yes.

4 BY MS. GUICE SMITH:

5 Q. Is it correct --

6 ALT. COMMISSIONER NEWTON: Okay.

7 BY MS. GUICE SMITH:

8 Q. -- Ms. Matoian, that our chart that needs to be
9 corrected is missing the --

10 COMMISSIONER FRYE: '93 charge.

11 BY MS. GUICE SMITH:

12 Q. -- 1993, October 1st arrest --

13 A. Correct.

14 Q. -- with a conviction date in 1994?

15 A. Correct.

16 MS. GUICE SMITH: We will update that handout and
17 make that available to you-all later.

18 Okay. Any other questions about Mr. Clagon for
19 Ms. Matoian?

20 (No response.)

21 MS. GUICE SMITH: Thank you.

22 BY MS. GUICE SMITH:

23 Q. I think you had just told the commissioners who
24 Joseph Lynn is. Will you remind them again?

25 A. Uh-huh. Joseph Lynn was investigated during the

1 initial law enforcement investigation, along with Maurice
2 Wilkins. However, although law enforcement collected
3 fingerprint standards and blood standards from Wilkins and
4 McPhatter and polygraphed them both, they did not do so for
5 Joseph Lynn.

6 Q. And can you remind the commissioners who Maurice
7 Wilkins and Lee McPhatter are?

8 A. Yes. Both Mr. Wilkins and Mr. McPhatter were
9 investigated during the initial law enforcement
10 investigation after being seen in the area of the victim's
11 trailer on the night of the murder.

12 MS. GUICE SMITH: Commissioners, you can find a
13 summary related to Joseph Lynn, Maurice Wilkins, and Lee
14 McPhatter on pages 46 to 49 of your brief. Handouts 34, 35,
15 and 36 in your Hearing Handout notebooks are summaries of
16 Joseph Lynn, Maurice Wilkins, and Lee McPhatter's criminal
17 records, respectively.

18 (Handout Numbers 34, 35, and 36 were
19 identified for the record.)

20 MS. GUICE SMITH: If you'd like to take a moment
21 to look at those.

22 (Pause in proceedings.)

23 BY MS. GUICE SMITH:

24 Q. Ms. Matoian, who led law enforcement to Mr. Lynn,
25 Mr. Wilkins, and Mr. McPhatter?

1 A. Bennie Covell, who was the boyfriend of Mary
2 Swain, who is Frank Swain's sister, told law enforcement in
3 an interview on December 20th, 1993, that when he and Mary
4 Swain got back to town around 9:45 p.m. on the night of the
5 crime, he saw two black males and a white male in a blue
6 Chevrolet extended cab truck peeping over at the victim's
7 house.

8 Then on January 1st, 1994, he told law enforcement
9 that on that day, January 1st, he had seen the same blue
10 truck drive down Folly Road and park at the white house,
11 which is the same house he saw them at on the night of the
12 crime. They got out and went into the white house. And law
13 enforcement determined that that was the house where
14 Mr. McPhatter was living at the time.

15 Q. And did Mr. Covell ever identify who the
16 individuals were?

17 A. No. It doesn't appear that law enforcement ever
18 asked Mr. Covell to identify those individuals.

19 Q. Does the description given by Mr. Covell match any
20 of the individuals from the case?

21 A. Maurice Wilkins and Lee McPhatter are both black,
22 and Joseph Lynn is white. And Joseph Lynn also drove a blue
23 truck, and all three said they were at Lee McPhatter's house
24 on the night of the crime.

25 Q. And as you just testified, that house was next

1 door to Mr. Swain's residence.

2 A. Correct.

3 Q. Did the Commission interview Bennie Covell?

4 A. We did. We interviewed him by phone on January
5 8th, 2018.

6 Q. And was that interview recorded and transcribed?

7 A. It was.

8 Q. What did he tell Commission staff?

9 A. Mr. Covell stated that he was the boyfriend of
10 Mary Swain, who was the victim's sister. And he said that
11 he was a truck driver at the time of the crime and was with
12 Mary Swain in Virginia on that night. And he said that Mary
13 had called the victim from Waverly, Virginia, at about 6 or
14 7 p.m. on the night of the crime and spoke with the victim.
15 He said he was not near the victim's home at the time of the
16 crime but was driving back from that work trip to Virginia.
17 And he said that he gave law enforcement a lottery ticket
18 that had been time-stamped from Virginia where he bought it.

19

20 After being read his initial statement by
21 Commission staff, he stated that it was not correct because
22 the murder had already happened by the time he and Mary got
23 back to town. He said that Mary got the call that the
24 victim had been murdered, and that was when they went down
25 to the victim's trailer, and they were denied access to it.

1 As to the men in the truck, he said he did not see
2 the men in the blue extended cab truck and he did not see
3 anything in the trailer park. He stated that his statement
4 from January 1st, 1994, was also not accurate and was not
5 true.

6 Q. Was Joseph Lynn interviewed by law enforcement?

7 A. He was interviewed by law enforcement on December
8 23rd, 1993, and his truck was searched by law enforcement on
9 the same day.

10 Q. Was he interviewed by anyone else prior to the
11 Commission's involvement?

12 A. He was interviewed during John Floyd's independent
13 post-conviction investigation on January 21st, 2003, and
14 April 4th, 2003.

15 MS. GUICE SMITH: Commissioners, you can find a
16 summary related to John Floyd's interview with Joseph Lynn
17 on page 512 of your brief.

18 BY MS. GUICE SMITH:

19 Q. Did the Commission interview Mr. Lynn?

20 A. We did. We interviewed him briefly by phone on
21 February 2nd, 2016.

22 Q. And was this interview recorded and transcribed?

23 A. It was.

24 Q. What did he tell Commission staff in that
25 interview?

1 A. Mr. Lynn remembered the police picking him up to
2 question him. He stated it completely caught him off guard
3 because he didn't know anything about the murder until they
4 made him aware of it. He said that he did not know the
5 victim, and he also did not know Mr. Spruill or Mr. Jones.

6 Mr. Lynn stated he knew Maurice Wilkins, and when
7 told that several people had stated that he was with
8 Mr. Wilkins on the night of the crime, Mr. Lynn agreed with
9 that.

10 Q. And did the Commission request a voluntary swab
11 from Mr. Lynn?

12 A. We did, and he declined to provide a voluntary
13 swab at that time. He stated that the local police chief
14 came to visit him in the year 2000 after he had gotten in
15 some trouble for drugs. He stated they had falsified
16 documents that they said were S.B.I. lab reports. And he
17 said that he knew it couldn't be true because he didn't know
18 anything about the murder until police came and talked to
19 him, which he said he told them at the time.

20 He stated that the S.B.I. came back to talk to him
21 a few years later when they were investigating local police,
22 and the police who came to him with the false documents
23 ended up with felony charges for tampering and doctoring
24 with evidence in a murder case.

25 He then stated that his response for any voluntary

1 DNA sample was no unless he consulted with an attorney.

2 Q. And did you inform Mr. Lynn that the Commission
3 may seek an order for his DNA?

4 A. Yes, I did. He stated, quote, "I don't want to
5 trade out one innocent man for another innocent man," end
6 quote, and stated that he did not want to be the fall guy.

7 Q. Did the Commission seek a non-testimonial
8 identification order for Mr. Lynn's DNA?

9 A. We did, and Judge Wagoner granted that on February
10 10th, 2016.

11 Q. And did the Commission serve that N.T.I.O. on
12 Mr. Lynn?

13 A. We attempted to serve it on him on February 18th,
14 2016, but he was not home. That same day we received an
15 e-mail from an attorney named Breeze Alcorn who asked that
16 all communication to Mr. Lynn go through him.

17 We served the N.T.I.O. on his attorneys on
18 February 19th, 2016, and then Mr. Lynn's attorneys filed a
19 motion to quash on March 18th, 2016.

20 The Commission filed a response to that on April
21 1st, 2016, and a hearing was held before Judge Wagoner as
22 Commission Chair on May 25th, 2016. And at the hearing,
23 Mr. Lynn was presented by -- represented by Ernest Conner.

24 And Judge Wagoner ultimately ordered Lynn to
25 provide a standard pursuant to the N.T.I.O., and for the

1 sample to be promptly destroyed if Mr. Lynn was excluded
2 from the profiles.

3 Q. Did the Commission have Mr. Lynn's DNA compared to
4 the unknown profiles at the crime scene?

5 A. We did.

6 Q. And did the Commission have Mr. Lynn's latent
7 prints compared to the unidentified identifiable latent
8 prints from the crime scene?

9 A. We did, and he was eliminated from all.

10 Q. Based on the Commission's testing, did the
11 Commission return Mr. Lynn's DNA standard to his attorney in
12 accordance with the court order --

13 A. We did.

14 Q. -- by Judge Wagoner?

15 Did the Commission have Mr. Maurice Wilkins and
16 Mr. Lee McPhatter's DNA compared to the unknown profiles?

17 A. We did.

18 Q. And did the Commission have Mr. Wilkins and
19 Mr. McPhatter's latent prints compared to the unidentified
20 identifiable latent lifts from the crime scene?

21 A. We did, and they were eliminated from all.

22 MS. GUICE SMITH: Commissioners, do you have
23 questions for Ms. Matoian as it relates to Maurice Wilkins,
24 Lee McPhatter, or Joseph Lynn?

25 COMMISSIONER BARROW: Was -- was Lynn, Wilkins, or

1 McPhatter implicated in any relationships with Honea or --
2 or Maybin?

3 THE WITNESS: No. I believe -- I have birth
4 dates. Let's see. I'm just trying to see if they were
5 similar ages. But, no, we don't have any indication from
6 the file that --

7 COMMISSIONER BARROW: Okay.

8 THE WITNESS: -- they knew each other.

9 BY MS. GUICE SMITH:

10 Q. Did the Commission interview anyone else related
11 to these individuals?

12 A. We did. We interviewed Avis Arnold in person on
13 February 4th, 2010.

14 MS. GUICE SMITH: Commissioners, there's a summary
15 related to Avis Arnold on pages 514, 518, and 596 to 597 of
16 your brief. If you'll refer to Handout 37 in your handout
17 notebooks, that is the criminal record of Avis Arnold.

18 (Handout Number 37 was identified for the
19 record.)

20 BY MS. GUICE SMITH:

21 Q. Who is Avis Arnold?

22 A. Avis Arnold was a friend of Mr. Wilkins, Mr. Lynn,
23 Mr. McPhatter, and the McNair brothers. And he reported
24 being with all of those individuals at various times on the
25 night of the crime.

1 In 2004 -- November 15th, 2004, Mr. Spruiell told
2 the S.B.I. that Avis Arnold had told him that he was the
3 lookout in the Swain murder while Mr. Arnold and Mr. Spruiell
4 were in prison together.

5 According to Mr. Spruiell, Mr. Arnold told him that
6 he saw Maurice Wilkins with his arm around Frank Swain's
7 throat and that Wilkins cut Frank Swain's throat.

8 He stated that Mr. Arnold also said that Billy Ray
9 -- Billy Ray McNair was there, too. And Mr. Spruiell also
10 stated he had Arnold write a statement and then had it
11 notarized and sent to his attorney, Carl Stewart.

12 Q. Does the notarized letter -- letter from Avis
13 Arnold to Carl Stewart provide any of the details that were
14 relayed by Mr. Spruiell to the S.B.I.?

15 A. No. It just says that Mr. Arnold wanted to talk
16 to Stewart about the Swain and Day murders.

17 Q. Was Avis Arnold interviewed by law enforcement
18 during the original investigation?

19 A. He was. He was interviewed on December 30th and
20 December 31st, 1993, about his whereabouts.

21 Q. Was he interviewed by anyone else prior to the
22 Commission's investigation?

23 A. No.

24 Q. Prior to the Commission's investigation?

25 A. I'm sorry. He was interviewed by John Floyd on

1 January 15th, 2003, by the S.B.I. on March 25th, 2005, and
2 by the Center on January 29th, 2007.

3 Q. And what did he say in those interviews?

4 A. According to John Floyd's report, Avis Arnold told
5 him that JoJo and Billy McNair killed the victim and Sonja
6 Day but did not say he was there when they did so.

7 He later told the S.B.I. that Billy McNair told
8 him he had stabbed Sonja Day with a screwdriver. He stated
9 that McNair had never discussed with him the murder of Frank
10 Swain, and he didn't say anything about being present.

11 In his interview with the Center, he does not say
12 anything about the Swain murder.

13 Q. What did he tell the Commission?

14 A. He stated that he does not know anything about the
15 Frank Swain or Sonja Day murders and that he had agreed --
16 that he had agreed to write the letters for Spruiell to his
17 attorney because he thinks that Spruiell and Jones didn't do
18 it but also doesn't have any personal knowledge about the
19 murders.

20 Q. Did the Commission have Mr. Arnold's latent prints
21 compared to the unidentified identifiable latent lifts from
22 the crime scene?

23 A. We did, and he was eliminated from those.

24 Q. Did the Commission interview Mr. Wilkins or
25 Mr. McPhatter?

1 A. No. The main reason we were interviewing
2 alternate suspects was to obtain DNA standards for them, and
3 we already had standards for both Mr. Wilkins and
4 Mr. McPhatter that were collected during the initial
5 investigation.

6 MS. GUICE SMITH: Questions for Ms. Matoian about
7 that set of testimony?

8 (No response.)

9 MS. GUICE SMITH: Okay.

10 BY MS. GUICE SMITH:

11 Q. Who is Edward Hudson?

12 A. Edward Hudson was in prison with Leroy Spruiell,
13 Wallace Brandon Jones, and Wyatt Spruiell at various times
14 over the past 20-some years.

15 MS. GUICE SMITH: Commissioners, you can find a
16 summary related to Edward Hudson on page 518 to 519 of your
17 brief. Handout 38 is the summary of Edward Hudson's
18 criminal record.

19 (Handout Number 38 was identified for the
20 record.)

21 MS. GUICE SMITH: Do take a moment to review it.
22 He will be testifying live here at the end of Ms. Matoian's
23 testimony.

24 JUDGE WAGONER: I have a question. I forgot. Who
25 is JoJo?

1 THE WITNESS: That is Joseph McNair.

2 JUDGE WAGONER: Okay. Thank you. What page is
3 his testimony on?

4 COMMISSIONER FRYE: 518.

5 MS. GUICE SMITH: 518 to 519 in your brief with
6 the summary related to him.

7 JUDGE WAGONER: Gotcha.

8 (Pause in proceedings.)

9 MS. GUICE SMITH: Commissioners, I should also
10 mention that you were already provided Mr. Hudson's criminal
11 record up through 2005 on page 520 of your brief right after
12 that summary. The one in your notebooks is from 2005
13 forward since we had previously provided that to you.

14 (Pause in proceedings.)

15 JUDGE WAGONER: Was Hudson given a polygraph test?

16 THE WITNESS: No. The S.B.I. file doesn't
17 indicate that it -- they ever did that.

18 BY MS. GUICE SMITH:

19 Q. Ms. Matoian, was Mr. Hudson interviewed by law
20 enforcement during the original investigation?

21 A. No, he was not.

22 Q. Was he interviewed by anyone else prior to the
23 Commission's involvement?

24 A. He was interviewed by the S.B.I. on September
25 14th, 2005, after he wrote the letter to James Coman on

1 August 25th, 2005.

2 Q. And did the Commission interview Mr. Hudson?

3 A. We did. We interviewed him in prison on June
4 16th, 2017.

5 Q. Was that interview recorded and transcribed?

6 A. It was.

7 Q. What did he tell Commission staff?

8 A. Mr. Hudson said that in 2001 he was in prison with
9 Mr. Spruiell and with Mr. Jones at some point during that as
10 well. He said that in 2004, 2005, or 2006, he was also in
11 prison with Wyatt Spruiell, and they got to be pretty tight.

12 Mr. Hudson indicated that Wyatt Spruiell had been
13 diagnosed with a disease and that Wyatt Spruiell told him he
14 wanted to clear his conscience. He said that Wyatt Spruiell
15 told him -- or that Wyatt Spruiell knew Edward Hudson was
16 good friends with Leroy Spruiell and Wallace Brandon Jones.

17 Q. And what else did he tell you?

18 A. He said that Wyatt Spruiell told him it was
19 supposed to be a robbery that he set up, and that they were
20 going to steal drugs from the victim. He said that Wyatt
21 said he was there when the victim was killed.

22 And he said that Wyatt told him, quote, "It went
23 bad," end quote, and they tied a phone cord around the
24 victim's neck. He said if he remembered right, he thought
25 that they had decapitated the victim. He said that

1 afterward, they threw a gun in the river, but he wasn't sure
2 if the gun was used in the crime.

3 Mr. Hudson said that it had been a long time and
4 the details he provided in his letter to the S.B.I. would
5 have been when it was still fresh in his mind.

6 He said that Wyatt Spruiell also told him that he,
7 meaning Wyatt Spruiell, was strung out on dope and they were
8 trying to get money and drugs and stuff like that.

9 When asked if he remembered the names of the other people
10 that Wyatt said were involved, Mr. Hudson stated that Wyatt
11 had never told him their names. He also stated that Wyatt
12 told him -- that when Wyatt told him this, they may have
13 been in earshot of other people, but he did not know who and
14 he couldn't provide any names.

15 Q. Were there any inconsistencies between
16 Mr. Hudson's 2005 interview with the S.B.I. and his
17 interview with the Commission in 2017?

18 A. Yes. Mr. Hudson did not previously tell the
19 Attorney General's Office in his letter or the S.B.I. in his
20 interview that Wyatt Spruiell had been diagnosed with a
21 disease and wanted to clear his conscience. He said that
22 Mr. Hudson did not previously tell in the Attorney General
23 letter and the S.B.I. interview that a phone cord was used
24 or tied around the victim's neck.

25 He did not previously say in the letter or the

1 interview that a gun was thrown in the river. And in his
2 letter to the Attorney General, Mr. Hudson did provide the
3 names of Maurice Wilkins, JoJo McNair, and Joseph Lynn as
4 being the ones who were involved with Wyatt Spruiell.

5 In the interview with the S.B.I., he could only
6 remember JoJo McNair's name. And in our interview, he
7 stated that Wyatt Spruiell had never given him the names of
8 the people involved.

9 Q. Did you provide Mr. Hudson with a copy of his 2005
10 interview to read?

11 A. I did. He reviewed it and said he didn't remember
12 the fishing-line part of the interview and reiterated that
13 he was sure that Wyatt Spruiell had mentioned the telephone
14 cord to him.

15 Q. Did the Commission do anything additional with
16 respect to the information that Mr. Hudson provided?

17 A. Yes. The Commission obtained a court order for
18 D.P.S. records for Wyatt Spruiell and reviewed those.

19 Q. And did the records indicate that Wyatt Spruiell
20 had the disease that Edward Hudson stated that he had?

21 A. No. The records indicate that he did not have
22 that disease.

23 Q. Did the Commission do anything additional with
24 respect to the information provided by Mr. Hudson?

25 A. We did. We also obtained a court order for the

1 prison housing records for Mr. Hudson and compared those to
2 the prison housing records we already had for Leroy Spruiell,
3 Wallace Brandon Jones, and Wyatt Spruiell, to determine when
4 he was housed with those individuals and to compare it to
5 how he had described it.

6 Q. And what did that review reveal?

7 A. That review revealed that Leroy Spruiell, Wallace
8 Brandon Jones, and Edward Hudson were in Hyde Correctional
9 from June 24th, 1999 until February 1st, 2000, with the
10 exception of the days where Mr. Hudson was taken to the Pitt
11 County Jail.

12 Again, in March 6th, 2001, through September 12th,
13 2001, Leroy Spruiell, Wallace Brandon Jones, and Edward
14 Hudson were in Hyde Correctional together, with the
15 exception of the days where Hudson was taken to the Pitt
16 County Jail.

17 Wyatt Spruiell and Edward Hudson were in Craven
18 Correctional from October 19th, 2001, until November 1st,
19 2001, when they were both transferred to Carteret
20 Correctional. They remained together in Carteret
21 Correctional until February 20th, 2002.

22 And then Leroy Spruiell and Edward Hudson were in
23 Craven Correctional together from August 16th, 2005, until
24 September 1st, 2005.

25 Q. Did the Commission do anything else with the

1 information provided by Edward Hudson?

2 A. We obtained a court order for JoJo McNair's DNA
3 sample, served that on him, and collected his DNA sample and
4 interviewed him in prison.

5 Q. And when did that occur?

6 A. On July 19th, 2017.

7 Q. And after the collection of that sample, did he
8 agree to be interviewed?

9 A. He did.

10 MS. GUICE SMITH: Commissioners, if you will refer
11 to Handout 39 in your Hearing Handout notebooks. This is
12 the criminal record of Joseph McNair.

13 (Handout Number 39 was identified for the
14 record.)

15 BY MS. GUICE SMITH:

16 Q. Was Mr. McNair interviewed by law enforcement
17 during the original investigation?

18 A. He was, on January 1st, 1994.

19 Q. Was he interviewed by anyone else prior to the
20 Commission's involvement in the case?

21 A. He was, on November 10th, 2006.

22 Q. What did he tell the Commission in his July 19th,
23 2017, interview?

24 A. He stated that he didn't know anything about the
25 murder until he had gotten to the club that night and

1 someone told him about it. He stated that he got to the
2 club around midnight and had been with his girlfriend
3 earlier in the evening.

4 In his original interview with law enforcement, he
5 named the girlfriend as Lisa Allen. However, in the
6 Commission's interview, he said he remembered dating a woman
7 named Lisa Allen but could not remember the name of the girl
8 he was with that night.

9 He stated he lived about five miles away from the
10 victim's trailer and was not in the trailer park where the
11 victim lived at all that night.

12 He stated that he knew who the victim was but had
13 never been in or to his house and that he was not involved
14 with drugs at that time and had not bought drugs from the
15 victim.

16 He said that he had met both Mr. Spruiell and
17 Mr. Jones while he was in prison. However, he was at first
18 confusing Leroy and Wyatt Spruiell, and later said that he
19 did not know Wyatt Spruiell. He stated that he had never
20 told Avis Arnold that he and his brother had killed the
21 victim and that he did recall people coming to interview him
22 at Hyde Correctional.

23 Q. Who interviewed Joseph McNair at Hyde
24 Correctional?

25 A. The North Carolina Center on Actual Innocence.

1 Q. What did he tell the Commission about that
2 interview?

3 A. Mr. McNair said that after the interview, Leroy
4 Spruiell had approached him and asked him what the Center had
5 talked to him about. He said that he told Mr. Spruiell that
6 they had asked him about, quote, "that murder," end quote.
7 He stated that that was the extent of their conversation.

8 Q. Did you ask Mr. McNair anything else?

9 A. I asked him if he had told Leroy Spruiell that his
10 brother Billy McNair had killed the victim, and he denied
11 telling Leroy Spruiell this, and he said he never had any
12 other conversations about this murder with Leroy Spruiell.

13 Q. And did you ask him anything else?

14 A. I asked him if he killed the victim, and he said
15 no. I asked him if he was present when the victim was
16 killed, and he said no.

17 Q. Did the Commission have Mr. McNair's DNA compared
18 to the unknown profiles from the crime scene?

19 A. We did.

20 Q. And did the Commission have Mr. McNair's latent
21 prints compared to the unidentified identifiable latent
22 prints from the crime scene?

23 A. Yes, from the Swain crime scene.

24 MS. GUICE SMITH: Commissioners, do you have any
25 questions for Ms. Matoian as it relates to her testimony

1 about Edward Hudson or JoJo McNair?

2 COMMISSIONER BARROW: No, I was scratching my
3 head.

4 MS. GUICE SMITH: Okay.

5 ALT. COMMISSIONER NEWTON: You said the standards
6 were compared. Was he eliminated?

7 THE WITNESS: For the DNA --

8 ALT. COMMISSIONER NEWTON: Right.

9 THE WITNESS: -- or the prints? He was eliminated
10 from all the prints, yes.

11 ALT. COMMISSIONER NEWTON: Okay.

12 JUDGE WAGONER: And the DNA?

13 THE WITNESS: That one is a little trickier.

14 COMMISSIONER FRYE: It's one of those two people
15 -- there's three people that --

16 JUDGE WAGONER: That's -- yeah.

17 THE WITNESS: Let me find my chart. (Reviewing
18 documents.) Okay. He -- Mr. McNair is excluded from the
19 tire tool. He is excluded from the mixture from the
20 envelope containing the scrapings from the victim's front
21 door. He was excluded from the mixture from Area 1 of the
22 inside left pocket with that initial testing at Bode -- I'm
23 sorry -- at Cellmark.

24 On Area 1 of the inside right pocket from that
25 initial Cellmark testing, he is excluded from that mixture.

1 On Area 2 of the inside right pocket, he's also excluded as
2 a contributor from that mixture.

3 In the 2018 STRmix at DNA Labs International,
4 Mr. McNair is -- let's see. So the testing that they had
5 done on those previous extracts: As Meghan testified to
6 yesterday, they weren't able to make a lot of comparisons to
7 those extracts due to those -- to the complex nature of the
8 mixture.

9 The extracts from Area 2 of the right pocket,
10 there was a partial mixture of at least three individuals,
11 and that was the one where Wallace Brandon Jones was the
12 only person who could be conclusively excluded. And then
13 the testing on the pockets that was done using the MVAC,
14 Joseph McNair is excluded from the mixture that came from
15 the white -- right pocket.

16 From the left pocket, he is excluded from that
17 unknown number 1 position, but they were not able to draw
18 any conclusions about the unknown number 3 and unknown
19 number 4 positions because the software could not explain
20 him as being part of that mixture.

21 JUDGE WAGONER: Thank you.

22 MS. GUICE SMITH: Any other questions for
23 Ms. Matoian?

24 (No response.)

25 MS. GUICE SMITH: You may step down.

1 THE WITNESS: It may take me a minute to move my
2 things.

3 ALT. COMMISSIONER NEWTON: Could I ask one -- I'm
4 sorry, before you have to step down. Just because you're
5 leaving. The scissors -- I mean, the knife that was found
6 in the car where the victim traveled with the other guy out
7 of state and came back and they were stopped with a stop
8 sign violation -- a stop light violation or something, did
9 anybody answer the question whether that blade or that knife
10 is still in the car? Was it accounted for? I know that's
11 kind of random, but that's bothering me.

12 THE WITNESS: I will say that the -- there was no
13 knife found on the victim's person at the time. I think
14 other individuals had indicated they'd known him to carry a
15 knife, and that was in the car in that New Jersey report,
16 but no knife was recovered from the crime scene.

17 ALT. COMMISSIONER NEWTON: And the crime scene,
18 did it include the car?

19 THE WITNESS: I would have to go back and double-
20 check. I don't know if they -- I would have to double-check
21 what car they were driving in New Jersey, if he still had
22 that car, and see if they conducted a search of his car. We
23 can look into that.

24 ALT. COMMISSIONER NEWTON: Thank you.

25 MS. GUICE SMITH: Okay. You may step down.

1 (The witness left the stand.)

2 MS. GUICE SMITH: The Commission is going to call
3 Edward Hudson to testify, and he's available. He has been
4 written in from the Department of Public Safety and is
5 currently in the custody of Wake County Sheriff. So he's
6 going to come in and come around.

7 JUDGE WAGONER: Are y'all okay to keep going?

8 COMMISSIONER BOSWELL: Yeah.

9 COMMISSIONER BRITT: How long -- how long do you
10 anticipate this taking?

11 COMMISSIONER BOSWELL: Lindsey, how long do you
12 think this will take?

13 MS. GUICE SMITH: Not long.

14 JUDGE WAGONER: Not long.

15 COMMISSIONER BRITT: Okay.

16 (Mr. Hudson was brought into the room.)

17 JUDGE WAGONER: Just have a seat right there, sir,
18 please, in that black chair. All right, sir. If you would
19 please place your left hand on the Bible. As best you can,
20 raise your right hand.

21 EDWARD HUDSON,
22 having been called as a witness for the Commission, was
23 sworn by Judge Wagoner and testified as follows:

24 JUDGE WAGONER: Thank you. All right.

25 EXAMINATION BY MS. GUICE SMITH:

1 Q. Good afternoon, sir.

2 A. Hi.

3 Q. Can you please state your name for the Commission?

4 A. Edward Hudson.

5 Q. And where are you currently incarcerated?

6 A. Caledonia Minimum.

7 JUDGE WAGONER: Down where?

8 THE WITNESS: Caledonia Minimum.

9 BY MS. GUICE SMITH:

10 Q. And what are you incarcerated for?

11 A. I got a habitual felon extortion charge.

12 Q. And do you know why you're here today?

13 A. Yes, ma'am.

14 Q. My name is Lindsey Smith. I'm the director of the
15 North Carolina Innocence Inquiry Commission. We are hearing
16 the case of State versus Leroy Spruiell and State versus
17 Wallace Brandon Jones.

18 A. Yes, ma'am.

19 Q. I've got some questions for you today.

20 A. Yes, ma'am.

21 Q. When I'm done, the folks around the table are
22 commissioners and they --

23 A. Yes, ma'am.

24 Q. -- may have questions --

25 A. Yes, ma'am.

1 Q. -- for you as well.

2 What do you know about the Frank Swain homicide?

3 A. In I think -- I believe it was 2001, I was at Hyde
4 Correctional with the two defendants. And, you know, I'd --
5 I'd heard about it then, and -- and at the time they were
6 talking about the case and pleading their innocence and
7 talking about trying to get some help.

8 And then later on I was transferred to Carteret
9 County where I was housed with a Wyatt Spruill, his cousin
10 of Leroy Spruill. And he had heard me mention the name
11 Leroy and -- and had told me that was his cousin, and he
12 kind of befriended me.

13 Over a period of couple of weeks, we'd become
14 friends. And then several weeks later, he had come back and
15 after talking about it a little bit, he had told me that he
16 had thought that he had contracted AIDS and was getting
17 sick. And he was coming off a lot of drug abuse and stuff
18 like that. And he said that he needed to get some stuff off
19 his conscience.

20 Well, he went on to tell me that during the
21 incident that when the gentleman, Frank, was murdered -- I'm
22 not sure of his last name, but I know him by Frank. When he
23 was murdered, that supposedly he was told to set up a deal
24 with Frank, have him come over, and that there was one or
25 two people in the place with Wyatt -- I'm not sure how many,

1 but -- at the time they were going to be in the back room,
2 and they were going to set it up to where they were going to
3 rob the person. And he had told me that when they came over
4 and went to rob him, it went bad, and the person ended up
5 being killed and that he had felt bad about that.

6 And then he said later on that his sister was
7 murdered and that he felt like that was maybe a message to
8 keep him quiet because she was killed in the same fashion.

9 And then the rest is just, you know, common
10 knowledge, you know, of stuff that people had talked about
11 over the years, bits and pieces.

12 Q. And who did you tell this information to, if
13 anyone?

14 A. I contacted the S.B.I. agent.

15 Q. And how did you get his contact information?

16 A. I asked the address from one of the case managers.

17 Q. And how did you know who the S.B.I. agent was that
18 you should contact?

19 A. I didn't. I just wrote in general and wrote a
20 letter explaining the situation because I didn't feel like
21 -- you know, at the time Mr. Spruiell and Wallace had
22 maintained their innocence. And when he told me that, I
23 didn't feel in good conscience that, you know, I could let
24 them sit there and -- and not offer to contact somebody, you
25 know, to try to help them. And made a statement and never

1 heard anything after that.

2 And then I had ran into Mr. Spruiell at C.P. during
3 an eye appointment and asked him if anything had ever come
4 up and told him that I had made a statement, you know, to
5 them, and that if he needed me to make a statement or -- or
6 testify on his behalf, I would. And then the Innocence
7 Project came and saw me and interviewed me.

8 Q. I am going to hand you a letter.

9 A. Yes, ma'am.

10 Q. Can you please identify that? Is that a letter
11 that you wrote to the S.B.I.?

12 A. It appears to be, yes, ma'am.

13 Q. Okay. And at the top of it, does it say
14 Mr. Coman?

15 A. It does, but I don't remember at the time having a
16 set name.

17 Q. Do you --

18 A. But --

19 Q. Do you know who Mr. Coman is?

20 A. Not -- not -- I mean, I wouldn't know him if I saw
21 him now.

22 Q. So do you think that you directed that letter to
23 the S.B.I. or the Attorney General's Office?

24 A. I -- I thought it was the S.B.I. I mean, I could
25 be mistaken, but I thought it was the S.B.I. at the time.

1 Q. And when you said a minute ago that you heard
2 Wyatt say that he had set up this robbery and they were
3 going to hide in the back room and rob a person, where did
4 you understand that they would be hiding?

5 A. The way that I interpreted what he said was he was
6 enticed to have the person come over to -- to -- supposedly
7 a drug transaction. I don't -- I'm not sure whether it was
8 to buy or sell. But the person that was with him -- person
9 or persons; I'm not sure how many -- they were going to --
10 supposedly in the back room waiting for Wyatt to do the
11 deal, and then they were going to come out and rob the
12 person, according to Mr. Spruiell.

13 And I can't say whether Wyatt Spruiell was involved
14 in the murder. I can't say that. I just know what I was
15 told; that the deal went bad and supposedly the person was
16 murdered.

17 Q. And do you know where the crime happened?

18 A. No, ma'am. I can't -- I mean, I don't know a
19 address or set location.

20 Q. What conversations have you had with Leroy
21 Spruiell?

22 A. When we were at C.P., just in passing -- we were
23 having a eye appointment -- and I asked him, like I said, if
24 anything had come of his case, and -- and I told him that I
25 was willing to testify on his behalf. That, you know,

1 'cause I told him what I'd heard from Wyatt, and he said
2 that he had -- the Innocence Commission was helping him on
3 his case. And I told him if they wanted to contact me, I
4 would be glad to tell them what I heard.

5 Q. And do you recall when that was that you were in
6 Central Prison with him for an eye appointment?

7 A. It's been probably six, seven, eight months ago,
8 maybe. Maybe a little bit longer. Thereabouts.

9 Q. Is that the first time that you've spoken to Leroy
10 Spruiell?

11 A. I believe so.

12 Q. I'm going to hand you a report from the S.B.I.
13 dated September 14th, 2005.

14 A. Uh-huh.

15 Q. If you'll take some time -- and I know this copy
16 is not great, but if you can read through that and then
17 pay particular attention to the last paragraph of page 1 and
18 2, the first paragraph of page 2.

19 A. Okay. (Reviewing documents.)

20 (Pause in proceedings.)

21 Q. Mr. Hudson --

22 A. Yes, ma'am.

23 Q. -- I believe the pages are out of order.

24 A. Oh, I'm sorry.

25 Q. It's not your fault. It's my fault.

1 (Ms. Guice Smith corrected the document.)

2 Q. That's the correct order. Just read the entire
3 thing.

4 A. Okay.

5 (Pause in proceedings.)

6 BY MS. GUICE SMITH:

7 Q. Have you had an opportunity to --

8 A. Yes, ma'am.

9 Q. -- read that?

10 Do you recognize that as an interview that you had
11 on September 14th, 2005, with Special Agent-in-Charge J.B.
12 Tilley?

13 A. Yes, ma'am.

14 Q. And that was conducted at Southern Correctional
15 Institute?

16 A. I don't remember it being there. I thought it --
17 I was thinking it was at Carteret, but it may be Southern.

18 Q. Have you been incarcerated at Southern --

19 A. Yes, ma'am.

20 Q. -- a period of time?

21 A. Yes, ma'am.

22 Q. And do you see in that report on the second page
23 on the fourth paragraph:

24 "Hudson stated a month or so ago he ran into
25 Leroy Spruiell at the Hyde County facility. He

1 talked to Leroy about Wyatt. Hudson asked Leroy
2 about the murder of Frank. Leroy told him the
3 same story and used the exact same name."

4 A. Uh-huh. Yes, ma'am.

5 Q. Is it still your recollection that the first time
6 you've talked with Leroy Spruiell about this case was in the
7 last seven to eight months?

8 A. I was only with Leroy when I was at Hyde with him
9 back in 2001. I've only been there that time. This may be
10 misconstrued a little bit.

11 I ran in -- now, Leroy was at Craven -- at Craven
12 Correctional. I do remember that. But we didn't have
13 contact other than casual -- casual passing when he was
14 transferred from Hyde to Craven, and I was processing.

15 Q. So I'm going to continue reading there.

16 A. Uh-huh.

17 Q. "Leroy said that Wyatt testified in the trial.

18 Wyatt could have told the truth; and if he had,

19 Leroy would have gotten off.

20 A. No. He -- he said that from the very start, that
21 -- that if everybody had -- that had known anything had told
22 the truth, that, you know, he wouldn't have faced what he
23 had.

24 Q. Who said that?

25 A. Leroy said that.

1 Q. But I thought you hadn't talked to him until the
2 last six months.

3 A. No. From the very start, when we first met.

4 Q. Which was when?

5 A. Back in 2001.

6 Q. In 2001.

7 A. I mean, he's contended that from day one, that if
8 everybody had told the truth and -- and that there was some
9 girl involved in the case -- and I can't remember the name
10 -- that was a girlfriend of his co-defendant, that she was
11 offered some kind of deal to testify against him or
12 something like that.

13 Q. Okay.

14 A. And I don't know the details of that.

15 Q. And the next paragraph states:

16 "Hudson stated he wrote the names in his
17 letter to Coman from memory right after he talked
18 to Leroy."

19 A. Uh-huh.

20 Q. This letter appears to have been written to
21 Mr. Coman on August 25th, 2005.

22 A. Uh-huh.

23 Q. Do you know where you were incarcerated on August
24 25th, 2005?

25 A. I believe it was Carteret.

1 Q. Is it possible that it was Craven Correctional?

2 A. It's -- it's possible. I mean, it's --

3 Q. If D.P.S. records indicate that you were in Craven
4 Correctional from August 16th, 2005, until September 1st,
5 2005, would there be any reason that those would be
6 incorrect?

7 A. No, ma'am.

8 Q. Okay.

9 A. No, ma'am.

10 Q. And if those records indicate also that during
11 that time period Leroy Spruiell was also in Craven
12 Correctional with -- during that time period, would there be
13 any reason that --

14 A. No.

15 Q. -- you would suspect --

16 A. He was at Craven during -- during the time, and
17 like -- like I just stated a few minutes ago.

18 Q. And you spoke to him while you were in Craven?

19 A. Just in passing, not --

20 Q. Okay.

21 A. -- not -- not about his case or any -- because he
22 was population. I was processing.

23 Q. So it's your contention that you didn't speak to
24 Mr. Spruiell about this case and then write the letter to
25 Mr. Coman?

1 A. I don't remember it being Mr. Coman.

2 COMMISSIONER BARROW: Excuse me. Which
3 Mr. Spruiell, please?

4 MS. GUICE SMITH: Leroy Spruiell. Thank you.

5 A. Yeah. I don't remember it having the name of
6 Mr. Coman, but obviously I did. But --

7 BY MS. GUICE SMITH:

8 Q. For the S.B.I.?

9 A. Right, right. But I don't know -- I don't
10 remember having a name prior to writing that person -- to
11 writing -- I thought I -- to the best of my knowledge, I
12 thought I wrote just a generic letter trying to -- to get a
13 response, you know, to make a statement.

14 But -- but to your question, as far as discussing
15 the case at Craven, I can't recall that, to the best of my
16 knowledge.

17 As I addressed when the inquiry come and spoke to
18 me at -- at Lanesboro, I had an injury -- head injury during
19 the hurricane, and I was thrown off a tractor, and my short-
20 term memory was affected a little bit. But I can say that
21 with 100 percent certainty what my statement was made that I
22 was -- discussed with Wyatt Spruiell, that's a hundred
23 percent accurate.

24 Q. And would that have been Hurricane Matthew?

25 A. It was a couple of years prior to '15, which --

1 whichever one that was.

2 Q. Probably not Matthew. Has Leroy Spruiell asked you
3 to do anything --

4 A. He --

5 Q. -- with respect to this case?

6 A. He's never said anything but to tell the truth,
7 and I'll -- I'll take a polygraph on that. And I've -- I've
8 always -- in any conversation I've ever heard him make or
9 have with someone, he's always said the same thing.

10 Q. Were you promised anything by --

11 A. No, ma'am.

12 Q. -- Leroy Spruiell --

13 A. No, ma'am.

14 Q. -- to provide the information that you provided?

15 A. No, ma'am. I volunteered on my own.

16 Q. Were you promised anything by anyone else to
17 provide the information --

18 A. No, ma'am.

19 Q. -- he provided?

20 Have you spoken to Wyatt Spruiell since the time
21 that he -- that you say he originally gave you this
22 information?

23 A. I ran into him yesterday in the holding cell.

24 Q. And what conversations did you have yesterday in
25 the holding cell with him?

1 A. When they put us all in together and no one
2 recognized each other besides me and Leroy Spruiell, Wyatt
3 made a comment to Leroy if he knew who he was, and he said
4 no. And Leroy -- I mean, Wyatt told him that he was his
5 cousin. And he didn't even -- Leroy didn't even recognize
6 his co-defendant, Wallace Jones. And then Wyatt started
7 asking a few questions.

8 JUDGE WAGONER: I'm sorry. Did you say that you
9 and Wyatt and Leroy and Mr. Jones were all in the same
10 holding cell yesterday?

11 THE WITNESS: Yes, ma'am. We come in about the
12 same time and --

13 JUDGE WAGONER: Here in Wake County?

14 THE WITNESS: Yes, ma'am.

15 JUDGE WAGONER: I would like to do an order to say
16 that they're to be segregated.

17 MS. GUICE SMITH: Please do.

18 JUDGE WAGONER: If somebody will type it up, I
19 will sign it.

20 MS. GUICE SMITH: Absolutely.

21 A. But the -- the particulars of the case, I mean,
22 they weren't discussed in broad spectrum like you might
23 expect. It was just, you know, "I haven't seen you in all
24 these years." Leroy made a comment that he hadn't seen his
25 co-defendant since 2005. Wyatt Spruiell asked a few

1 questions about, you know, if he remembered this person,
2 that person, this person -- any of which I don't know
3 'cause I didn't know anything about the case except for
4 running into Mr. Spruill back in 2001. And then after that,
5 you know, bits and pieces, you know, hearing people talk
6 about it.

7 Now, I can say that Leroy Spruill is -- is known
8 all over the prison system of North Carolina as -- he's one
9 of the most respected people that you'll run into as far as
10 an inmate. And never once have I seen him done anything but
11 try to help people out.

12 And the reason I say that is, again, from day one,
13 he's -- anybody he's ever discussed about the case trying to
14 get help, you know, from the outside, as far as
15 representation, stuff like that, he's never told anybody to
16 do anything but tell the truth.

17 And he said -- you know, in his situation, that he
18 made the comment that he was offered a sentence for I
19 believe seven and a half years if he would testify against
20 his co-defendant, and he said that he couldn't do that in
21 all good consciousness [phonetic] knowing that they were
22 both innocence -- innocent. I'm sorry.

23 Other than that, it's just -- you know, people
24 that know of him, you know, have always asked questions
25 whether, you know, he's gotten any help or gotten out or --

1 or to that effect.

2 BY MS. GUICE SMITH:

3 Q. So while you were in the holding cell yesterday,
4 did Wyatt Spruiell provide any information about being
5 involved with the crime?

6 A. No, ma'am. He's -- he's never -- he didn't even
7 recognize me. He just asked questions about whether he
8 remembered certain people and, you know, certain people that
9 had maybe -- I'm not sure whether they were involved in the
10 case or not. I think certain names he might have asked may
11 have been or -- or people that knew about the case.

12 Q. Are you from Washington County?

13 A. No, ma'am.

14 Q. Have you ever been in Washington County?

15 A. Just driving through.

16 Q. Okay. So you have some convictions from
17 Washington County for a simple worthless check from 1991 and
18 a larceny -- misdemeanor larcenies from 1991 in Washington
19 County? Do you recall those?

20 A. Not in Washington County. In -- in Little
21 Washington, I've had a check charge, but not in Plymouth.
22 There was a father and son with my same name.

23 Q. And do you have some simple worthless checks out
24 of Pitt County? Is that accurate?

25 A. Yes, ma'am, back in the day. Yes, ma'am.

1 Q. That was also in 1991?

2 A. Very possible.

3 Q. Simple worthless check in Martin County?

4 A. Uh-huh.

5 Q. Worthless check in Beaufort County?

6 A. Uh-huh.

7 Q. Common law robbery --

8 A. Never a common law robbery.

9 Q. -- in Pitt County?

10 A. No, ma'am.

11 Q. In 1994?

12 A. No, ma'am.

13 Q. No?

14 A. Never -- never a common law robbery.

15 MS. GUICE SMITH: Commissioners, we will double-
16 check all of these for you-all. I'm looking at the wrong
17 person. I'm so sorry. You can ignore all of that that I
18 just said.

19 JUDGE WAGONER: You're looking at the wrong one.

20 MS. GUICE SMITH: Let's try this again.

21 BY MS. GUICE SMITH:

22 Q. Washington County, 1995, sell or deliver cocaine?
23 Is that you?

24 A. No, ma'am.

25 Q. That's not you.

1 (Staff conferred.)

2 A. The only thing I've --

3 COMMISSIONER BRITT: Can I ask a question?

4 MS. GUICE SMITH: You may.

5 COMMISSIONER BRITT: What's your date of birth?

6 THE WITNESS: 2/9/66.

7 JUDGE WAGONER: 2/9?

8 THE WITNESS: Yes, ma'am.

9 JUDGE WAGONER: Okay.

10 THE WITNESS: February 9th.

11 MS. GUICE SMITH: All right. Let's try this --

12 COMMISSIONER BARROW: And your middle name?

13 THE WITNESS: Brian.

14 BY MS. GUICE SMITH:

15 Q. Obtaining --

16 COMMISSIONER BRITT: B-r-i or B-r-y?

17 THE WITNESS: I.

18 BY MS. GUICE SMITH:

19 Q. I'll try this again to see if I've got the right
20 person. Edward B. Hudson?

21 A. Yes, ma'am.

22 Q. Beaufort County, obtaining property by false
23 pretenses, 2003, 2004?

24 A. Yes, ma'am.

25 Q. Okay. Some additional obtaining property by false

1 pretenses in Pitt County in 2004?

2 A. Yes, ma'am.

3 Q. Worthless check in Pitt County in 2004?

4 A. Yes, ma'am.

5 Q. More worthless checks in Beaufort County in 2003?

6 A. Yes.

7 Q. Wilson County, worthless checks in 2009?

8 A. Uh-huh.

9 Q. Driving while license revoked in Beaufort County
10 in 2004?

11 A. Yes, ma'am.

12 Q. Another simple worthless check in Beaufort County
13 in 2003?

14 A. That would've been possible.

15 Q. Unauthorized use of a motor vehicle in Martin
16 County in 2012?

17 A. Yes, ma'am.

18 Q. Cyberstalking in Haywood County in 2014?

19 A. Yes, ma'am.

20 Q. Harassing phone calls also in Haywood County in
21 2014?

22 A. Yes, ma'am.

23 Q. Communicating threats and harassing phone calls in
24 Onslow County in 2014?

25 A. Yes, ma'am.

1 Q. And extortion in 2014 out of Beaufort County?

2 A. Yes, ma'am.

3 Q. And then a habitual felon out of Beaufort County
4 in two thousand and --

5 A. Same time.

6 Q. -- fifteen, I guess is when the conviction was?

7 A. Yes.

8 Q. Okay. So that's you. Did you know Wyatt Spruiell
9 prior to being incarcerated?

10 A. No, ma'am.

11 Q. Did you know Leroy Spruiell prior to being
12 incarcerated?

13 A. No, ma'am.

14 Q. Did you know Wallace Jones prior --

15 A. No, ma'am.

16 Q. -- to being incarcerated?

17 Did you have conversations with Wallace Jones in
18 prison?

19 A. Just when we were at Hyde, we used to all play
20 volleyball together. Him, myself, Leroy, and several other
21 people, and that's really the only communication we really
22 had. I mean, we were just passing friends.

23 Q. He didn't talk about his case with you?

24 A. I mean, he spoke with a lot of people about it,
25 you know, maintaining his innocence, and saying that he was

1 trying to get help.

2 Q. Have you ever heard Leroy Spruiell ever say
3 anything other than that he did not commit the crime?

4 A. No, ma'am.

5 Q. Have you ever heard him admit guilt to any portion
6 of the crime?

7 A. No, ma'am.

8 Q. Have you ever heard Wallace Jones admit guilt to
9 any portion --

10 A. No, ma'am.

11 Q. -- of the crime?

12 A. From day one, anytime that I've ever heard -- have
13 any kind of conversation about the case, they were
14 maintaining their innocence.

15 Q. And I want to go back just for one more second to
16 your conversations with Wyatt Spruiell.

17 A. Uh-huh.

18 Q. What -- what caused those conversations to come
19 about?

20 A. Like I said, when -- when we were there, either he
21 or I mentioned the name Leroy Spruiell and -- I think it was
22 me -- and -- and the reason I say that is 'cause he said
23 that that was his cousin. And from there, because of the
24 high regard I had for Leroy, we kind of kept talking and
25 became somewhat friends.

1 And then later on, he -- I could have swore he
2 told me that he had contracted AIDS, which I -- I could be
3 wrong about that, but he was very sick, and at the time he
4 was under a lot of drug use and at the time looked very bad.
5 And he had made the comment that he wanted to get some stuff
6 off his conscience, and then he had made the comments that
7 he had.

8 MS. GUICE SMITH: Commissioners, that's all the
9 questions that I have, if you-all have questions of
10 Mr. Hudson.

11 JUDGE WAGONER: Yes.

12 EXAMINATION BY COMMISSIONER BRITT:

13 Q. Mr. Hudson, my name is Johnson Britt. I'm the
14 District Attorney in Robeson County.

15 A. Yes, sir.

16 Q. I serve as a commissioner here. You said earlier
17 that you had a conversation with Leroy Spruiell. I believe
18 -- I thought you said 2001?

19 A. Yeah. We were -- we were at Hyde Correctional
20 together. That's the first time I met him.

21 Q. In 2001.

22 A. I believe that -- it was during 9/11, that time
23 frame, 2001, I think it was.

24 Q. And was that the same time that you met Wyatt
25 Spruiell?

1 A. No, sir. I met him at -- later on at Carteret
2 Correctional. I believe that was a few years later.

3 JUDGE WAGONER: You said a few years later?

4 THE WITNESS: I believe so. I --

5 JUDGE WAGONER: All right.

6 THE WITNESS: -- I don't know the exact date,
7 but --

8 BY COMMISSIONER BRITT:

9 Q. And you said that yesterday y'all all basically
10 came in at the same time?

11 A. Within a few minutes of each other, about -- about
12 ten, 15 minutes, and then we --

13 Q. You were in a holding cell at the Wake County
14 Jail?

15 A. Yes, sir. Yes, sir.

16 Q. Did you recognize everyone?

17 A. I recognized Leroy. He's never changed in
18 appearance. Wallace Jones had -- nobody recognized him.
19 And then I somewhat recognized Wyatt but couldn't tell you
20 who he was until he said.

21 Q. Did you speak to any of them?

22 A. We all spoke, you know, basically saying hi.

23 Q. Just greetings?

24 A. Just greetings, pretty much. You know, I -- you
25 know, Wallace had asked Leroy Spruiell about, you know, how

1 this was going to work and whether he thought that it was
2 going to help or, you know, to that effect.

3 The only real questions that were asked was Wyatt
4 wanted to know if -- if he remembered -- if Leroy Spruiell
5 remembered certain people, which I didn't know who they
6 were.

7 Q. Like people from back in the day?

8 A. I think that and maybe some people that might have
9 had something -- you know, knowledge of the case or
10 something like that. I -- I can't say for sure because I
11 don't know those people.

12 Q. Okay. And the conversation that you had testified
13 about having with Wyatt Spruiell --

14 A. Uh-huh.

15 Q. -- he said there it was a robbery that went bad?

16 A. He -- he was asked -- to the best of my knowledge
17 and memory, he was asked to have the person that I know as
18 Frank -- I don't know his last name -- to come over and -- I
19 don't know whether he was going to -- in -- intent to buy
20 drugs or sell drugs, but somebody was going to hide in the
21 back room, and they were going to rob that person when they
22 came over.

23 Q. And this was --

24 Was this supposed to take place at Wyatt's house?

25 A. I don't -- I'm not sure where it was. I believe

1 Wyatt might have been staying there or -- or was close
2 friends with the people or something to that, but I can't
3 say for sure.

4 All I know is they said that there was -- there
5 was -- somebody was going to hide in the back room, and then
6 when the deal was supposed to be made, they were going to
7 rob the person. And supposedly the deal went bad and the
8 person ended up being killed the way that they were.

9 Q. Did he describe the manner in which the person was
10 killed?

11 A. At the time I thought he told me that the person
12 was -- was cut, and that they were almost beheaded from the
13 cut. And something to do -- what I remember is a phone cord
14 being tied around a neck, and supposedly later on his sister
15 was killed in the same manner. I think she was tied to a
16 bed and a phone cord --

17 JUDGE WAGONER: When you say "his sister," do you
18 mean the victim's sister?

19 THE WITNESS: Leroy's -- I mean, Wyatt's sister.
20 Wyatt Spruiell.

21 JUDGE WAGONER: Wyatt's sister.

22 THE WITNESS: Yes, ma'am.

23 A. And then I believe -- and I can't swear to this,
24 but I believe they said that a weapon was thrown in a river
25 somewhere. I don't -- I can't be a hundred percent honest

1 about that, but I believe that's what I remember.

2 BY COMMISSIONER BRITT:

3 Q. That -- told you that --

4 A. A weapon was thrown in a river somewhere.

5 Q. A weapon was thrown in a river?

6 A. Yeah. They didn't say --

7 Q. Did they name who the other people involved were?

8 A. No, sir. No, sir.

9 JUDGE WAGONER: He said Frank. He said Frank.

10 BY COMMISSIONER BRITT:

11 Q. This is -- I'm talking in terms of Wyatt. Did
12 Wyatt indicate in any fashion who the other people were that
13 were --

14 A. Involved in it?

15 Q. -- involved?

16 A. No, sir. Not -- I don't -- to the best of my
17 recollection. There -- in that statement there's a name
18 JoJo, but I can't remember whether that was the other person
19 or that was the name for who I call Frank. It had been so
20 long ago that I -- I can't recall that name.

21 Q. Did Wyatt express any opinion about there being a
22 connection between his sister's murder and Frank's murder?

23 A. Yes, sir. To the best of my recollection, he made
24 the comment that he feared that that was a way to keep him
25 quiet. Now, at the time, you know, I -- I don't know that

1 -- I can't say that he was directly involved in killing the
2 person. I just know that he made the statements that he
3 made and that he -- and like I said, he was -- he was in
4 very bad health at the time, and that he made the comment
5 that he thought that that might have been made to keep him
6 quiet.

7 Q. And did you say anything or ask him any questions
8 in response to what he was telling you?

9 A. Just -- just out of curiosity, and trying to, you
10 know -- you know, trying to dig and, you know, to find out
11 information that might be useful in -- in coming to the
12 truth so I could contact the S.B.I. But it was --

13 Q. What did you ask him?

14 A. Sir?

15 Q. What did you ask him?

16 A. Just basically, you know, to explain what he was
17 trying to tell me, and -- and -- and all I really got was
18 the statement that I made.

19 Q. Did you ever tell Leroy about your conversation
20 with Wyatt?

21 A. Yes. When I was at C.P., we ran into each other
22 at an eye appointment. And I told him that -- you know,
23 that he had made that statement and that, you know, if there
24 was any way that I could testify, you know, on his behalf,
25 that I would be willing to do that.

1 And that's when the Innocence Commission was -- he
2 had me contact -- I think he contacted them, and they come
3 saw me while I was at Lincoln Correctional -- not
4 Lincoln, but Lanesboro. I'm sorry.

5 Q. In relationship to when you saw Leroy at C.P.,
6 when did you write the letter to the S.B.I.?

7 A. Oh. That was when I was with Wyatt at -- years
8 ago, before that.

9 Q. So before.

10 A. Yes, sir.

11 Q. And did you tell Leroy you had written the S.B.I.?

12 A. Yes. At the time, you know, I told --

13 Q. And did anyone from the S.B.I. ever come interview
14 you?

15 A. Yes, someone did.

16 Q. Where did that take place?

17 A. I -- I -- to the best of my recollection, it was
18 at -- at Carteret. I don't remember it being at Southern,
19 which it may have been, but I can't recall.

20 Q. Were you ever housed at Troy?

21 A. Yes, sir. Yes, sir.

22 (Pause in proceedings.)

23 A. But, again, I want to, you know, state that in any
24 conversation I've ever had or -- or heard him have, never
25 once has he asked me to tell anything but the truth.

1 Q. Okay. In response to -- with regard to your
2 letter, were you writted to Troy, or were you transferred?

3 A. Transferred.

4 Q. Why were you transferred to Troy?

5 A. I was trying to get my work release at the time.
6 I put in a transfer.

7 Q. And Hyde is what classi fication?

8 A. Medium.

9 Q. Close custody?

10 A. No, sir. Medium custody.

11 Q. Okay. Troy at the time was --

12 A. Mi ni mum.

13 Q. -- close custody?

14 A. Mi ni mum.

15 JUDGE WAGONER: Mi ni mum?

16 THE WITNESS: Mi ni mum.

17 BY COMMI SSIONER BRITT:

18 Q. At Southern?

19 A. Yes, sir.

20 Q. Okay. They're mul tiple parts. I'm sorry.

21 A. Yes, sir. And there -- and there's, you know, a
22 few years' gap between the two instances that we're speaking
23 about, you know, when I -- when I was at -- we're talking,
24 I like, 2005, 2006, '7, time range when I was at Carteret and
25 Southern.

1 Q. I think that's all the questions I have at this
2 time. Thank you.

3 EXAMINATION BY JUDGE WAGONER:

4 Q. Have you been incarcerated continuously since
5 about --

6 A. No, ma'am.

7 Q. -- 2005?

8 A. No, ma'am. Different --

9 Q. So you would get out --

10 A. Yes, ma'am.

11 Q. -- then mess up and go back in?

12 A. Yes, ma'am. Unfortunately, yes.

13 Q. All right. Now, when you -- the four of you were
14 in the same holding cell last night, does everybody know --
15 did everybody know why they're here -- why all four of you
16 were in Wake County last night?

17 A. When I was told, I think last Friday night, that I
18 had a writ for court, which I knew that I didn't have any
19 cases, I was trying to find out. I didn't know until -- for
20 sure until I got here that it was for this reason. I got
21 the under -- the impression that nobody else really knew
22 except for Leroy and maybe Wallace Jones.

23 Q. Okay. And did y'all all come from four separate
24 places?

25 A. Yes, ma'am. Yes, ma'am.

1 Q. Where are you right now?

2 A. Caledonia Minimum.

3 Q. Okay. Then where is Leroy? DO you know?

4 A. I think he's at Greene County.

5 Q. And what about Wallace?

6 A. I couldn't tell you that.

7 Q. And what about --

8 COMMISSIONER BRITT: Wyatt.

9 BY JUDGE WAGONER:

10 Q. -- Wyatt?

11 JUDGE WAGONER: Thank you.

12 A. Wyatt made a comment. I think he's -- one of the
13 camps north of Raleigh. I don't know if it's Bunn or
14 another one, to that effect.

15 Q. Thank you.

16 JUDGE WAGONER: Yes, ma'am.

17 EXAMINATION BY COMMISSIONER THOMPSON:

18 Q. Did Wyatt Spruiell ever say -- when everything went
19 down and -- and the robbery went bad, did they actually take
20 any money from the victim, or did they take any drugs? Did
21 he say what was taken or --

22 A. Not to the best of my recollection.

23 Q. They were there to rob him.

24 A. Yes, ma'am. And -- and --

25 Q. Did they rob him?

1 A. Well, I think -- I can't -- I don't remember him
2 saying that they got any money or any drugs. He -- he made
3 the comment that whoever it was with them instigated the
4 situation and enticed them to get the person over there, and
5 they were going to rob him, and then, in his words,
6 something went bad, and the person was killed.

7 I've heard stories since that time that supposedly
8 after that happened, that Wyatt holds to his story that, you
9 know, that he didn't know anything about the murder and that
10 he had left the house for about ten minutes and come back
11 and found the body and then called 911, which, according to
12 everything that I was told, that doesn't wash, you know, as
13 far as consistency.

14 But as far as anything being stolen or -- or
15 taken, I can't say, 'cause that was never brought up.

16 Q. So he -- he's claiming he wasn't actually there
17 during the murder. He just said --

18 A. Well, that's what I've been told.

19 Q. Okay. So he set him up and he leaves and he comes
20 back?

21 A. What I was told is that there -- the person or
22 persons, one of two, was going to rob him, and then when
23 they did, it went bad and somebody was killed. I got the
24 impression that he was still there.

25 But since then, you know, through people that's

1 known of the case, I've heard stories that Wyatt made the
2 comment to investigators that he had left for a while -- you
3 know, just to leave to go to the store -- and that when he
4 came back, he just found the body and knew nothing about
5 what had happened. But that's hearsay, you know, on my
6 part.

7 Q. Thank you.

8 JUDGE WAGONER: Yes, sir.

9 EXAMINATION BY MR. BOSWELL:

10 Q. Do you have any idea why Wyatt would have told
11 you?

12 A. He -- he made the comment at the time, you know,
13 he was really sick. He was really bad strung out on drugs
14 and he was trying to get clean, and he just -- nothing
15 worked at the time. And to the best of my recollection, he
16 -- I could a swore he told me that he thought he had
17 contracted HIV.

18 Q. Yeah, I got that. But why did he tell you as
19 opposed to someone else?

20 A. Because we had become somewhat friends just
21 because of -- of having the common -- you know, with Leroy
22 being the common thread.

23 Q. Do you know if he told anybody else?

24 A. No, sir. I can't say that.

25 Q. You never heard anybody else talk about it?

1 A. I've heard several people over the years, you
2 know, here and there because everybody seems to know Leroy.

3 Q. No. I meant, did you hear anybody else --

4 A. At that time?

5 Q. -- tell you that Wyatt had told --

6 A. Oh, no, sir.

7 Q. -- the same story --

8 A. No, sir. No, sir.

9 Q. -- to someone else that he told you?

10 A. No, sir. I can't say that.

11 Q. Did he know you were going to tell the --

12 A. No, sir.

13 Q. -- S.B.I. or somebody --

14 A. No, sir. And I've never told him that.

15 Q. Okay. You -- you never told him that you reported
16 what he told you?

17 A. No, sir. I just -- at the time I felt like as --
18 as much as Leroy Spruiell and Wallace Jones maintained their
19 innocence, and as hard as they were fighting to -- to try to
20 get what they called justice, I felt like I owed it to them
21 to at least let somebody know what I was told, you know, and
22 then let them sort out whether it was true or not. And --

23 Q. Right.

24 A. -- and that's basically all it was.

25 Q. Right. Now, did -- how many times did Wyatt

1 confess to you what he told you? Was this just one
2 conversation --

3 A. It --

4 Q. -- or many times?

5 A. It -- the bulk of it was mainly that day, and then
6 just -- you know, there would be a question, too, here and
7 there every now and then. We weren't together that long.

8 And then, you know, after he told me that, it was
9 kind of like, you know, well, you did this to somebody I
10 hold in somewhat high regard as far as, you know, the way
11 they treat people. And my view was kind of, you know,
12 obviously different at that point, not that I'm any better
13 than anybody else.

14 Q. Right.

15 A. So it's kind of like, you know, we would have
16 casual talks here and there, but nothing like it was, you
17 know, up -- leading to that point.

18 Q. So you don't -- it wasn't -- you don't think it
19 was his intention that you should report it to the
20 authorities.

21 A. I can't --

22 Q. You think he was just getting that off his chest?

23 A. -- I can't say that. The -- the -- to the best of
24 my memory, the -- the statement was made that he wanted to
25 get something off his conscience --

1 Q. Okay.

2 A. -- because he thought that -- I -- I think, if I
3 remember right, he told me that he thought he'd contracted
4 HIV --

5 Q. Right.

6 A. -- and that he wanted to get that off the
7 conscious [phonetic] before something happened.

8 Q. Before he died or whatever.

9 A. Yes, sir.

10 EXAMINATION BY COMMISSIONER FRYE:

11 Q. So you guys all come together, got all put in a
12 cell together yesterday.

13 A. Yes, sir.

14 Q. Did you spend the night together last night?

15 A. No, sir. They -- once we -- we were placed in
16 another holding cell with myself and Leroy and another
17 person, and then Wyatt and Wallace Jones were in a cell with
18 somebody else -- a holding cell -- until we went up to our
19 -- our dorms. And then we were separated and have been
20 since then.

21 Q. So you were separated once you got to the dorms.

22 A. Yes, sir.

23 Q. So we've got four gentlemen here in a holding
24 cell --

25 A. Yes, sir.

1 Q. -- two of which are maintaining their innocence.

2 A. Well, there was -- there was about six or seven of
3 us in the cell, but four -- four of the group, yes, sir.

4 Q. Four of the group.

5 A. Yes, sir.

6 Q. Two are maintaining their innocence.

7 A. Yes, sir.

8 Q. A third guy in the cell who admitted to you that
9 he was in on doing the murder which is why they're spending
10 -- have --

11 A. Yes, sir.

12 Q. -- spent the past 20-plus years --

13 A. Yes, sir.

14 Q. -- in prison.

15 A. Yes, sir.

16 Q. And these are all getting along.

17 A. Well, Wyatt, he never --

18 Q. But you told Leroy that Wyatt said that.

19 A. I did. And --

20 Q. You were bound to told Wallace. I mean, Wallace
21 knows that Wyatt has said that.

22 A. I -- I told him.

23 Q. Okay. So they know that Wyatt has admitted that
24 he done it and that they didn't, and yet they're all getting
25 along?

1 A. Well, no, I'm not saying everybody was all cheeky
2 and this, that, and the other. I told them, and then when
3 Wyatt come in, and then they --- once everybody, you know,
4 recognized who everybody was, everybody got quiet about it.
5 And then Wyatt had started asking a few questions about who
6 certain people were, if they remembered, you know, who they
7 were.

8 Q. But you were just talking and --

9 A. Not -- not -- not like -- like it seems in your
10 question. I mean, we were only together, you know, probably
11 ten, 15 minutes before we got moved to a different cell.

12 I mean, it's not like a lot of casual conversation
13 was going on. It was just, you know, wow, you look
14 different, and, you know, 'cause everybody's changed over
15 the years.

16 And both of them -- both Leroy and Wallace both
17 had reservations about -- matter of fact, Leroy even made
18 the conversation or the comment that when Wallace Jones --
19 they recognized each other and he went to -- he said, "I
20 want to hug you, but I'm afraid to" because so many things
21 have been said over the years, you know, good or bad or
22 whatever about the case, and he didn't want to jeopardize
23 anything.

24 And he was very -- both of them were very guarded
25 about, you know, anything that was said while we were in the

1 cell except for the comments -- you know, "How are you
2 doing? Where you been?" And then when the questions were
3 asked by Wyatt Spruiell, you know, if he remembered certain
4 people.

5 Q. And so Wyatt would ask that, and Robert and
6 Wallace would just answer him and --

7 A. It's -- it -- there was a couple of names that
8 were thrown out there. And I think he said that he
9 remembered a couple of people, but there was nothing
10 discussed about the names. Just yeah, no, or stuff like
11 that. I think it was people that was in Wyatt's past, and I
12 can't say that it had anything to do with the case because I
13 don't know the people involved in it.

14 Q. So did you -- did you testify at one time that you
15 and Wyatt and Robert Spruiell were all in prison at one
16 prison together at one point in time?

17 A. Not Wyatt. Me, Wallace Jones, and -- and Leroy
18 Spruiell. We were at Hyde together.

19 Q. You, Wallace, and Leroy.

20 A. Yes, sir.

21 Q. Okay.

22 A. That was in 2001.

23 Q. And you think a lot of Leroy.

24 A. Just by the way that he carries his self and --
25 and treats people.

1 Q. Okay.

2 A. He's -- he's -- I've never seen him do anybody
3 wrong or mistreat anybody, and he's gone out of his way to
4 -- to help people.

5 Q. Has he helped you before?

6 A. Just, you know, like if I needed -- you know, like
7 if I was doing a certain job, if I needed him to help me out
8 or -- or, you know, like, wanted a drink or something, you
9 know, from the canteen or something to that nature. But,
10 you know, never, like, favors involving anything.

11 Q. Okay.

12 JUDGE WAGONER: Okay. Questions?

13 COMMISSIONER GRACE: I do, yes.

14 EXAMINATION BY COMMISSIONER GRACE:

15 Q. Good afternoon, sir.

16 A. Good afternoon.

17 Q. My name is Mike Grace. I'm a defense attorney,
18 and I'm one of the commissioners here. And I have a few
19 questions --

20 A. Sure.

21 Q. -- if you don't mind.

22 A. Sure.

23 Q. Tell me what you were doing time for back in 2001.

24 A. I had a violation of probation for a worthless
25 check.

1 Q. We have a criminal record that goes back as far as
2 2004. It's your testimony today that you had charges prior
3 to that?

4 A. And -- well, obviously before 2001, 'cause I was
5 -- I'd had a violation of probation.

6 Q. Right.

7 A. Yes, sir.

8 JUDGE WAGONER: I think she said we only had part
9 of the record. She said that earlier, I think.

10 COMMISSIONER BOSWELL: If you look on page 520 of
11 the brief, there's --

12 JUDGE WAGONER: 520 in the --

13 BY COMMISSIONER GRACE:

14 Q. How long did you house in -- in Hyde before
15 Mr. Jones and Mr. Spruiell were brought in?

16 A. They were there prior to me getting there --

17 Q. They were there before you?

18 A. -- to the best of my knowledge.

19 Q. How long did you-all house there together?

20 A. I was there -- I think I had two eight- to ten-
21 month sentences for violation of probation.

22 Q. So you-all were there together that entire time?

23 A. Yes, sir. We didn't hang out together all the
24 time or didn't know each other the whole time. I --

25 Q. Were your cells together or --

1 A. No, sir.

2 Q. -- in the same dorm?

3 A. No, sir. We just played -- you know, a lot of
4 people on the camp played volleyball together, and that's
5 how I got to know them.

6 Q. And when in that period of time did Mr. Spruiell
7 and Mr. Jones tell you about their situation? Was it at the
8 beginning or the middle or the end?

9 A. We got to know each other, like I said, through
10 volleyball, and it was just -- you know, a lot of people on
11 the camp were talking about it because they were fighting
12 their case trying to -- to get some help. And it was just
13 -- you know, you'd hear hearsay every now and then, and then
14 he would -- you know, he would discuss, you know, some
15 things that what he thought people had overlooked in the
16 case and like, you know, DNA and bloodstains and this, that,
17 and the other. But it was probably five or six months after
18 I got there that I really started talking to them, maybe.

19 Q. And you spent a total of how long there with them?

20 A. I think it was two eight- to ten-month sentences
21 back then.

22 Q. Back to back?

23 A. Yes, sir. They were consecutive.

24 Q. So you would have -- you would have done 16 months
25 there?

1 A. Yes, sir. Well, on --

2 Q. Did they put you on release out sometime in 2003
3 or late 2002?

4 A. Or there right before, yes, sir, yeah.

5 Q. When did you write the first letter to Mr. Coman
6 or -- or anyone?

7 A. I thought I wrote it when I was at -- at Carteret
8 'cause that's when Wyatt made the conversation or the
9 comments.

10 Q. When did you go into Carteret?

11 A. I'm not sure of the exact year. It was several
12 years after that, you know, like 2005, '6, '7, somewhere
13 around there.

14 Q. Could it have been earlier?

15 A. It's possible, but not much earlier than that.

16 Q. But -- but you're fairly -- are you fairly certain
17 that when you made first contact with authorities that you
18 and Wyatt were both still there at Carteret?

19 A. Yes, sir. 'Cause I -- I'd -- I hadn't talked -- I
20 hadn't met Wyatt before I was at Carteret.

21 Q. And you're certain -- you're certain that you
22 hadn't been released from Carteret when you wrote the letter
23 to Mr. Coman?

24 A. Like I said, I -- I may have been at Southern at
25 the time, but it was -- it was shortly after, if so. I

1 can't 100 percent certainty say it was Carteret or Southern,
2 but I believe it to be Carteret.

3 Q. Mr. -- Mr. Coman is now deceased and -- and is
4 very well-known to people across the state in law
5 enforcement and lawyers and judges. How did you come up
6 with his name?

7 A. That -- that's what I was saying earlier. I can't
8 remember someone giving me his name or whether I wrote a
9 generic, you know -- you know, trying to get a response to
10 the S.B.I.

11 Q. Well, it's not generic. I mean, it's clear that
12 it's your letter, and you were shown --

13 A. Right, right.

14 Q. -- the letter.

15 A. Right, right, yes, sir.

16 Q. Is that letter in your handwriting?

17 A. Yes, sir, it is. But I can't recall having --
18 somebody giving me his name.

19 Q. Did you talk to Leroy before you wrote this
20 letter?

21 A. Just when I -- I hadn't seen him except for at
22 Hyde County in two thousand -- back in the 2001 time frame.

23 Q. I understand that. But my question is, before you
24 wrote this letter, did you see him to tell him about it?

25 A. No, sir. That's what I -- I couldn't understand

1 about the comments in here. I -- I didn't see him again
2 until we were at Craven and just in passing, and, you know,
3 made the comment -- I asked him about -- had he got any help
4 on his case. No long-term conversations. And then I saw
5 him again at C.P. about a year or so ago.

6 Q. So the -- the -- the two contacts you've had with
7 Leroy was sometime in 2001 through 2003 at Hyde. And then
8 not again until you saw him at Central?

9 A. At Craven. We were at Craven together.

10 Q. What years was that?

11 A. I can't recall the exact year, sir. It was -- it
12 should be in -- in the records when we were there together,
13 but I can't give you a -- a -- a year.

14 Q. Had you written this letter to Coman before you
15 got to Craven and -- and -- and reunited with --

16 A. Yes, sir, I --

17 Q. -- Leroy?

18 A. -- believe it was before -- before Craven.
19 Whenever -- whenever I was at Carteret, it's that time frame
20 that I wrote the letter.

21 Q. And it's your testimony here today that neither
22 Mr. Jones and Mr. Spruiell and Roy Spruiell helped you with
23 this letter?

24 A. Absolutely not. No. Like I said, you know, just
25 in passing, you know, there is little comments about, you

1 know, things about his case when we were at -- at Hyde
2 County together. But I can't remember ever discussing the
3 letter with him until we saw each other at -- at C.P. But
4 he's never once told me to say something or not to say
5 something or anything to that effect.

6 Q. When -- at what prison camp did you tell him that
7 you had written the letter and him being the Roy Spruill?
8 When did you tell him that?

9 A. When we were -- when we saw each other at C.P.
10 briefly. I went for an eye appointment.

11 Q. And that was when? What year?

12 A. It was just prior to the Innocence Commission
13 coming to see me. About a year -- within the last two
14 years, a year and a half or so. I was at -- at the time I
15 was at Lanesboro Correctional.

16 Q. Well, earlier, did you -- did you not say that it
17 -- it had been eight, ten months when -- since you had your
18 dental appointment at C.P.?

19 JUDGE WAGONER: What?

20 COMMISSIONER GRACE: Eye appointment. I'm sorry.
21 Your eye appointment.

22 A. It was eye or dental. But it was -- it was a few
23 months prior to the Commission coming to see me.

24 BY COMMISSIONER GRACE:

25 Q. Well, tell -- tell me when that was. Help me with

1 the date.

2 A. Well, I've been at -- at the camp I'm at now since
3 October. So it was three, four, five months prior to that
4 when I was still at Lanesboro.

5 Q. So from the time you made contact back in '05,
6 until possibly '17, maybe '16 -- 2016 -- you hadn't had any
7 chance to tell Mr. Spruill that you had written this letter?

8 A. Not to the best of my knowledge.

9 Q. Well, I mean, you'd know, wouldn't you, if --

10 A. Well, that's what I'm saying. I don't -- I don't
11 believe so, sir. I don't remember ever seeing him besides
12 at Craven and then at the eye appointment.

13 Q. Did you have an opportunity last night in the
14 holding cell to ask Wyatt about his illness and --

15 A. No, sir. I never brought that up. He didn't --
16 he acted like he didn't recognize me, and I didn't want to
17 bring that up to -- to cause any questions.

18 He asked me what my name was, and I told him. And
19 he -- he kind of squinted, like he might have recognized the
20 name a little bit.

21 And then on the way over here, we rode together.

22 JUDGE WAGONER: So did y'all ride in the same car
23 over here?

24 THE WITNESS: Yes, ma'am. Yes, ma'am.

25 A. But that -- that wasn't discussed. It was just

1 casual conversation to try to keep it off of the case.

2 JUDGE WAGONER: So is he sitting out there in the
3 hall? Where is he?

4 THE WITNESS: He is with the other officer.

5 MS. GUICE SMITH: He should be in a separate room.

6 THE WITNESS: He was. He was.

7 MS. GUICE SMITH: Like we instructed that they be
8 in separate rooms here.

9 JUDGE WAGONER: Okay.

10 BY COMMISSIONER GRACE:

11 Q. Did Wyatt give you the names of the people that he
12 was involved with back in -- when this happened?

13 A. There was the name Frank, and I can't swear that
14 that's not the person that -- in -- in the report that I
15 recognize as JoJo. I can't say for sure that that's not one
16 and the same.

17 Q. But if you had given Mr. Coman any other names,
18 that would have had to come from Wyatt --

19 A. Yes, sir.

20 Q. -- wouldn't it?

21 A. Yes, sir. And when I was interviewed from the
22 Commission, you know, I told them at the time that I had had
23 a head injury prior to that and my short-term memory was
24 affected, and I couldn't recall everything.

25 And then I was shown a statement and then it

1 flashed back to me after that. But Frank is definitely the
2 name that I remember now. I don't know if JoJo is one and
3 the same or if JoJo was the person in the back room. I
4 can't swear to that.

5 COMMISSIONER GRACE: I don't have anything else.

6 JUDGE WAGONER: Let me -- I'm going to --

7 FURTHER EXAMINATION BY JUDGE WAGONER:

8 Q. Did I misunderstand you? Did you say when you
9 decided you wanted to tell somebody, the S.B.I., about what
10 Wyatt had told you, did you tell that to your case worker --

11 A. No, ma'am.

12 Q. -- or your case manager?

13 A. I think I asked the case manager for an address to
14 contact them. And that's why I say I think I -- I thought I
15 wrote a generic letter trying to get help from someone that
16 I could speak to.

17 Q. So do you recall your case manager giving you
18 Mr. Coman's name or --

19 A. No, ma'am, I can't. And obviously, I had a name
20 because it's written on there. But I -- to the best of my
21 knowledge, I can't remember where I got that name.

22 FURTHER EXAMINATION BY COMMISSIONER BOSWELL:

23 Q. In your letter you say that Leroy gave you the
24 name.

25 A. I -- I can't recall that. I swear I can't. I'm

1 not saying he didn't --

2 Q. Right.

3 A. -- but I cannot recall that.

4 Q. What -- what you say in this letter is -- let's
5 see.

6 "The next day he came to me and asked that I
7 would contact you and provide you with information
8 that I've been told."

9 A. Well, see, that's the thing. I -- I can't -- from
10 the time that I left Hyde -- the next time I saw Leroy was
11 at Craven. I don't recall -- I mean, and I'll -- I mean,
12 I'll take a polygraph to the fact that I don't remember
13 Leroy ever giving me a name of anybody to contact.

14 Q. I was just reading what was in the letter.

15 A. Yes, sir.

16 Q. Did you ever take a polygraph test?

17 A. Not for this case, no, sir. I've taken one for a
18 -- a drug case before with the F.B.I. -- or D.E.A. I'm
19 sorry.

20 JUDGE WAGONER: Okay. Yes, sir.

21 COMMISSIONER FRYE: One last question.

22 THE WITNESS: Yes, sir.

23 FURTHER EXAMINATION BY COMMISSIONER FRYE:

24 Q. As you've been put into prison numerous times, you
25 go through a classification?

1 A. Yes, sir.

2 Q. Are you gang-related --

3 A. No, sir.

4 Q. -- or anything?

5 Have you ever been classified as having any
6 relationships with any group or gang --

7 A. No, sir.

8 Q. -- in prison?

9 A. No, sir.

10 COMMISSIONER BARROW: I have a couple questions.

11 JUDGE WAGONER: Yes, sir.

12 EXAMINATION BY COMMISSIONER BARROW:

13 Q. Your testimony is that this letter is on -- in
14 your own handwriting?

15 A. Yes, sir.

16 Q. The date up here, did you write that in? Is that
17 your handwriting, too?

18 A. I -- I don't have that --

19 JUDGE WAGONER: Maybe somebody can --

20 A. -- in front of me --

21 JUDGE WAGONER: -- show it to him.

22 A. -- but I -- I would think that it would be.

23 BY COMMISSIONER BARROW:

24 Q. Well, let's try to be --

25 A. Yes, sir. Yes, sir.

1 Q. That 8/25/05 is the way you write those -- those
2 numbers?

3 A. Yes, sir.

4 Q. And this is a well-written letter. Did you -- did
5 you have a earlier draft and then recopy it in this better
6 handwriting?

7 A. I don't see that as better handwriting. But I
8 mean, I started it a couple of times and wanted to make sure
9 that I got my point across, you know, trying to get somebody
10 to come talk to me.

11 Q. Did anybody read those earlier drafts --

12 A. No, sir.

13 Q. -- and help you with that?

14 A. I balled it up and tore it up and threw it in the
15 trash.

16 Q. And you say -- and I've heard you say a couple of
17 times that Mr. -- Mr. Wyatt Spruiell --

18 A. Uh-huh.

19 Q. -- when he told you this was sick or thought he
20 was sick.

21 A. Yes, sir.

22 Q. And you've also said he was strung out on drugs?

23 A. Yes, sir. He was -- he was a very bad drug case
24 back in -- I was totally shocked to see him walk in
25 yesterday. I -- I -- I thought he had passed away.

1 Q. Was he -- when you saw him --

2 A. He was --

3 Q. -- wherever that was, back in -- back in the
4 day --

5 A. Yes, sir.

6 Q. -- in '05 --

7 A. Yes, sir.

8 Q. -- did -- was he strung out from drugs in prison
9 or strung out from drugs on the street and had just come to
10 prison?

11 A. I think most of it was from the street. I can't
12 say whether he was or was not using in prison. I mean, it's
13 common wherever you go. But I can't say for sure that he
14 was using while in prison. I just -- he was just a frail of
15 his self and, you know, in -- in bad shape. You could tell
16 that he had been using a long time.

17 And I don't know how long he had been in at that
18 point either. You know, so it may have been fairly short.
19 I don't -- I don't know.

20 Q. Did you see any concern or fear yesterday when he
21 realized he was in the cell with Mr. Jones?

22 A. I saw nervousness from my point of view because he
23 asked me what my name was, and he was trying to recall --
24 remember me, and I don't think that he did fully.

25 And then he started asking Leroy if he remembered

1 certain people. It was almost my -- my impression was that
2 he was kind of fishing to see where he stood, if anybody
3 knew anything.

4 I don't know that -- in my mind, I was kind of
5 wondering if he thought that maybe I had said anything to
6 those two, you know, about his admission. But that was
7 never discussed.

8 Q. And, again, I sort of hark back to the question
9 that's been asked, in a way. Do you have any explanation
10 for why he chose you to tell this story to?

11 A. Nothing other than the fact that, you know, he was
12 kind of a loner and, you know, we had got to be somewhat
13 friendly, just through the common bond through knowing Leroy
14 and him being related to Leroy. And we had started talking
15 and kind of -- you know, we used to walk laps together a
16 little bit.

17 And -- and, you know, there you don't have a lot
18 of people there, per se, that -- that really hang out with
19 each other. And then he had said that -- you know, what I
20 remember is thinking that he had contracted HIV and had a
21 little remorse on his -- on his conscience. But when I saw
22 him yesterday, he -- he certainly didn't look like he had,
23 you know, had contracted H.I.V.

24 JUDGE WAGONER: He hadn't died.

25 A. He -- he was very healthy, which, like I said, I

1 was totally shocked when he walked into the cell.

2 BY COMMISSIONER BARROW:

3 Q. Were you afraid?

4 A. Of him being there?

5 Q. Uh-huh.

6 A. No, sir. Because, I mean, like I said, that --
7 that was never even questioned about, you know, anything
8 that he had said to me or I had said to anybody else.
9 Everybody was just kind of close-guarded about saying
10 anything, you know, because nobody really recognized each
11 other except for me and Leroy.

12 Leroy didn't even recognize his own co-defendant,
13 'cause they -- everybody had changed in appearance so much.
14 And the only reason Leroy recognized me is 'cause he had
15 seen me, you know, not too long ago at C.P.

16 Q. Thank you.

17 COMMISSIONER GRACE: I have a couple of more
18 questions.

19 MS. GUICE SMITH: Okay.

20 COMMISSIONER GRACE: Do you have some?

21 COMMISSIONER BRITT: I -- I have a couple of
22 questions.

23 COMMISSIONER GRACE: Go -- go right ahead.

24 FURTHER EXAMINATION BY COMMISSIONER BRITT:

25 Q. Were you ever interviewed by anyone with the

1 Washington County Sheriff's Office?

2 A. Washington. Washington County never interviewed
3 me.

4 Q. Do you know -- where did this happen? It was in
5 Washington County, wasn't it?

6 JUDGE WAGONER: Where did this incident happen?

7 BY COMMISSIONER BRITT:

8 Q. Where did this incident -- where did this
9 allegedly take place?

10 JUDGE WAGONER: The murder -- where the murder --

11 A. Oh. I was never interviewed by anybody other than
12 the S.B.I. that had -- I had contacted.

13 BY COMMISSIONER BRITT:

14 Q. So did anyone from the Plymouth Police Department
15 come to talk to you?

16 A. No, sir.

17 Q. Do you recognize the name John Floyd?

18 A. No, sir, not off the top of my head.

19 Q. You don't know John Floyd to be --

20 A. No.

21 Q. -- the police chief at Plymouth?

22 A. No. Not -- not -- I don't recall that name.

23 Q. Did Leroy ever tell you that the police chief in
24 Plymouth was opening his own independent investigation?

25 A. Not -- now, he may have -- if it happened, you

1 know, like in 2001, he may have said it in passing. But not
2 to the best of my knowledge; I don't recall that. I can't
3 swear to that one way or the other, but I certainly don't
4 remember that name.

5 Q. What about Wyatt Spruiell?

6 A. No, sir.

7 Q. Thank you. I don't have any --

8 A. I mean, I couldn't even tell you who that person
9 was --

10 Q. Okay.

11 A. -- you know, if I had heard the name.

12 JUDGE WAGONER: Do you have something, Mr. Grace?

13 COMMISSIONER GRACE: Yes, I have a few.

14 FURTHER EXAMINATION BY COMMISSIONER GRACE:

15 Q. How long after Wyatt gave you this information did
16 you write the letter?

17 A. I want to say -- I thought it was in -- within a
18 week or two, but I -- I can't swear to the exact time frame.
19 But I just knew that when he told me, I felt really bad for
20 people that had, like I said, maintained their innocence the
21 whole time. And I felt like I needed to contact somebody to
22 -- to let them know.

23 Q. And as you sit here, do you -- do you deny that
24 Wyatt gave you the names of the people that were involved,
25 or do you admit that or --

1 A. Like I said -- well, I mean, he's the only person
2 that's ever really talked to me about the case, so anything
3 that I had came from Wyatt except for, you know, little bits
4 and pieces, you know, when I knew the co-defendants at Hyde.
5 But none of the major details or anything, which --

6 Q. Do you have the letter in front of you there?

7 A. I do now, yes, sir.

8 Q. Would you look on page 4?

9 A. Page 4?

10 Q. Page --

11 JUDGE WAGONER: 4? 4 is at the bottom.

12 BY COMMISSIONER GRACE:

13 Q. It's at the bottom.

14 JUDGE WAGONER: Even though it only looks like
15 page 3. It's probably --

16 BY COMMISSIONER GRACE:

17 Q. It is the third page but numbered 4.

18 A. (Reviewing documents.) Right here. I've got it.

19 Q. Do you have that in front of you?

20 A. Yes, sir, I do.

21 Q. Would you go down -- one, two, three, four, five,
22 six, seven, eight -- nine lines where it starts with, "Leroy
23 said"?

24 A. "Leroy said that" -- yes, sir, I see that.

25 Q. Read -- read that out loud.

1 A. It's hard to see without my glasses.

2 JUDGE WAGONER: Do you wear glasses?

3 THE WITNESS: Reading glasses.

4 BY COMMISSIONER GRACE:

5 Q. Let -- let me read it and see if you can follow
6 while I read, please. It says:

7 "Leroy said that the same three sets of
8 fingerprints were found at both crime scenes and
9 stated the names of the three guys that Wyatt had
10 told me about. I had not told Leroy the three
11 names at that time, and he had no way of knowing
12 that I already knew."

13 A. No --

14 Q. And that's in your letter. I'm reading it.

15 A. Right, right, right.

16 Q. Yeah.

17 A. I'm saying back in 2001, there was a few things
18 that was said here and there. That might be in -- what's in
19 reference by my comment.

20 Q. Well, you have to tell me. Is that what -- are
21 you telling us now that back in 2001 at Hyde County, Leroy
22 gave you the names of the three people --

23 A. He didn't give me, per se. It was just general
24 conversation where he had made comments that -- he said that
25 -- you know, that there was fingerprints there, but they

1 didn't have his and -- but supposedly Wyatt's fingerprints
2 were there. The bloodstains: He said that there were
3 supposedly some in a -- some sort of truck that turned out
4 to be paint or something like that.

5 Q. Well, do you realize that what you're saying in
6 this letter to Mr. Coman is that the exact three names that
7 -- that -- that you got from Wyatt, Leroy had given you, and
8 you -- and you named these people in your letter?

9 A. I named a JoJo and -- which I think that's the
10 person that I called Frank.

11 Q. Go back to page -- page 2, which is number 2, but
12 page 1, if you look at the very bottom.

13 A. Uh-huh.

14 Q. Next to the last line, it says, "He said that he
15 had known Joseph Lynn, Maurice Wilkins, and JoJo McNair,"
16 and then he had called Billy and the three of them wanted an
17 amount of crack and cash at the mobile home. Those are the
18 three names, aren't they?

19 A. Well, if -- if -- if they're in this letter, then
20 -- then Wyatt gave them to me 'cause that's the only way I
21 would know anything. I don't -- I don't recall these three
22 names, but if he -- if I got them in this letter, I've got
23 them from Wyatt.

24 Q. But then you confirmed that these are the same
25 three names that Leroy had given you.

1 A. I mean, it didn't -- Leroy's never given me
2 anything, per se. It was just a general conversation.

3 Q. I'm not arguing with you, sir.

4 A. Yeah.

5 Q. I'm just telling you what --

6 A. Oh, I know, I know.

7 Q. -- your letter says, and I'm asking you to explain
8 how you got those names if Leroy didn't give them to you.

9 A. Well, that's what I'm trying to say is if -- if
10 there was any names mentioned by Leroy, it wasn't a specific
11 conversation with me. It was just -- you know, like general
12 conversation with people where he was talking about trying
13 to get some help on his case and -- and talking to some
14 people.

15 And at the time, if they're in this letter, then
16 they were mentioned by Wyatt Spruiell. But to this day, can
17 I recall those names? No, sir, I can't do that. Just like
18 at the time when the Commission come and saw me; I couldn't
19 remember all the facts at the time.

20 But everything that's in this letter was written
21 after the statement that I was given by Wyatt Spruiell.

22 Q. And it's your contention that you had no -- you've
23 had no opportunity to run any -- any of this by Leroy since
24 Wyatt gave it to you.

25 A. Just at C.P. I told him that he had made those

1 statements, and that I was willing to testify on his behalf.
2 And at that time he said do nothing but tell the truth.

3 Q. Could it -- could it be possible that while you
4 were at the Hyde with Leroy and Jones that they gave you all
5 this information?

6 A. If he -- if he did, it was just in -- in casual
7 conversation, not anything targeted to me. But at the time,
8 we really didn't know each other. It was just, you know,
9 general acquaintances that we all played volleyball
10 together. And there's several people that -- that had, you
11 know, talked about stuff where he was trying to get help.

12 Q. Well, that would have been the only time Leroy
13 would have had an opportunity to give it to you, isn't it?

14 A. Yes, sir. Yes, sir.

15 Q. So he had to give it to you then.

16 A. Well, I'm not -- I'm not disputing that he did.
17 I'm just saying I can't recall that --

18 Q. Well, the point I'm --

19 A. -- with these names.

20 Q. -- trying -- the point I'm trying to make is that
21 he then gave that to you -- Leroy gave it to you before you
22 talked to Wyatt.

23 A. Right. And --

24 Q. And you had all this information before you talked
25 to Wyatt.

1 A. Right. My -- what I'm trying to say is I can't
2 recall him giving me those specific names. But if I said in
3 this letter that he -- the same names that Leroy had said,
4 then that's the case. I can't -- because, like I said,
5 'cause of my head injury at the time, I can't recall these
6 specific names.

7 Q. You understand I'm not disputing what you --

8 A. Yes, sir. Yes, sir.

9 Q. -- say. I'm just trying to --

10 A. I --

11 Q. -- get you to explain to me --

12 A. Yes, sir. I have no --

13 Q. -- the order of it.

14 A. -- no issues with that whatsoever. None. I'm
15 just saying I can't recall these three names. Even when I
16 was interviewed by the Commission, I didn't recall any of
17 these names.

18 Q. No, I -- I'm not asking you --

19 A. Yeah.

20 Q. -- to recall them now.

21 A. Yeah.

22 Q. I'm trying to put you back in --

23 A. Yes, sir.

24 Q. -- two thousand --

25 A. I understand. I understand.

1 Q. -- and one when you got these names.

2 JUDGE WAGONER: Everybody needs to talk at the
3 same -- for the court reporter, one person at a time.

4 COMMISSIONER GRACE: Yes, Your Honor.

5 THE WITNESS: Yes, ma'am.

6 JUDGE WAGONER: All right.

7 A. And I -- and I totally understand what you're
8 saying. Yes, sir.

9 BY COMMISSIONER GRACE:

10 Q. So would you concede that that's a bit confusing
11 to me --

12 A. Yes, sir --

13 Q. -- in the --

14 A. -- absolutely. Yes, sir.

15 Q. You also had the -- the name of the sister Sonja,
16 didn't you?

17 A. If it's in this letter, it was given to me then,
18 yes, sir. I'm not sure whether it was Sonja or Sondra or
19 something to that effect, but --

20 Q. One last question. Out of all the people in the
21 Attorney General's Office and all the people involved in
22 this case in Washington County and other counties, how did
23 you pick Mr. Coman to send this letter to?

24 A. That's what I can't recall. I don't -- I don't
25 remember being given -- I'm not saying I wasn't. I just

1 don't recall being given that name. To my recollection, I
2 asked for a address and I wrote a generic letter. But
3 obviously I had that name, but I don't recall being given
4 that name by any particular person.

5 COMMISSIONER GRACE: Thank you, sir.

6 THE WITNESS: Yes, sir. Thank you.

7 COMMISSIONER FRYE: One last question --

8 JUDGE WAGONER: Wait a minute.

9 COMMISSIONER FRYE: -- from ME.

10 JUDGE WAGONER: Have you got a question?

11 FURTHER EXAMINATION BY COMMISSIONER FRYE:

12 Q. You rode over here with Wyatt Spruiell.

13 A. Yes, sir.

14 Q. You had no involvement in this case that happened
15 -- in this murder that happened.

16 A. No, I --

17 Q. The only reason you're here -- that you two could
18 be here for the same reason is for this case. Wyatt has to
19 know that you're testifying on what he said, correct?

20 A. I would -- I would think that, but he's never made
21 that comment. He's never brought that up whatsoever.

22 Q. Well, he never said anything on the ride --

23 A. No, sir.

24 Q. -- over here --

25 A. No, sir.

1 Q. -- like, "Don't sell me down" --

2 A. No, sir. Never once. He's -- matter of fact,
3 he's steered away from that, and he acted like he didn't
4 remember me at all.

5 Q. Okay. Good enough.

6 A. And as I said, I can't say that he was directly
7 involved in the murder. I -- I can't say that. I was just
8 told that they had planned --

9 Q. You just told me -- you just said that he said he
10 was --

11 A. Right.

12 Q. -- involved.

13 A. No. I said that he was told to invite the people
14 over to rob the people, and then the deal went bad. Now, do
15 I -- do I say --

16 Q. That would be involved in a felony involved in a
17 murder.

18 A. -- that's accessory?

19 Right, right, but I'm not saying he actually
20 killed the person is what I'm trying to say.

21 Q. Okay.

22 JUDGE WAGONER: Okay. Mr. Barrow, a question, and
23 then Ms. Newton.

24 THE WITNESS: Yes, ma'am.

25 FURTHER EXAMINATION BY COMMISSIONER BARROW:

1 Q. You wrote this letter dated August 25 in your own
2 handwriting?

3 A. Yes, sir.

4 Q. And you wrote it at or about the time of your
5 conversation with Mr. Wyatt Spruiell?

6 A. Soon thereafter, yes, sir.

7 Q. Would you tell us a little bit about your head
8 injury that you had --

9 A. Uh-huh.

10 Q. -- in the hurricane?

11 A. That was years later. I was working for a
12 gentleman named Carson Jones that had a swine farm. And
13 during the hurricane, we were taking generators on a tractor
14 to the farms and the bucket came down, and I was thrown off
15 the tractor and hit head-first and I shattered my wrist, and
16 you know, like a concussion-type injury to my head. And
17 just my short-term memory every now and then is affected.

18 Q. If we had to believe the letter --

19 A. Yes, sir.

20 Q. -- or what you say today, which would you tell us
21 to believe?

22 A. What's written in that letter is verbatim what I
23 was told by Mr. Spruiell.

24 Q. So this is like a way of recording what Mr. Wyatt
25 Spruiell had told you?

1 A. Yes, sir. I wanted to contact the authorities on
2 -- you know, to try to offer what I was told to help the
3 people that were affected that had claimed their innocence
4 ever since I had known them.

5 Q. Did you have any other record of what Mr. Wyatt
6 Spruiell had told you?

7 A. Not -- I wouldn't think so. I mean, I wouldn't
8 have any way to have anything. Just conversation.

9 Q. There is not another -- you didn't write it down
10 somewhere else on some notes as soon as you got back to your
11 cell and then writing this later?

12 A. Not to my recollection. I mean, I don't recall
13 that because we were just walking and -- and having the
14 conversation at the time.

15 Q. And did you have any medical treatment for the
16 injury to your head?

17 A. I went to the hospital and had my -- my hand put
18 in a cast and they did a scan on my -- on my head.

19 Q. They did a scan on your head?

20 A. Yes, sir.

21 Q. And do you recall what they said?

22 A. Just like a mild concussion, if that.

23 Q. And is that mild concussion what you are referring
24 to --

25 A. Yes, sir.

1 Q. -- today when you had -- say --

2 A. Yes, sir.

3 Q. -- you had some loss of --

4 A. Yes, sir.

5 Q. -- memory?

6 A. Yes, sir. Yes. I just -- it's affected my short-
7 term memory at times. Not all the times; just sometimes.

8 Q. But that injury would have been --

9 A. After all that.

10 Q. Long time after that.

11 A. Yes, sir. Yes, sir.

12 Q. So at the time of your injury, would you have been
13 five or more years after the letter?

14 A. This was not this past hurricane, but the last big
15 hurricane prior to that -- it was during that time frame,
16 within the last two or three years.

17 Q. And where were you injured?

18 A. In Craven County.

19 Q. And so it would have been a big hurricane in
20 Craven County.

21 A. Yes, sir.

22 Q. Okay.

23 A. Well, all over the eastern coast of North
24 Carolina, but ---

25 Q. Where did you go to the hospital?

1 A. Craven County Hospital.

2 COMMISSIONER BARROW: Thank you.

3 JUDGE WAGONER: All right. Ms. Newton?

4 ALT. COMMISSIONER NEWTON: Thank you.

5 EXAMINATION BY ALT. COMMISSIONER NEWTON:

6 Q. Good afternoon, Mr. Hudson. My name is Deb
7 Newton. I'm a criminal defense attorney in Raleigh, North
8 Carolina.

9 A. Yes, ma'am.

10 Q. I just have a few questions.

11 A. Sure.

12 Q. Back in September of 2005, what kind of a criminal
13 justice system were you under? What were you serving time
14 for?

15 A. It was, I believe, obtaining property by false
16 pretense due to a -- a check.

17 Q. In September of '05?

18 A. During this time frame here?

19 Q. Yes, sir.

20 A. Yes, ma'am.

21 Q. And what --

22 A. To the best of my knowledge.

23 Q. -- what kind of a sentence did you have hanging
24 over your head?

25 A. I think it was a -- like a 44-month sentence or

1 something like that.

2 Q. Okay. So you were not under a habitual felon
3 indictment at the time or conviction.

4 A. The -- the -- not conviction. I was given four --
5 I think it was four 11 to 14 sentences, consecutive.

6 Q. And when were you given that?

7 A. I'm not sure of the exact date, but I think that's
8 during the time frame that I was serving.

9 Q. Okay. Do you know who Mr. -- Agent Sutton is,
10 Mike Sutton?

11 A. I -- I -- from -- I knew -- which agency is he
12 from? I don't recall.

13 Q. Do you -- do you know the name?

14 A. I know there was a gentleman that was from the FBI
15 that I had spoke with.

16 Q. All right. When did you speak with him?

17 A. I think when I was at Craven during that --

18 Q. During that same period of time?

19 A. I believe so.

20 Q. Was that before or after you wrote the letter to
21 Mr. Coman?

22 A. It had to be before because that was -- that was
23 medium custody.

24 Q. And why did it have to be before?

25 A. 'Cause I was in medium custody and later got

1 promoted to -- to minimum custody.

2 Q. So how did you come to meet Mr. Sutton?

3 A. I had written the FBI.

4 Q. And what did you write them about?

5 A. I had some people that had approached me about a
6 case.

7 Q. I'm sorry?

8 A. People had approached me and wanting me to money
9 -- money-launder for a drug case.

10 Q. Do you mean that there were people in custody who
11 approached you and wanted you to money-launder?

12 A. Both prior to and inside, yes, ma'am.

13 Q. Okay. And, again, you were on four 11 to 14
14 consecutive sentences?

15 A. Yes, ma'am, I think that was the time.

16 Q. And why would you agree to meet with Mr. Sutton --
17 Agent Sutton?

18 JUDGE WAGONER: Ms. Newton, let me -- let me stop
19 you for a second.

20 (The Court conferred with Ms. Newton off the
21 record.)

22 BY ALT. COMMISSIONER NEWTON:

23 Q. When you spoke to Mr. Sutton, was there something
24 that you wanted help with?

25 A. At the time I had asked for some help with my

1 case.

2 Q. And you wanted to get out of jail at some point --

3 A. Or some relief, yes, sir [sic].

4 Q. -- doing some kind of work release or early
5 release.

6 A. Yes, sir -- yes, ma'am.

7 Q. Okay. When you spoke with Mr. Sutton, did he
8 explain to you certain offenses under which that would be
9 possible?

10 A. Yes, ma'am.

11 Q. Okay. How many times did you meet with him?

12 A. Once or twice.

13 Q. Among the other things that he talked to you about
14 -- we won't talk about that federal involvement.

15 A. Uh-huh.

16 Q. I'm not interested in the money-laundering or the
17 Patriot Act. Did he explain to you that he would be --
18 He's a federal agent.

19 A. Yes.

20 Q. He would be interested in assisting you with
21 anything related to the State if it were what kind of crime?

22 A. I don't recall that.

23 Q. Did he tell you if you had any information about a
24 crime of violence that he could also help you?

25 A. I don't recall that conversation.

1 Q. Did you talk to him about the information you
2 subsequently wrote to Mr. Coman?

3 A. Not -- no, 'cause Mr. Coman wouldn't have been
4 written until after that point.

5 Q. Right. Is he the one that gave you Mr. Coman's
6 name? Let's put it that way.

7 A. I don't -- I don't -- I don't -- honestly don't
8 recall where I got that name.

9 Q. Okay.

10 A. And I can't swear that he did or didn't. I just
11 -- I don't recall that name. And I would have had no reason
12 to ask for that name prior to having that conversation with
13 Wyatt Spruiell.

14 Q. But as Mr. Barrow pointed out, you did write
15 Mr. Coman in your own handwriting.

16 A. Obviously so, yes, ma'am.

17 Q. So you got the name from somewhere.

18 A. From somewhere, yes, ma'am.

19 Q. Now, do you remember interviewing with an agent
20 after you wrote Mr. Coman?

21 A. There was a gentleman that come spoke to me.

22 Q. Mr. Tilley?

23 A. That could be. I'm not sure of the name.

24 Q. So that was shortly after you wrote the letter to
25 Mr. Coman.

1 A. Yes, ma'am.

2 Q. And did you tell him you also wanted help -- you
3 wanted to get out of jail, you wanted --

4 A. I don't -- I don't --

5 Q. -- some cooperation --

6 A. -- recall that at the time.

7 COURT REPORTER: Sir, if you could wait for the
8 question.

9 THE WITNESS: Oh, I'm sorry.

10 BY ALT. COMMISSIONER NEWTON:

11 Q. Do you recall explaining to Mr. Tilley that you
12 were assisting Mr. Sutton -- Agent Sutton?

13 A. That's possible, but --

14 Q. And did you tell him that you wanted Agent Sutton
15 to help you with work release or some custody issues getting
16 out early?

17 A. On -- on the prior -- prior to, but not in this
18 case. But it was the one that we had already discussed.

19 Q. Thank you.

20 A. Yeah.

21 FURTHER EXAMINATION BY COMMISSIONER BOSWELL:

22 Q. Have you -- have you read -- since you've been
23 sitting here, have you re-read your letter?

24 A. No, sir. Like I said, it's hard to see without my
25 reading glasses.

1 COMMISSIONER BOSWELL: Is there -- can we let him
2 read his letter?

3 COMMISSIONER GRACE: I've got a pair of glasses.
4 It'll read.

5 COMMISSIONER BOSWELL: I was going to give him
6 mine.

7 COMMISSIONER GRACE: If you don't mind using the
8 old man glasses.

9 (Commissioner Grace handed a pair of glasses
10 to the witness.)

11 THE WITNESS: No, sir. I'm one myself.

12 COMMISSIONER BRITT: He may not need them that
13 strong.

14 COMMISSIONER GRACE: Look who's talking.

15 (Laughter.)

16 JUDGE WAGONER: Do they help?

17 COMMISSIONER BOSWELL: Can we --

18 THE WITNESS: Whoa.

19 (The witness gestured with the glasses.)

20 (Laughter.)

21 COMMISSIONER GRACE: Easy, easy, easy. Those are
22 loaners.

23 COMMISSIONER BOSWELL: Can we take a short break
24 and let him read the letter? Maybe a five-minute break?

25 JUDGE WAGONER: Yeah.

1 COMMISSIONER BOSWELL: Let him read the letter and
2 come back?

3 JUDGE WAGONER: We'll -- we'll take a short recess
4 and let him read this letter with somebody's glasses. We'll
5 just be in recess for ten minutes.

6 (Off the record at 4:18 p.m.)

7 (A brief recess was taken.)

8 (Back on the record at 4:26 p.m.)

9 JUDGE WAGONER: For the record, will you just
10 state what you just told me a second ago about y'all ride --
11 about y'all being in the same room together yesterday?

12 THE WITNESS: When -- when we were brought into
13 booking at the jail, one of the officers had saw the
14 paperwork where there were co-defendants and stuff and asked
15 if we should be separated.

16 And we had made the comment -- a couple of us down
17 there -- that we were there to offer, you know, testimony on
18 behalf of -- of Wallace Jones and Leroy Spruiell. And so I
19 think that's why they didn't bother to separate.

20 JUDGE WAGONER: Okay. Well, hopefully -- I signed
21 an order that y'all aren't supposed to be transported
22 together or housed together or even -- you're not going to
23 be in the same dormitory, and this nice officer will take it
24 back and -- it's not his fault, obviously.

25 Okay. Further questions?

1 COMMISSIONER BOSWELL: Can I follow up?

2 CONTINUATION OF FURTHER EXAMINATION BY COMMISSIONER BOSWELL:

3 Q. Mr. Hudson --

4 A. Yes, sir.

5 Q. -- did you have a chance to read the letter?

6 A. I did.

7 Q. When I read this letter, it seems to indicate that
8 you were with Leroy Spruiell at about this time.

9 A. That's what it seems like in the letter, yes, sir,
10 but I --

11 Q. And I thought I understood your testimony earlier
12 to say that he wasn't around at this time.

13 A. To the best of my knowledge, he wasn't. But if
14 it's in this letter, I mean, it's very possible. But I -- I
15 honestly cannot recall being together with him other than
16 those three instances.

17 Q. Okay. All right. So you don't have an
18 explanation as to why you said --

19 A. No, sir. If -- if -- if it's there, I -- I mean,
20 I can't dispute it because, I mean, I just can't recall it.
21 But I might have ran into him somewhere, and he -- if I
22 state it in this letter that he gave me that name, then
23 obviously that's the case. But I -- to the best of my
24 recollection, I cannot recall it.

25 Q. Okay. All right.

1 JUDGE WAGONER: Further questions?

2 (No response.)

3 JUDGE WAGONER: Nope? I think the plan is we're
4 going to probably let him go. Then we're going to probably
5 recess for the day, so if y'all have another question,
6 please feel free to ask him.

7 MS. GUICE SMITH: I do --

8 JUDGE WAGONER: Yes.

9 MS. GUICE SMITH: -- have one question.

10 FURTHER EXAMINATION BY MS. GUICE SMITH:

11 Q. Mr. Hudson, earlier today, did you ask Mr. Ziegler
12 -- Brian Ziegler in the back --

13 MS. GUICE SMITH: Brian, will you stand up,
14 please?

15 (Mr. Ziegler complied.)

16 BY MS. GUICE SMITH:

17 Q. -- one of the Commission staff members -- whether
18 you would be testifying when Wyatt Spruiell was present in
19 the room?

20 A. Yes, ma'am.

21 Q. And why did you ask him that?

22 A. Just out of curiosity. I didn't know if he would
23 -- had recalled that he had made that statement to him
24 [sic].

25 Q. Did you have concerns --

1 A. To me.

2 Q. -- that if he were in here --

3 A. Well, I didn't know whether that would influence
4 his testimony or not.

5 JUDGE WAGONER: Are you talking about Wyatt?

6 THE WITNESS: Yes.

7 MS. GUICE SMITH: Wyatt SpruiII.

8 JUDGE WAGONER: Wyatt.

9 THE WITNESS: Yes, ma'am.

10 JUDGE WAGONER: Okay.

11 MS. GUICE SMITH: That's all the questions that I
12 have of Mr. Hudson.

13 JUDGE WAGONER: A follow-up? Yes, sir.

14 FURTHER EXAMINATION BY COMMISSIONER BARROW:

15 Q. One little short question.

16 A. Yes, ma'am -- yes, sir.

17 Q. You were interviewed by an S.B.I. agent, a state
18 agent?

19 A. To the best of my knowledge. The one that I wrote
20 this letter to, I believe him to be S.B.I.

21 Q. Okay. And then you were interviewed by somebody
22 from the Innocence Commission.

23 A. Yes. I had written the -- or I had spoke to Leroy
24 SpruiII when we ran into each other at C.P. and told him
25 that it -- you know, reiterated the information that -- that

1 I was told and told him that I would, you know, more than
2 happy to testify on his behalf on what I was told. And he
3 -- you know, I told him that if he wanted to contact his
4 lawyers, if they ever wanted to subpoena me or -- or write
5 me, that I would, you know, talk to them and tell them the
6 same thing.

7 Q. Yeah. Anybody else ever in between those?

8 A. Not to the best of my recollection. I mean, I
9 spoke to, like I said, the D.A. prior to that. But nobody
10 that I know of in between.

11 Q. And were you out of jail part of the time between
12 those two interviews?

13 A. Not since I spoke to the Innocence Commission, I
14 haven't.

15 Q. But were you out of jail after you spoke to the
16 S.B.I. agent?

17 A. Yes, sir.

18 Q. And before you spoke --

19 A. Yes, sir.

20 Q. -- to the Innocence --

21 A. Yes, sir.

22 Q. -- Commission?

23 A. Yes, sir.

24 Q. How long were you out of jail?

25 A. Multiple years. I -- I can't recall the exact

1 amount, but, you know, three, four years, five years,
2 something to that effect.

3 Q. Did you ever talk with anybody --

4 A. No, sir.

5 Q. -- about this case during --

6 A. No, sir.

7 Q. -- that period of time?

8 A. No, sir.

9 Q. No family members --

10 A. No, sir.

11 Q. -- of the Spruills?

12 A. No one that I -- I've never known anybody from
13 that family, and nobody in my family knows anyone from that
14 family.

15 Q. Thank you.

16 FURTHER EXAMINATION BY JUDGE WAGONER:

17 Q. And I'm just -- you -- you understand that this
18 group, this is the Innocence --

19 A. Absolutely.

20 Q. -- Inquiry Commission.

21 A. Absolutely.

22 Q. There's another -- there's some other groups that
23 had the word "Innocence" in them, but did you talk to
24 anybody from that -- from another group that you're aware?

25 A. What I understood to be the Innocence Project or

1 -- or something to -- to that name, which I -- I was given a
2 card which I have in my wallet back at the jail. But --

3 Q. Okay.

4 A. -- there was two people that -- two ladies that
5 come spoke with me.

6 Q. Okay. And they came to see you while this --
7 after you wrote this letter or before you wrote this letter
8 or when?

9 A. After the -- well after the letter.

10 Q. Well after the letter. Okay.

11 A. This was in the last year, year and a half.

12 Q. Okay.

13 JUDGE WAGONER: Okay. But it -- it wasn't you-
14 all, was it?

15 MS. GUICE SMITH: Mr. Fields [sic], do you
16 recognize Catherine Matoian --

17 THE WITNESS: Yes, ma'am, I think I do.

18 MS. GUICE SMITH: -- as the person who came --

19 THE WITNESS: I think I do.

20 MS. GUICE SMITH: -- and interviewed you?

21 JUDGE WAGONER: And she's with the Innocence
22 Commission --

23 THE WITNESS: Yes, ma'am.

24 JUDGE WAGONER: -- which is us.

25 Okay. Further questions?

1 COMMISSIONER GRACE: No, ma'am. Thank you.

2 JUDGE WAGONER: Okay. That's it. Thank you, sir,
3 very much.

4 THE WITNESS: Thank you.

5 JUDGE WAGONER: You have a good trip back.

6 (Mr. Hudson left the room.)

7 MS. GUICE SMITH: For administrative purposes, I
8 want to just clean up a few things that were handed out
9 during Mr. Hudson's testimony.

10 Number -- what will become Handout 84 is that
11 letter from Mr. Hudson to James Coman and the subsequent
12 S.B.I. report of the interview between the S.B.I. and
13 Mr. Hudson.

14 (Handout Number 84 was identified for the
15 record.)

16 MS. GUICE SMITH: And then Number 85 will become
17 -- will be the movement records of Edward Hudson from his
18 Department of Public Safety file.

19 (Handout Number 85 was identified for the
20 record.)

21 MS. GUICE SMITH: If you-all will leave those on
22 your tables tonight --

23 JUDGE WAGONER: Leave these all here?

24 MS. GUICE SMITH: Yes. -- we will take care of
25 inserting them in the morning and do the second Hearing

1 Handout notebook.

2 I've got, for purposes of this evening, some
3 transcripts that I need to send home with you. These are
4 interviews that we, the Commission, has done with both the
5 claimants Leroy Spruiell and Wallace Jones.

6 I intend to send home that second notebook with
7 you tonight, and I can tell you exactly which ones to read
8 so that -- you don't have to read all of the materials in
9 there. But I've also included in that notebook their other
10 statements that they gave to law enforcement prior because
11 it may help you, in looking at those, to look back at those
12 other prior statements.

13 The statements that you -- or the handouts that
14 you'll need to review are going to be Number 70, which is a
15 Commission interview with Wallace Jones; Number 75, Leroy
16 Spruiell's first Commission interview; Number 76 will be
17 Leroy's second Commission interview. And then also, as I
18 told you in the opening yesterday, Number 78 is a statement
19 from the Attorney General's Office.

20 (Handout Numbers 70, 75, 76, and 78 were
21 identified for the record.)

22 MS. GUICE SMITH: If you will review that tonight
23 as well, it's going to be in that Handout notebook as well.
24 You don't have that yet. I see some confused looks. I've
25 got them right out here, and I'll hand them to you before

1 you leave.

2 COMMISSIONER GRACE: The numbers refer to pages?
3 Reports? Items?

4 MS. GUICE SMITH: Those numbers refer to the tabs
5 in --

6 COMMISSIONER GRACE: Tabs.

7 MS. GUICE SMITH: -- the notebook: Handout Number
8 70, Handout Number 75, Handout Number 76, and Handout Number
9 78.

10 COMMISSIONER GRACE: Thank you.

11 MS. GUICE SMITH: The other information in that
12 file you do not have to review, but you may find their prior
13 statements to be helpful to look at.

14 I would just request that you bring them back in
15 the morning. And if you'll leave them on your desk when you
16 first get here, we'll be inserting these supplemental ones
17 that we added today.

18 JUDGE WAGONER: The statements by the defendant
19 that are in this -- what book is this? -- the hearing
20 Notebook Volume I -- the statements you're going to give us
21 tonight, are they different from the statements that are in
22 this hearing notebook, Volume I?

23 MS. GUICE SMITH: Yes.

24 JUDGE WAGONER: Okay. I just thought I'd try.

25 (Laughter.)

1 MS. GUICE SMITH: The statements that are in that
2 notebook -- the second notebook, Number 69, are Mr. Jones's
3 prior statement, and Number 74 are Mr. Spruiell's prior
4 statement. That is a compilation of all of them.

5 (Hearing Handout Numbers 69 and 74 were
6 identified for the record.)

7 MS. GUICE SMITH: Now, you have been provided
8 those -- I believe all of them -- in your briefs --

9 JUDGE WAGONER: Yeah.

10 MS. GUICE SMITH: -- but we thought that it would
11 be easier if they were in one place instead of having to
12 tell you where to flip in your brief.

13 JUDGE WAGONER: Okay.

14 MS. GUICE SMITH: Yes, sir.

15 COMMISSIONER BOSWELL: To close out on Mr. Hudson,
16 according to the records, were Mr. Hudson and Leroy Spruiell
17 together on August 25th, '05? Were they in the same -- were
18 they in the same facility?

19 MS. GUICE SMITH: I'm going to let Ms. Matoian
20 answer that for you.

21 JUDGE WAGONER: And you're still under oath.

22 CATHERINE MATOIAN,
23 having been re-called as a witness for the Commission and
24 having been previously duly sworn by Judge Wagoner,
25 testified as follows:

1 THE WITNESS: Can you read that date again? I'm
2 sorry.

3 COMMISSIONER BOSWELL: August 25th, 2005.

4 THE WITNESS: That's correct.

5 COMMISSIONER GRACE: Or somewhere preceding that
6 date?

7 THE WITNESS: I'll do the 2005 date, and I'll go
8 back to the original dates.

9 In 2005 Leroy Spruiell and Edward Hudson were in
10 Craven Correctional together. That was starting on August
11 16th, 2005, and lasted until September 1st, 2005.

12 JUDGE WAGONER: So two weeks.

13 THE WITNESS: And then --

14 COMMISSIONER BOSWELL: So --

15 THE WITNESS: I'm sorry.

16 COMMISSIONER BOSWELL: And were not together on
17 August 5th, 2005?

18 THE WITNESS: No, not according to the D.P.S.
19 records. He's -- I believe it's Mr. Hudson is transferred
20 in on August 16th, 2005.

21 COMMISSIONER BRITT: What about Wyatt Spruiell?

22 THE WITNESS: Wyatt Spruiell and Mr. Hudson were in
23 Craven Correctional together from October 19th, 2001, until
24 November 9th -- November 1st, 2001, when they were both
25 transferred to Carteret Correctional the same day. And they

1 remained in Carteret Correctional together until February
2 20th, 2002.

3 COMMISSIONER BOSWELL: I apologize. I -- I
4 misstated -- I misread the date because I wasn't wearing my
5 glasses. That was being corrected, and I didn't hear what
6 you just said. Was -- was Wyatt Spruiell and Mr. Hudson
7 together in August of -- of '05?

8 THE WITNESS: August two thousand -- I'm sorry.

9 JUDGE WAGONER: Wyatt.

10 THE WITNESS: August of 2005 is Leroy Spruiell and
11 Edward Hudson, and that's that October [sic] 16th, 2005, to
12 September 1st, 2005. That is Leroy Spruiell and Edward
13 Hudson.

14 MS. GUICE SMITH: Do you mean August 16th?

15 THE WITNESS: August 16th.

16 JUDGE WAGONER: You said October.

17 THE WITNESS: My apologies.

18 Okay. And then Wyatt Spruiell and Edward Hudson
19 were in Craven Correctional together from October 19th,
20 2001, to November 1st, 2001.

21 On November 1st, 2001, they were both transferred
22 to Carteret Correctional at the same time, and they remained
23 in Carteret Correctional together until February 20th, 2002.

24 COMMISSIONER BOSWELL: So around August of 2005,
25 Wyatt Spruiell was not in the same facility as --

1 COMMISSIONER FRYE: Edward Hudson.

2 COMMISSIONER BOSWELL: -- Edward Hudson.

3 THE WITNESS: That's correct.

4 COMMISSIONER FRYE: It had been since 2002 that
5 they were together.

6 JUDGE WAGONER: Yes.

7 THE WITNESS: Yes.

8 COMMISSIONER FRYE: However, Leroy was with him
9 during August.

10 THE WITNESS: Correct.

11 ALT. COMMISSIONER NEWTON: During what?

12 COMMISSIONER GRACE: August.

13 COMMISSIONER FRYE: During August.

14 JUDGE WAGONER: During August.

15 COMMISSIONER FRYE: They were together. '05.

16 JUDGE WAGONER: And you can figure this out
17 tomorrow. But we know when Mr. -- that person --

18 COMMISSIONER BRITT: What about Mr. Jones?

19 JUDGE WAGONER: -- got out of -- got out of
20 prison --

21 COMMISSIONER BRITT: Were Mr. Jones and Mr. Hudson
22 ever housed together?

23 THE WITNESS: They were. So Leroy Spruiell,
24 Wallace Brandon Jones, and Edward Hudson were all in Hyde
25 Correctional from June 24th, 1999, until February 1st, 2000

1 -- 2000. And that's with the exception of a few days in
2 there where it appears that Mr. Hudson and I think maybe
3 Mr. Spruill and Mr. Jones were also transferred to jails, I
4 think for court hearings and such.

5 And then -- so that ends in February 1st, 2000.
6 Leroy Spruill, Wallace Brandon Jones, and Edward Hudson were
7 in Hyde Correctional from March 6, 2001, until September
8 12th, 2001; again, with the exception of days where either
9 one of them was transferred to jail.

10 COMMISSIONER BRITT: Okay.

11 COMMISSIONER FRYE: Do you have a little flow
12 chart there that you're looking at?

13 MS. GUICE SMITH: We do not.

14 THE WITNESS: We can make one.

15 MS. GUICE SMITH: We can make one if you need
16 that.

17 COMMISSIONER FRYE: To try and put everybody where
18 they're at together?

19 MS. GUICE SMITH: Sure. We can create something.

20 COMMISSIONER FRYE: I think that would be helpful
21 to me.

22 JUDGE WAGONER: And one for their names, too. I'm
23 teasing.

24 COMMISSIONER FRYE: I think that would be
25 helpful --

1 JUDGE WAGONER: I know the names are --

2 COMMISSIONER BOSWELL: It would help me.

3 COMMISSIONER FRYE: -- to me to know who was with
4 who when.

5 THE WITNESS: Absolutely.

6 MS. GUICE SMITH: We will take care of that this
7 evening.

8 COMMISSIONER BOSWELL: Did -- did I --

9 ALT. COMMISSIONER NEWTON: As if you didn't create
10 enough, right?

11 COMMISSIONER BOSWELL: -- I guess I'll ask my
12 other commissioners. Did I understand Mr. Hudson to say
13 that his testimony was that he wrote this letter within a
14 couple of weeks of having the conversation with Wyatt
15 Spruiell?

16 COMMISSIONER FRYE: Yes. You're correct, yes.

17 COMMISSIONER GRACE: Yes.

18 COMMISSIONER FRYE: You are 100 percent correct.

19 COMMISSIONER BOSWELL: Okay.

20 MS. GUICE SMITH: Other questions related to
21 Mr. Hudson?

22 COMMISSIONER BRITT: You can't get us their cells
23 and bed assignments, can you?

24 JUDGE WAGONER: What?

25 THE WITNESS: We do have housing assignments. We

1 will look at that as well.

2 MS. GUICE SMITH: We will check and see if --

3 (Laughter.)

4 THE WITNESS: I -- and I believe the housing
5 assignments do include bed numbers.

6 (Several people speaking simultaneously.)

7 COMMISSIONER BRITT: I do, but they closed
8 Dorothea Dix.

9 (Laughter.)

10 JUDGE WAGONER: It's a park now.

11 MS. GUICE SMITH: Mr. Britt, would you like the
12 bed assignments on the flow charts and the --

13 COMMISSIONER BRITT: That would be very helpful.

14 MS. GUICE SMITH: We'll take care of it.

15 JUDGE WAGONER: Is that mine or yours?

16 COMMISSIONER GRACE: That's mine.

17 JUDGE WAGONER: It's yours, okay.

18 COMMISSIONER GRACE: But you're welcome to it.

19 JUDGE WAGONER: Is that it? No, I don't want it,
20 thank you.

21 COMMISSIONER GRACE: Just some more reading?

22 MS. GUICE SMITH: All right. Judge Wagoner --

23 JUDGE WAGONER: I got it. Thank you. Yeah.

24 MS. GUICE SMITH: -- if -- are there other
25 questions before --

1 JUDGE WAGONER: 9:00 tomorrow morning.

2 COMMISSIONER BARROW: Why are you looking at me?

3 MS. GUICE SMITH: I don't know. I feel like you
4 have something.

5 (Laughter.)

6 MS. GUICE SMITH: Please don't leave until I give
7 you your notebooks.

8 We did have Wyatt Spruiell here this afternoon.
9 Given the time and given the amount of reading that you have
10 this evening, I believe Judge Wagoner wants to have him
11 brought back in the morning.

12 JUDGE WAGONER: Yes.

13 MS. GUICE SMITH: So we will -- we will handle him
14 fairly early tomorrow morning. I can give just a --

15 COMMISSIONER FRYE: Well, the three can --

16 MS. GUICE SMITH: -- little trajectory --

17 COMMISSIONER FRYE: -- ride together tomorrow
18 and --

19 JUDGE WAGONER: Huh?

20 COMMISSIONER FRYE: The three can car pool
21 tomorrow.

22 JUDGE WAGONER: I hope not.

23 MS. GUICE SMITH: Yes. I don't know that we will
24 get to the claimants tomorrow. It may be Thursday, just
25 given how long we went today. But if we did, it would be in

1 the -- in the late afternoon. And we want to get to both of
2 them tomorrow. We've still got to talk about Big Ed's Bar,
3 the -- the alibis, and the non-alibis from Big Ed's Bar, and
4 we need to talk about Dana Maybin, and then the two
5 claimants.

6 JUDGE WAGONER: And the --

7 COMMISSIONER GRACE: How is your estimate for us
8 getting out of here Thursday or not?

9 MS. GUICE SMITH: We hope to be done Thursday. I
10 didn't plan for you to be here Friday, so --

11 COMMISSIONER GRACE: Well, I'm just -- I'm open.
12 I'm just --

13 (Laughter.)

14 COMMISSIONER GRACE: -- trying to see what -- what
15 your schedule --

16 COMMISSIONER BOSWELL: Should we start earlier or
17 go later? Do we need -- do we need more time during the
18 day?

19 MS. GUICE SMITH: I think that that's up to --

20 COMMISSIONER GRACE: No. He's asking --

21 MS. GUICE SMITH: -- Judge Wagoner, but --

22 COMMISSIONER GRACE: -- do you need more time to
23 put that on so we can get out of here by Thursday?

24 MS. GUICE SMITH: I think that we can see how far
25 we get tomorrow. It may be that we need to -- to work a

1 little later tomorrow afternoon, but --

2 JUDGE WAGONER: That's fine.

3 MS. GUICE SMITH: -- I think we'll get done on
4 Thursday. Initially, I thought we would be done by
5 lunchtime on Thursday. So with that thought in mind, I
6 think we'll go till the end of the day on Thursday. But I
7 do anticipate that we will be able to get done Thursday.

8 COMMISSIONER BRITT: And do you still anticipate
9 getting the results from the examination of the tire tool
10 tomorrow?

11 MS. GUICE SMITH: I do anticipate that we will get
12 those. We have some information this afternoon, but we have
13 not had a chance to discuss or look at that. So I can't, in
14 good -- good conscience, put anyone up to testify about what
15 they've gotten.

16 COMMISSIONER BRITT: You read it, digest it.

17 MS. GUICE SMITH: We'll review that in the
18 morning.

19 JUDGE WAGONER: All right. 9:00 tomorrow morning.

20 (An overnight recess was taken at 4:44 p.m.)

21

22 (CONTINUED IN VOLUME III, PAGE 540.)

23

24

25

NORTH CAROLINA GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA	)	COUNTY OF WASHINGTON
)	
v.	)	94 CRS 1984
	)	94 CRS 1566
LEROY SPRUIELL,)	
)	
Defendant.)	
_____)	

STATE OF NORTH CAROLINA	)	COUNTY OF WASHINGTON
)	
v.	)	94 CRS 1973
	)	94 CRS 1565
WALLACE BRANDON JONES,)	
)	
Defendant.)	
_____)	

HEARING BEFORE THE
NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

VOLUME III OF V

(Pages 540 - 858)

Wednesday, October 3, 2018

Wanda B. Constantino, CVR-CM-M
AOC-Approved Per Diem Reporter
1102 Driftwood Drive
Siler City, North Carolina 27344
919.548.4914
wanda@mywordservices.com

APPEARANCES

Commissioners Present and Serving:

The Honorable Anna Mills Wagoner, Chair

Nigle "Tex" Barrow, Esq., Commissioner

John Boswell, Esq., (Alternate serving as Commissioner)

Johnson Britt, Esq., Commissioner

Ms. Camilla Cover (Alternate serving as Commissioner)

Sheriff Kevin Frye, Commissioner

Michael Grace, Esq., Commissioner

Ms. Jennifer Thompson (Alternate serving as
Commissioner)

Also Present:

Deborrah L. Newton, Esq. (Commissioner serving
as Alternate)

Lindsey Guice Smith, Esq.

North Carolina Innocence Inquiry Commission

Administrative Office of the Courts

Post Office Box 2448

Raleigh, North Carolina 27602

TABLE OF CONTENTS

	<u>PAGE</u>
Colloquy	546
<u>COMMISSIONER'S WITNESSES (Cont'd.)</u>	
Catherine Matoian	
Direct examination by Ms. Guice Smith	550
Wyatt Spruiell	
Examination by Ms. Guice Smith	580
Examination by Judge Wagoner	619, 718
Examination by Alt. Comm. Newton	626, 709
Examination by Commissioner Boswell	639
Examination by Commissioner Thompson	642
Examination by Commissioner Frye	643
Examination by Commissioner Grace	651
Examination by Commissioner Barrow	667
Examination by Commissioner Britt	672
Colloquy	722
Beth Tanner (re-called)	
Examination by Ms. Guice Smith	724
Meghan Clement (re-called)	
Examination by Ms. Guice Smith	726
Catherine Matoian (re-called)	
Examination by Ms. Guice Smith	732, 756
	763, 774
	788
Examination by Commissioners	752, 760
	773, 785
Marguerite Lynn Spruiell	
Colloquy	793
Examination by Commissioner Boswell	794, 800
	807
Examination by Judge Wagoner	798, 809
	813
Examination by Commissioner Frye	802, 808
Examination by Commissioner Britt	803

TABLE OF CONTENTS (Cont'd.)

	<u>PAGE</u>
Marguerite Lynn Spruiell (cont'd.)	
Examination by Alt. Commissioner Newton	805
Examination by Comm. Thompson	806
Examination by Ms. Guice Smith	810, 815
Examination by Commissioner Grace	811, 813
Colloquy	816
<u>COMMISSIONER'S WITNESSES (Cont'd.)</u>	
Catherine Matoian (re-called)	
Examination by Commissioner Boswell	819
Examination by Alt. Comm. Newton	820
Examination by Commissioner Britt	822
Examination by commissioners	823
Audio-videotaped interview of Dana Maybin played	827
Catherine Matoian (re-called)	
Examination by Ms. Guice Smith	828
Colloquy	846

HANDOUTS

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE IDENTIFIED</u>
40	Wyatt Spruiell Criminal Record	561
41	Wyatt Spruiell SBI Interview	563
42	Wyatt Spruiell Partial Transcript - Commission Interview	563
43	Tim Swain Criminal Record	569
44	Lynn Rogers Criminal Record	734

TABLE OF CONTENTS (Cont'd.)HANDOUTS (Cont'd.)

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE IDENTIFIED</u>
45	Leroy Spruiell Partial Transcript - Commission Interview	735
46	Lynn Rogers Commission Deposition Transcript	734
47	Margie Perry Criminal Record	741
48	Margie Perry Partial Transcript - Commission Interview	743
49	Tony Calloway Criminal Record	748
50	Tony Calloway Partial Transcript 1 - Commission Interview	750
51	Tony Calloway Partial Transcript 2 - Commission Interview	750
52	Tommy Barber Criminal Record	756
53	Cottie Oliver Record	774
54	Cottie Oliver Transcript - Commission Interview	776
55	Map: 31 Folly Road	777
56	Rob Samson Criminal Record	779
57	Terri Bullock Criminal Record	780
58	Ed Champ, Sr. Criminal Record	782
59	Ed Champ, Jr. Criminal Record	788
60	Sherry Honea Criminal Record	834
61	Sherry Honea S.B.I. Interview Report	837
62	Sherry Honea Partial Transcript - Commission Interview	839
63	Nichole Mills Criminal Record	844

TABLE OF CONTENTS (Cont'd.)HANDOUTS (Cont'd.)

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE IDENTIFIED</u>
64	Nichole Mills Partial Transcript - Commission Interview	845
86	Photograph of envelope containing tire iron	546
87	Photograph of tire iron in a clear bag	547
88	Photograph of tire iron in a clear bag	547
89	Photograph of tire iron in a clear bag	548
90	Photograph of tire iron in a clear bag	548
91	Closeup photograph of tire iron in a clear bag	548
92	Photograph of tire iron	549
93	Closeup photograph of tire iron	549
94	Enlargement of portion of photograph of tire iron	549
95	Autopsy photo of victim	549
96	D. P. S. Housing Overlap Comparisons	554
97	James Earl "Duke" Carter Criminal Record	618
98	Wyatt Spruiell's Trial Testimony	618

1 PROCEEDINGS OF WEDNESDAY, OCTOBER 3, 2018:

2 (Proceedings resumed at 9:09 a.m.)

3 THE COURT: Okay. We will resume.

4 MS. GUICE SMITH: Okay. Good morning --

5 COMMISSIONER GRACE: Good morning.

6 MS. GUICE SMITH: -- Commissioners.

7 COMMISSIONER BOSWELL: Good morning.

8 THE COURT: Good morning.

9 MS. GUICE SMITH: Today we're going to be between
10 your two Hearing Handout notebooks. I apologize for that,
11 but as we've added some to the end there in that second
12 notebook, I will let you know -- try to let you know which
13 notebook you're in as we look.

14 So if you'll start this morning with your second
15 notebook, the one you took home last night, we've added some
16 tabs this morning. And if you'll turn to Handout 86.
17 Yesterday Bode Cellmark Forensics took photographs of the
18 tire iron. They're going to start on page 86, but I'm just
19 going to walk through what the photos are of.

20 Handout 86 is the -- our envelope that the tire
21 iron was in. As I testified to yesterday, this is how we
22 saw the package. This was a sealed cushion mailer.

23 (Handout Number 86 was identified for the
24 record.)

25 MS. GUICE SMITH: If you turn to Handout 87, when

1 Bode Cellmark opened that package, they pulled out another
2 bag. Handout 87 is a photo of that zip-top bag. The
3 zip-top bag was inside the white, padded envelope. It was
4 mostly zipped but was not sealed with tape. It has some
5 markings in red on the outside that start with 2004-3241.
6 If you continue to read on those, it's marked "10-4-2005,"
7 marked as the "Tire tool," and that it was "Seized by Agent
8 J. Tilley." It also says "From" and then the rest of that,
9 I -- I can't read from the photos.

10 (Handout Number 87 was identified for the
11 record.)

12 MS. GUICE SMITH: Handout 88 is just simply a
13 photograph of the back of that zip-top bag.

14 (Handout Number 88 was identified for the
15 record.)

16 MS. GUICE SMITH: If you turn to Handout 89, when
17 Cellmark -- Bode Cellmark opened the zip-top bag, they
18 pulled out another bag. This bag was sealed with tape. It
19 is a plastic bag. On the exterior of the bag is an orange
20 caution label that indicates that, "Possible carcinogens
21 were used to treat the evidence. Do not open the package
22 and handle contents without wearing gloves."

23 Also on the exterior of that bag is a small,
24 white, square label with the LabCorp number F9500461 and a
25 date of 8/4/95. Also on the exterior of that bag is a

1 State's exhibit red sticker that is labeled "State's Exhibit
2 17." Also on the outside of that bag is the number
3 R93-25616, labeled "Item 9." That corresponds to the
4 original S.B.I. Crime Lab Number, and Item 9 for the S.B.I.
5 Crime Lab was the tire iron.

6 (Handout Number 89 was identified for the
7 record.)

8 MS. GUICE SMITH: This bag, on Handout 90, that's
9 just the back of that package.

10 (Handout Number 90 was identified for the
11 record.)

12 MS. GUICE SMITH: Handout 91 is a close-up of that
13 inner package that shows a three-centimeter tear in the
14 plastic. Outside of the three-centimeter tear, the package
15 was sealed otherwise.

16 (Handout Number 91 was identified for the
17 record.)

18 MS. GUICE SMITH: Handout 92 is the tire iron
19 itself [sic]. Along with that is a small, round sticker.
20 That was on the tire iron. That is labeled R2006-5573 and
21 is dated 8/17/2007. That corresponds with the S.B.I. file
22 number from the later testing. They also marked that with
23 initials and the number 4. The tire iron in that 2007
24 testing at the S.B.I. Crime Lab was labeled "Item 4" for
25 that testing.

1 (Handout Number 92 was identified for the
2 record.)

3 MS. GUICE SMITH: Handout 93 is a closeup of the
4 lug-nut end of the tire iron. This is the portion of the
5 tire iron that was previously tested by the Crime Lab in
6 2007 and for which there is a profile being routinely
7 queried in CODIS.

8 (Handout Number 93 was identified for the
9 record.)

10 MS. GUICE SMITH: Handout 94 is a close-up photo
11 of the straight portion of the tire iron. This is the
12 portion that Bode Cellmark swabbed for us yesterday and for
13 which they tested yesterday.

14 (Handout Number 94 was identified for the
15 record.)

16 MS. GUICE SMITH: Handout 95 I am not putting on
17 the screen again but is the photo of the back of the
18 victim's head that we placed on the screen yesterday. As a
19 reminder, that photo was introduced at trial as an exhibit
20 during the medical examiner's testimony.

21 (Handout Number 95 was identified for the
22 record.)

23 COMMISSIONER BARROW: Was -- do you know if the
24 missing portion of that part of the tire iron, which fitted
25 over the lug nut, has the missing part of that ever been

1 recovered or discussed?

2 MS. GUICE SMITH: It was not recovered at the
3 scene.

4 COMMISSIONER BARROW: Okay.

5 MS. GUICE SMITH: Commissioners, the DNA expert,
6 Meghan Clement, should be available by around 11:00 today,
7 and she will be here to testify about the testing that was
8 done yesterday at Bode Cellmark, as well as any comparisons
9 that she was able to do to any profile or profiles that were
10 developed during that testing.

11 All right. At this time, I would call Catherine
12 Matoian. Re-call.

13 JUDGE WAGONER: Would you just be sworn again,
14 please? Left hand on the Bible, raise your right.

15 CATHERINE MATOIAN,
16 having been re-called as a witness for the Commission, was
17 sworn by Judge Wagoner and testified as follows:

18 EXAMINATION BY MS. GUICE SMITH:

19 Q. Ms. Matoian, excuse me, I am handing you a page
20 from the file from LabCorp, from the testing conducted in
21 1995 by LabCorp. On the overnight break, were you able to
22 locate information about -- additional information about how
23 the tire iron may have been handled?

24 A. We did.

25 Q. And can you read for the commissioners from that

1 Lab file, the portion of the lab file, that information?

2 A. Yes. This evidence inventory from LabCorp
3 indicates that on August 4th, 1995, the tire iron was
4 hand-delivered by Washington County Sheriff's Office, and it
5 was hand-delivered by Janice Spruiell. It's described as:

6 "Number 1: One paper bag previously opened
7 for defense viewing, per Janice Spruiell.

8 Continued [sic] one sealed plastic bag."

9 Q. Ms. Matoian, does that notation "continued," is
10 that a common notation for "containing"?

11 A. Containing, I'm sorry. "Containing one tire iron
12 labeled as Item Number 9. Head portion is broken." And
13 then there is a drawing of the tire iron itself.

14 Q. Ms. Matoian, just to be clear, it said -- you said
15 "Continue," but I think that you meant to say "containing
16 one sealed plastic bag."

17 A. I did. Sorry.

18 Q. "Containing one tire iron"?

19 A. Yes.

20 Q. Does that notation indicate that the paper bag
21 that was on the exterior of the sealed plastic bag had been
22 previously opened?

23 A. It does.

24 Q. And that was for defense viewing?

25 A. Yes.

1 Q. And that was according to Janice Spruiell?

2 A. Correct.

3 Q. Does it indicate that the sealed plastic bag
4 inside that paper bag had been previously opened?

5 A. It does not.

6 MS. GUICE SMITH: Any questions about that,
7 Commissioners?

8 JUDGE WAGONER: We do not know if that plastic bag
9 was taped or just sealed?

10 THE WITNESS: The -- this report only indicates
11 that it was sealed. It doesn't indicate how.

12 BY MS. GUICE SMITH:

13 Q. Ms. Matoian, yesterday there was a question from,
14 I believe, Commissioner Newton regarding the car that
15 Mr. Spruiell -- no, the victim, Mr. Swain, and Mr. Knowles
16 were in when they went to New Jersey --

17 A. Uh-huh.

18 Q. -- and whether or not that was one of the cars
19 located at Mr. Swain's home after the murder. Do you have
20 any additional information about that?

21 A. I do. I went back and looked at the New Jersey
22 arrest report, and it indicates that the victim and
23 Mr. Knowles were stopped driving a green Chevy Caprice. In
24 Mr. Honeycutt's crime scene report, he noted two cars near
25 the victim, in the front of the victim's home. One was a

1 gray Corsica. I double-checked the V.I.N. numbers on both
2 to make sure that they were different, and they are
3 different. And there was also a Nissan truck. So it
4 doesn't appear that that car was at the victim's home.

5 Q. And Ms. Matoian, we were also asked a question
6 over the break by a commissioner regarding whether or not
7 Mr. Spruiell, Leroy Spruiell, or Wallace Jones's prints had
8 ever been compared to the Sonja Day prints. What can you
9 tell the commissioners about that?

10 A. The Sonja Day prints, there were two identifiable
11 latent prints from the set of prints that came from that
12 crime scene. The fingerprint was determined to be that --
13 determined to be a finger of JoJo McNair, and that was on
14 the exterior of the sliding glass door of Ms. Day's
15 apartment, and that was believed -- that door was believed
16 to be the exit route taken by the perpetrator.

17 The palm print remains unidentified, and that came
18 from the kitchen counter. Mr. Spruiell and Mr. Jones's
19 fingerprints were not submitted with that Crime Lab
20 submission because they had been excluded from the Swain
21 crime scene previously during the original investigation.
22 However, we are checking with the Crime Lab to see if
23 Mr. Spruiell and Mr. Jones are in the SAFIS system because
24 that palm print was uploaded into SAFIS with no results.

25 MS. GUICE SMITH: Commissioners, if you will turn

1 in your Hearing Handout notebook, Volume 2, to Handout
2 Number 96, the very last one there. Before the break last
3 night, you requested a chart of sorts with the housing --
4 prison assignments and housing assignments for Leroy
5 Spruiell, Wallace Brandon Jones, Wyatt Spruiell, and Edward
6 Hudson, showing any overlap.

7 (Handout Number 96 was identified for the
8 record.)

9 MS. GUICE SMITH: We've included that for you, and
10 I'm just going to ask Ms. Matoian to walk through that
11 briefly with you and tell you what we learned on the
12 overnight break.

13 A. Okay. Leroy Spruiell and Wallace Brandon Jones
14 were in Hyde Correctional Institution together between March
15 18th, 1999, and March 7th, 2000. During that time, there
16 were three instances where their bed assignments overlapped.
17 The way the bed assignments appear in the D.P.S. records is
18 a letter code and then a number. So anytime those letter
19 codes matched up, that's what's indicated in your chart.

20 So those overlaps were indicated from April 6,
21 1999, to May 25th, 1999; October 11th, 1999, to November
22 15th, 1999; and November 29th, 1999, to March 7th, 2000.

23 We also checked with somebody at the Department of
24 Public Safety who's familiar with those facilities, and they
25 indicated that it's a medium and minimum custody facility.

1 So there are single cells, and there's open movement amongst
2 the inmates where they could have contact with each other
3 outside of their housing assignments.

4 Going on to the next one, Leroy Spruiell, Wallace
5 Brandon Jones, and Edward Hudson were all in Hyde
6 Correctional together from June 24th, 1999, to February 1st,
7 2000. There's only one bed assignment overlap between all
8 three of them, and that occurred on December 3rd, 1999.
9 However, the records only indicate that that was the case
10 from 8:49 a.m. to 9:00 a.m. on that date. Otherwise,
11 there's no other overlap between those letter codes during
12 that time period.

13 Going to the --

14 COMMISSIONER BOSWELL: That was a quick 11
15 minutes.

16 JUDGE WAGONER: Yeah.

17 COMMISSIONER BRITT: Do you know if that was like
18 at the medical area for the prison or -- ?

19 THE WITNESS: I do not. We could check that
20 letter code with someone at the prison and see if they know.

21 A. Going on to the next one, from May 2nd, 2000, to
22 August 16th, 2005, Leroy Spruiell and Wallace Brandon Jones
23 were again housed together at Hyde Correctional Institution.
24 During that time period, there were three bed assignment
25 overlaps noted.

1 That's August 20th, 2000, to September 15th, 2000;
2 October 2nd, 2000, to December 28th, 2000; and August 11th,
3 2005 through August 16th, 2005. And I've just noted there
4 that that last one, October -- August 11th through August
5 16th, they were both in administrative segregation at the
6 time. I did go back and check their disciplinary records
7 that we had available in the D.P.S. file, and it did not
8 indicate that either of them had infractions from that time
9 period or any infractions together.

10 Again, at Hyde Correctional Institution from March
11 6th, 2001, to September 12th, 2001, Leroy Spruiell, Wallace
12 Brandon Jones, and Edward Hudson were all together. There
13 were no bed assignment overlaps during this time period
14 between the three of them.

15 And then at Craven Correctional Institution on
16 October 19th, 2001, to November 1st, 2001, Wyatt Spruiell and
17 Edward Hudson were in prison together. There were no bed
18 assignment overlaps. However, we again checked with D.P.S.,
19 and they indicated that that is a medium custody facility
20 and that there are single cells and open movement amongst
21 the inmates.

22 From Carteret Correctional, November 1st, 2001, to
23 February 20th, 2002, Wyatt Spruiell continued to be in prison
24 together. There were no bed assignment overlaps during that
25 time period, and Carteret Correctional is a minimum custody

1 field unit, so there are only open dorms at that prison.

2 And then at Craven Correctional between August
3 16th, 2005, and September 1st, 2005, Leroy Spruiell and
4 Edward Hudson were in prison together. There were no bed
5 assignment overlaps during that time and, again, that was a
6 medium custody facility with open movement.

7 BY MS. GUICE SMITH:

8 Q. And Ms. Matoian, is it your understanding from the
9 information we received from D.P.S. that medium custody
10 units with open movement mean that inmates, despite where
11 they may be housed to sleep, have free movement of the
12 prison and can interact with one another throughout the day?

13 A. That is correct.

14 Q. Can you remind the commissioners the date of the
15 letter from Edward Hudson to Mr. Coman?

16 A. That happened on August 25th, 2005.

17 Q. And that was at a time period in which Leroy
18 Spruiell and Edward Hudson are both at Craven Correctional
19 Institution. Is that accurate?

20 A. That's correct.

21 COMMISSIONER BARROW: Does that overlap with the
22 time of the S.B.I. reinvestigation?

23 THE WITNESS: It does.

24 COMMISSIONER BRITT: What was the date of the
25 letter again?

1 THE WITNESS: August 25th, 2005.

2 COMMISSIONER BRITT: The 25th, okay.

3 COMMISSIONER BOSWELL: Did we -- was that letter
4 put in one of the --

5 MS. GUICE SMITH: It is in your hand -- in your
6 Hearing Handout notebooks, the second one, as Handout 84,
7 and that's the letter. And right behind that in that same
8 handout is that S.B.I. report of Mr. Hudson's interview with
9 Agent Tilley.

10 COMMISSIONER BOSWELL: Okay. Thank you.

11 MS. GUICE SMITH: Any further questions about the
12 bed assignments or housing assignments?

13 COMMISSIONER BRITT: I just have a question. Does
14 D.P.S. records indicate -- for example, Mr. Hudson testified
15 he was taken to Central Prison for an eye exam and he ran
16 into Leroy Spruiell -- when they are transferred from, for
17 example, this is probably Craven to Central for some
18 specialized medical, and then they go back. Do they just
19 remain as an inmate in Craven?

20 THE WITNESS: We're going to check with D.P.S.
21 about that. Mr. Hudson had indicated in my interview with
22 him that that interaction at Central Prison had happened a
23 few months before my interview in 2017. That was after we
24 had gotten Mr. Spruiell's movement records from D.P.S. So
25 we're going to contact D.P.S. to get an updated record to

1 see if we can verify that instance.

2 JUDGE WAGONER: And how long they were there, if
3 it was just a day or the night.

4 COMMISSIONER BRITT: And -- and with respect to
5 Mr. Spruiell, why he --

6 THE WITNESS: Okay.

7 COMMISSIONER BRITT: -- if it's medical or he was
8 sent there for disciplinary reasons.

9 MS. GUICE SMITH: All right. We will reach out to
10 Department of Public Safety specifically about those issues
11 and hopefully have a response to you later today or
12 tomorrow.

13 I'm going to turn our attention now back to the
14 alternate suspects in this case.

15 BY MS. GUICE SMITH:

16 Q. Ms. Matoian, yesterday there was testimony by
17 Mr. Hudson that the Commission came and interviewed him
18 because --

19 JUDGE WAGONER: Lindsey, is this -- what notebook?
20 Where are we?

21 MS. GUICE SMITH: We're not in a notebook.

22 JUDGE WAGONER: Okay.

23 BY MS. GUICE SMITH:

24 Q. There was testimony from Mr. Hudson that the
25 Commission had come and interviewed him because of a

1 conversation that he had with Leroy Spruiell, and that Leroy
2 Spruiell had told the Commission to interview him. Is that
3 -- is that, in fact, what happened?

4 A. No, that's not. We had decided to interview
5 Mr. Hudson based on our own review of the file, and I did
6 not know that he had been in contact with Mr. Spruiell at
7 Central Prison until he told me so during that interview.

8 MS. GUICE SMITH: Commissioners, also yesterday
9 afternoon, as Ms. Newton helped clarify for us, we had an
10 error on Handout 33, which was Alton Clagon's criminal
11 record. We updated that. Again, if anyone had notes on
12 theirs, we left yours with notes in there. Were there were
13 no notes, we just put the new one in there reflecting that
14 other charge from October of 1993.

15 BY MS. GUICE SMITH:

16 Q. All right. Let's turn our attention this morning
17 to Wyatt Spruiell. Who is Wyatt Spruiell?

18 A. Wyatt Spruiell was with -- with the victim for most
19 of the day on the day of the murder and was the last known
20 person to see him alive and the person to find him dead.

21 MS. GUICE SMITH: Commissioners, you can find
22 summaries related to Wyatt Spruiell throughout your brief,
23 pages 33 to 46, 237 to 239, and 521.

24 Handout 40 in your first Hearing Handout notebook
25 is the criminal record of Wyatt Spruiell, if you want to take

1 a moment to look at that.

2 (Handout Number 40 was identified for the
3 record.)

4 COMMISSIONER GRACE: What was that number again,
5 please?

6 MS. GUICE SMITH: Number 40.

7 COMMISSIONER GRACE: 40.

8 MS. GUICE SMITH: In the first notebook.

9 (Pause in proceedings.)

10 BY MS. GUICE SMITH:

11 Q. Ms. Matoian, was Wyatt Spruiell interviewed by law
12 enforcement during the original investigation?

13 A. He was. He was interviewed on December 18th
14 through the 19th on -- 1993, which was the night of the
15 murder going into the morning after the murder. Again, on
16 December 21st, 1993, he was polygraphed and interviewed. On
17 December 23rd, 1993, he was interviewed; again on January
18 4th, 1994, and again on January 14th, 1994.

19 Q. And did he testify at Mr. Jones's trial?

20 A. He did.

21 Q. Was he interviewed by anyone else prior to the
22 Commission's involvement?

23 A. He was interviewed by the S.B.I. on February 16th,
24 2007, as part of their post-conviction reinvestigation.

25 Q. Did the Commission interview Wyatt Spruiell?

1 A. We did. We interviewed him in prison on May 10th,
2 2013.

3 Q. And was that recorded and transcribed?

4 A. It was.

5 Q. Was his interview with the Commission consistent
6 with his interview with law enforcement and his testimony at
7 trial?

8 A. He was generally consistent regarding his previous
9 statements and trial testimony regarding his whereabouts on
10 the day of the crime, and also as to being the last person
11 to see the victim alive and being the person to find the
12 victim's body.

13 Q. And did he provide any additional information to
14 the Commission?

15 A. He did. He remembered S.B.I. agents coming to
16 visit him when he was at Dan River Work Farm, which is
17 another prison, and said that someone he had been in prison
18 with at Carteret Correctional said that he, Wyatt, had told
19 that individual that he was involved in the robbery of the
20 victim. Wyatt denied being involved in a robbery or ever
21 telling anyone he was involved in a robbery of the victim.

22 MS. GUICE SMITH: Commissioners, if you'll refer
23 to Hearing Handouts 41 and 42 in the first Hearing Handout
24 notebook, these are the reports of the S.B.I.'s interview
25 with Wyatt Spruiell and a portion of the transcript of the

1 Commission's interview with Wyatt Spruiell, beginning on page
2 49, line 14, and going through page 51, line 2.

3 (Handout Numbers 41 and 42 were identified for
4 the record.)

5 MS. GUICE SMITH: If you'll take a moment to
6 review the report, and then that partial transcript.

7 (Pause in proceedings at 9:44 a.m.)

8 MS. GUICE SMITH: Commissioners, not to interrupt,
9 but I see that the second portion of Handout 41 was not in
10 your notebooks. This is that second interview with the
11 S.B.I. in 2007.

12 JUDGE WAGONER: Gotcha.

13 MS. GUICE SMITH: The first one in 2007, but
14 you've got the '93, and then --

15 COMMISSIONER GRACE: Thank you.

16 MS. GUICE SMITH: -- this one should be in there.

17 (Pause in proceedings until 9:54 a.m.)

18 JUDGE WAGONER: Duke Carter. Do we have any
19 information on Duke Carter?

20 THE WITNESS: Duke Carter was a friend and
21 relative of the victim. He was with the victim earlier that
22 day. I believe he indicated that he was at church in a
23 different town that night, and I think they spoke to a woman
24 who confirmed that he was there. We've never had any
25 indication that he was a suspect in the initial law

1 enforcement investigation, but he was with the victim on the
2 day of the murder.

3 JUDGE WAGONER: Okay. But we don't know what his
4 record is or have anything that puts him -- I'm just curious
5 since he appears to be the victim's driver.

6 THE WITNESS: I can see if we have his criminal
7 record.

8 JUDGE WAGONER: If possible, I'd like to see that.

9 (Pause in proceedings.)

10 MS. GUICE SMITH: We're looking for that for you,
11 but I'm just going to keep going.

12 JUDGE WAGONER: That's fine. That's fine.

13 BY MS. GUICE SMITH:

14 Q. Ms. Matoian, did the Commission do anything else
15 with respect to Wyatt Spruiell?

16 A. We did. We obtained a court order for Wyatt
17 Spruiell's D.P.S. records and reviewed those, the ones that
18 were provided.

19 Q. And that included his movement records that we've
20 already talked about?

21 A. Correct.

22 Q. We also reviewed other records?

23 A. Yes.

24 Q. And in the other records reviewed, was there any
25 relevant information about this crime?

1 A. No, there wasn't.

2 Q. Did the Commission do any additional follow-up
3 related to Wyatt Spruiell?

4 A. We did. We interviewed Maxine Downing in person
5 on September 6th, 2018.

6 Q. And who is Maxine Downing?

7 A. She was a neighbor of the victim and a friend of
8 Mary Swain, who is the sister of the victim. She told law
9 enforcement that on the night of the crime she went to the
10 victim's trailer between 7:30 and 8:30 p.m. The victim
11 answered the door but would not let her in. She saw a white
12 man inside the house sitting on a chair in the living room,
13 and she later identified that man as Wyatt Spruiell, and she
14 stated that the white man was the only person she saw in the
15 trailer.

16 She then went directly back to her home and called
17 the victim's trailer and asked for Mary Swain. The victim
18 told her that Mary had been gone since the previous
19 Thursday, and then the victim said quote, "I've got to go.
20 I've got to go," end quote, and hung up the phone.

21 COMMISSIONER THOMPSON: And, again, what time was
22 this?

23 THE WITNESS: Between 7:30 and 8:30.

24 MS. GUICE SMITH: Commissioners, Ms. Downing does
25 not have a criminal record.

1 JUDGE WAGONER: And did Ms. Downing know Wyatt
2 Spruiell? I guess if she identified him?

3 THE WITNESS: She did not know him by name. When
4 she came to the crime scene, law enforcement was
5 interviewing Wyatt Spruiell. He was sitting, I think, in a
6 police cruiser, and she identified him as the man that she
7 had seen in the victim's house a couple of hours before.

8 BY MS. GUICE SMITH:

9 Q. Why did the Commission interview Ms. Downing?

10 A. The Commission was interviewing Ms. Downing in an
11 effort to nail down the time that she had gone to the
12 victim's house on the night of the murder.

13 Q. Was Ms. Downing able to tell you anything about
14 that timing?

15 A. She did. She went to the victim's house between
16 8:00 and 8:30 p.m. on the night of the crime.

17 Q. That's what she told the Commission.

18 A. Yes.

19 Q. But she had told law enforcement it was between
20 7:30 and 8:30.

21 A. That's correct.

22 Q. Did she say anything else?

23 A. The other information provided by Ms. Downing
24 during that interview was largely inconsistent with the
25 information she had previously provided to law enforcement

1 or was additional information that -- and the additional
2 information that she provided that she had not previously
3 reported is not supported by any of the other information
4 the Commission has about the case.

5 Q. Do you recall what any of that information was?

6 A. I do. Ms. Downing indicated that she -- well, I
7 asked Ms. Downing if she knew who Frank Swain was, and she
8 initially did not know him. I asked her if she remembered
9 being interviewed by law enforcement about a murder, and
10 then she then started talking about a drunk driving incident
11 where someone was killed.

12 I told her that Frank Swain had been murdered in
13 his home, and then she said, "Oh, I remember, I was there."
14 She indicated that when she had gone to the victim's house,
15 she saw -- she referred to him as Mac Spruill, but based on
16 the information that she provided, she gave the correct name
17 of Wyatt Spruill's mother and talked about Sondra Day being
18 killed. I believe she may have been speaking about Wyatt
19 Spruill, but she was referring to him as Mac Spruill.

20 She said she saw the Avon Lady's son. She did not
21 know his name or the Avon Lady's name and said that the Avon
22 Lady had moved away. She then said she saw a woman inside
23 the house as well. I asked her to describe that woman, and
24 she said she was not white and she was not black, and she
25 may have been Indian. I asked if she had dark hair like

1 mine or blonde hair, and she said she had dark hair. For
2 reference, Dana Maybin is white and has blonde hair. And
3 she indicated that that woman was the one who had been
4 brought in to testify at the trial and that she had been put
5 up in a hotel to testify at the trial. Ms. Maybin was in
6 jail prior to the trial and during her testimony. And she
7 said that she was not allowed to listen during that woman's
8 testimony.

9 She also indicated that she had been at the Red
10 Apple, where Diane Baldwin, who is also the sister of the
11 victim, worked, and that Mac Spruiell, the woman, and the
12 Avon Lady's son, and the victim were all at the Red Apple
13 while she was there, and that Mac Spruiell had gone in to buy
14 cigarettes for the victim, and that Diane Baldwin had
15 thought that was strange because she said that the victim
16 had always gone in to buy his own cigarettes.

17 Q. Did the Commission do any additional follow-up
18 related to Wyatt Spruiell?

19 A. We did. We located and interviewed Tim Swain in
20 person on March 2nd, 2018.

21 Q. And who is Tim Swain, again?

22 A. Tim Swain is the victim's cousin. On the night of
23 the crime, Wyatt Spruiell had indicated that he came back to
24 the victim's home, discovered the body, immediately left.
25 Went to one neighbor's house, did not get an answer, then

1 immediately went to Tim Swain's house, and then that Tim
2 Swain and Wyatt Spruiell went back to the victim's trailer.
3 So he was the second person to see the victim's body, and
4 then Tim Swain and Wyatt Spruiell went to another neighbor's
5 house to call 911.

6 MS. GUICE SMITH: Commissioners, if you will refer
7 to Handout 43 in your Hearing Handout Notebook Number 1,
8 that is the criminal record of Tim Swain.

9 (Handout Number 43 was identified for the
10 record.)

11 BY MS. GUICE SMITH:

12 Q. Was Mr. Swain interviewed by law enforcement?

13 A. He was on December 18th, 1993; December 21st,
14 1993; and December 27th, 1993.

15 Q. And did he testify at Wallace Jones's trial?

16 A. He did.

17 Q. Was he interviewed by anyone else prior to the
18 Commission's involvement?

19 A. No, he was not.

20 Q. What did he tell the Commission staff in your
21 March 2nd, 2018, interview?

22 A. During that interview, he said that he came home
23 on the night of the crime and that approximately two to four
24 minutes after that there was a knock on his door. When he
25 opened the door, Wyatt Spruiell was there, and Wyatt said,

1 quote "Man, Frankie's dead," something to the nature of, "I
2 think Frank is dead," end quote. He said that when he and
3 Wyatt Spruiell -- excuse me. Tim Swain said that when he
4 came home that night, he saw the car that he knew to be
5 Wyatt Spruiell's car there with the lights off when he
6 arrived, and then the knock on his door did not happen until
7 two to four minutes later. He was filling up his mom's
8 kerosene tank.

9 Q. He saw the car where?

10 A. He saw the car in front of the victim's house.

11 Q. Wyatt Spruiell's car?

12 A. That's correct.

13 JUDGE WAGONER: Again, what time was this?

14 THE WITNESS: In the -- in our Commission
15 interview, he believed that it was a little bit earlier in
16 the night, and I can find the time.

17 JUDGE WAGONER: That's fine.

18 BY MS. GUICE SMITH:

19 Q. Is the information that Mr. Swain provided to you
20 consistent with what Wyatt Spruiell had said to the
21 Commission about his car?

22 A. No, it's not. Wyatt Spruiell said he had left his
23 car running with the headlights on when he had gone up to
24 the victim's house.

25 Q. And when you say "gone up to the victim's house,"

1 is this when he finds the body?

2 A. It is.

3 Q. What else did Mr. Swain say?

4 A. He indicated that he didn't touch anything other
5 than the door and that he didn't see Wyatt Spruiell touch
6 anything while they were in there together.

7 Q. And did the Commission obtain a voluntary DNA
8 sample from Tim Swain?

9 A. We did.

10 Q. And did we have Mr. Swain's DNA compared to the
11 unknown profiles from the crime scene?

12 A. Yes, and he's excluded from all of those profiles.
13 Or excuse me, he's excluded from all of the profiles with
14 the exception --

15 THE WITNESS: (Addressing staff.) Can you hand me
16 -- hand up Notebook Number 1? No, I need the Notebook
17 Number 1, the chart.

18 A. I'm going to go through the chart, the DNA --

19 BY MS. GUICE SMITH:

20 Q. Would you --

21 A. -- Testing Chart for Mr. Swain.

22 Q. Would you refer to page 4 of the DNA Testing
23 Chart? Was he excluded from all of the profiles with the
24 exception of the 2014 testing on the envelope containing
25 scrapings from the victim's front door?

1 A. That's correct. And as Ms. Clement testified,
2 assuming that there are two contributors in that mixture,
3 Mr. Swain would be excluded from it. However, if you assume
4 that there were three contributors, he would be included in
5 that mixture.

6 Q. And did the Commission have Mr. Swain's latent
7 prints compared to the unidentified identifiable latent
8 lifts from the crime scene?

9 A. We did. He was eliminated from all of the unknown
10 identifiable latent lifts.

11 Q. Did the Commission also obtain a voluntary sample
12 from Wyatt Spruiell?

13 A. No. Wyatt Spruiell initially declined to provide a
14 voluntary sample, so the Commission obtained an order for
15 the collection of his DNA sample, and he provided his sample
16 pursuant to that order.

17 Q. Did the Commission have Wyatt Spruiell's DNA
18 compared to the unknown profiles from the crime scene?

19 A. Yes, we did.

20 Q. And will you walk through the DNA Testing Chart
21 and remind the commissioners where Mr. Wyatt Spruiell's DNA
22 was located at the crime scene?

23 A. A hair that came from the jacket found near the
24 victim's body was found to have the same mitochondrial DNA
25 profile as Wyatt Spruiell.

1 Q. And did the Commission have Wyatt Spruiell's latent
2 prints compared to the unidentified identifiable latent
3 lifts from the crime scene?

4 A. We did.

5 Q. And can you tell the commissioners what the
6 results of those comparisons were?

7 A. Yes. The crime lab in that 2015 report identified
8 three latent prints from the plastic cup on the den floor of
9 the victim's trailer to Wyatt Spruiell. Marty Ludas then
10 identified five additional latent prints from that same
11 plastic cup on the den floor to Wyatt Spruiell. Marty Ludas
12 also identified two latent prints from the exterior of the
13 front door of the victim's trailer to Wyatt Spruiell. And
14 then he could not positively identify or exclude Wyatt
15 Spruiell from that print on the phone in the victim's living
16 room.

17 MS. GUICE SMITH: Commissioners, do you have
18 questions for Ms. Matoian related to her testimony about
19 Wyatt Spruiell or any of the other individuals?

20 COMMISSIONER BRITT: What reason did Wyatt Spruiell
21 give for not voluntarily providing a DNA sample?

22 COMMISSIONER BOSWELL: And, also, when did you ask
23 him about it, or ask him to provide the sample? When was
24 that?

25 THE WITNESS: Give me one second.

1 COMMISSIONER BOSWELL: You can answer Mr. Britt's
2 question first.

3 THE WITNESS: I cannot recall off the top of my
4 head what he said at the time. He did mention it in our
5 previous interview from a couple weeks ago. I can find what
6 he said about that then. (Reviewing documents.)

7 (Pause in proceedings.)

8 THE WITNESS: I do remember that Wyatt Spruiell
9 initially indicated that he wanted to meet with the
10 Commission and an attorney, and then when we tried to
11 schedule that interview, we were unable to do so. And then
12 he was no longer represented by an attorney, and at that
13 point the Commission had gotten the court order from Judge
14 Wagoner.

15 BY MS. GUICE SMITH:

16 Q. Did the Commission speak with that other
17 attorney --

18 JUDGE WAGONER: I think we've got a question here,
19 Lindsey.

20 MS. GUICE SMITH: Okay. I was just -- a follow-up
21 real quick.

22 JUDGE WAGONER: Okay.

23 BY MS. GUICE SMITH:

24 Q. Did the Commission speak with the attorney --
25 attorney that Wyatt Spruiell said was representing him --

1 A. We did.

2 Q. -- to try to set up that meeting?

3 A. We did.

4 COMMISSIONER FRYE: Was there at the crime scene,
5 or in Wyatt Spruiell's -- I'm assuming that they searched
6 Wyatt Spruiell's car as part of the crime scene search. Was
7 there a black baby doll found?

8 COURT REPORTER: I'm sorry?

9 JUDGE WAGONER: Black baby doll.

10 COMMISSIONER FRYE: A black baby doll.

11 (Staff conferred.)

12 THE WITNESS: (Reviewing documents.)

13 COMMISSIONER BOSWELL: Good question.

14 JUDGE WAGONER: And while y'all are looking, let
15 me -- did Wyatt Spruiell indicate why he left -- he said he
16 left his car engine running and the lights on when he went
17 to the victim's house. Did he say why?

18 THE WITNESS: Wyatt Spruiell indicated that since
19 he had just recently returned from rehab he had a curfew of
20 around 10:00 -- he was living with his grandparents -- and
21 that he had been off in the other trailer park off of Folly
22 Road. And then when he was leaving that trailer park, he
23 remembered that the victim had bought a black baby doll for,
24 I believe, his niece for Christmas that was still sitting in
25 the backseat. And so he had --

1 JUDGE WAGONER: In the backseat of?

2 THE WITNESS: Wyatt Spruiell's car.

3 JUDGE WAGONER: Wyatt's car.

4 THE WITNESS: And drove back to the victim's house
5 to give him the baby doll.

6 JUDGE WAGONER: Okay. And then the question would
7 be was there a black baby doll found in Wyatt's car when it
8 was searched?

9 ALT. COMMISSIONER NEWTON: Didn't he say he had
10 already gone back to the house to check on Frank because
11 Frank had been drunk earlier? Isn't that what he said?

12 COMMISSIONER FRYE: Yeah. He said that when he
13 left him he was drunk, laid on the couch.

14 ALT. COMMISSIONER NEWTON: And he went back to
15 check on him.

16 COMMISSIONER FRYE: And he went back to check on
17 him before he went back home.

18 JUDGE WAGONER: As opposed to finding the baby
19 doll.

20 THE WITNESS: I've got it.

21 MS. GUICE SMITH: I believe Ms. Matoian --

22 COMMISSIONER BRITT: Was there a -- was there a
23 toxicology from the autopsy?

24 THE WITNESS: There was. The victim had alcohol
25 in his system, and I can check on anything else.

1 Okay. So Wyatt Spruiell's car was searched on
2 December 22nd, 1993, by Dennis Honeycutt. It was a 1980
3 Buick Skylark. They did Luminol presumptive testing, which
4 I believe we outlined in the brief for you all. But Dennis
5 Honeycutt noted -- Dennis Honeycutt said, quote:

6 "S.A. Honeycutt then opened the trunk of the
7 vehicle and photographed the contents of same,
8 which included a doll in a wrapped package, a
9 four-way lug wrench, and a small broom."

10 COMMISSIONER GRACE: A four-way lug wrench.

11 THE WITNESS: Correct. That is the only mention
12 of a doll. It doesn't give any description of the
13 appearance of that doll.

14 COMMISSIONER GRACE: And we do not have that
15 photograph.

16 JUDGE WAGONER: Or the doll.

17 THE WITNESS: We do not.

18 ALT. COMMISSIONER NEWTON: I have a question.

19 Did you happen to ask Wyatt Spruiell why he did not use the
20 telephone at Frank's house to call 911? He had been on that
21 phone apparently earlier. And a follow-up to that is, was
22 that phone operational?

23 THE WITNESS: We did ask him why he hadn't called
24 from the phone, and his response was that he didn't even
25 think to; that upon seeing the body he immediately left the

1 house and went to the neighbor's and then to Tim Swain's.

2 As far as we know, that phone was operational when
3 Sonja Day had called earlier. When it was found at the
4 scene, it was off the hook on the floor, and there is what
5 appears to be blood visible on the phone in the photographs
6 of it.

7 JUDGE WAGONER: And I just want to be sure. In
8 one of the statements, Wyatt said he had gone back to take
9 the baby doll back to Frank. Is that correct?

10 THE WITNESS: Correct.

11 JUDGE WAGONER: But the black baby doll was not
12 found in Frank's house; it was found in Wyatt's car in his
13 trunk --

14 THE WITNESS: The trunk --

15 JUDGE WAGONER: -- right?

16 THE WITNESS: -- that's correct.

17 JUDGE WAGONER: Did he say why it was in his
18 trunk? If he was going to take it to Frank, why didn't he
19 take it to him?

20 THE WITNESS: He did not.

21 JUDGE WAGONER: Okay.

22 (The witness left the stand.)

23 MS. GUICE SMITH: Wyatt Spruiell is here, and you-
24 all will have an opportunity to ask him questions this
25 morning as well. And that -- unless you have more questions

1 for Ms. Matoian, I'm ready to call Wyatt Spruill.

2 JUDGE WAGONER: Any other questions?

3 (No response.)

4 JUDGE WAGONER: Okay.

5 COMMISSIONER GRACE: Would you reference me again
6 to the statements from Wyatt Spruill in our handout?

7 MS. GUICE SMITH: Yes. That was Handouts 41 and
8 42.

9 JUDGE WAGONER: 41 and 42.

10 MS. GUICE SMITH: The -- the S.B.I. reports are
11 41, and then 42 is just that small portion of our transcript
12 with him.

13 Commissioners, I do have a series of questions for
14 Mr. Wyatt Spruill, so I will ask those first --

15 JUDGE WAGONER: Okay.

16 MS. GUICE SMITH: -- and then allow you-all to ask
17 all of the questions you have.

18 (Mr. Spruill was brought into the room.)

19 JUDGE WAGONER: Mr. Spruill, if you'd please
20 remain standing. Place your left hand on the Bible. Raise
21 your right hand as best you can.

22 WYATT LELAND SPRUIILL,
23 having been called as a witness for the Commission, was
24 sworn by Judge Wagoner and testified as follows:

25 JUDGE WAGONER: You may have a seat there, sir.

1 DIRECT EXAMINATION BY MS. GUICE SMITH:

2 Q. Good morning, Mr. Spruiell.

3 A. Good morning.

4 Q. Can you please state your full name for the
5 Commission?

6 A. Wyatt Leland Spruiell.

7 Q. And where are you currently incarcerated?

8 A. At Dan River Prison Work Farm.

9 Q. And what are you incarcerated for?

10 A. I'm incarcerated for speeding to elude and felony
11 larceny of lumber material.

12 Q. And do you know why you're here today?

13 A. Nobody's told me anything.

14 Q. So my name is Lindsey Smith. I'm the Executive
15 Director of the North Carolina Innocence Inquiry Commission.
16 We are hearing the cases of State versus Leroy Spruiell and
17 State versus Wallace Brandon Jones, as it relates to the
18 homicide and robbery of William Frank Swain.

19 I am going to ask several questions of you today
20 and then when I'm done, around the table we have our
21 commissioners. There are nine of them here, and they will
22 probably have questions for you as well. Okay?

23 A. Okay.

24 Q. Are you from Washington County?

25 A. Yes, ma'am.

1 Q. You've lived there all your life?

2 A. Yes, ma'am.

3 Q. And around the time of the crime, had you been in
4 Virginia for rehab?

5 A. Yes, ma'am.

6 Q. When did you come back from Virginia?

7 A. Ma'am, it's been so many years ago that I -- I
8 don't know the exact date. I could -- I could possibly say
9 it was -- it was in December when I actually came back.

10 Q. So was it around the time of the crime?

11 A. Yes, ma'am.

12 Q. Do you know -- based on the day of the crime, do
13 you know about how long you had been back in Washington
14 County before that day?

15 A. Maybe a week and a half, two weeks.

16 Q. And during that couple-of-week period, did you
17 have interactions with the victim?

18 A. No, I didn't.

19 Q. Did you have interactions with him on the day of
20 the crime?

21 A. Yes, I did.

22 Q. Was that the first time that you were with him --

23 A. Yes.

24 Q. -- between when you left rehab and when you --

25 A. Yes.

1 Q. -- at the day of the crime? Just that day?

2 A. Yes, ma'am.

3 Q. Okay. And during that -- the course of that day,
4 were you in his home at any point?

5 A. Yes.

6 Q. Okay. Can you just walk the commissioners through
7 what you and the victim were doing that day from the time
8 you first saw him until the last time you saw him?

9 A. Okay. Well, the only reason that I went to Frank
10 -- Frank Swain's home was the fact that my sister was
11 incarcerated in Raleigh at the time.

12 Q. What's your sister's name?

13 A. Her name's Sonja Janine Day. And the only reason
14 I went is because I knew that Frank -- Frank and my sister
15 were boyfriend and girlfriend, whatever, and they had been
16 going with each other, dating each other, for some time.
17 Anyway, I went -- I was at Frank's house that day
18 specifically to talk to Frank about going to see my sister
19 that Sunday. He had a pass. He was on the list --
20 visitation list to go see her, and I didn't know how to go
21 about getting on that visitation list, and I -- I felt like
22 he would know.

23 So I went to Frank. And, now, that Friday night,
24 I -- I had spent the night at Frank's house that Friday
25 night. So when I woke up that Saturday morning, I, you

1 know, it was -- the day he got killed I was actually there.
2 And we had ate -- we ate a -- some sausage, or he boiled
3 some sausage that day in a pot. And basically we had talked
4 about going to get some things.

5 Back then you could get a box or a package
6 together, like cigarettes, and I think the State allowed
7 smoking cigarettes back then. And Frank couldn't read or
8 write, and he didn't know too much about going in and
9 actually getting this box together. So there was a thing --
10 there was a list of the things that you could have. So I
11 read the list, and so Frank and I --

12 Well, before we actually did this part, this -- a
13 fellow named Duke Carter came up to the -- to the residence.
14 Duke Carter was, if I had to -- if I had to say just from my
15 observance of -- of Duke that day, Duke was -- he drove
16 Frank around because Frank had lost his driver's license due
17 to a D.W.I. or drunk driving ticket that he had received in
18 the Town of Roper.

19 And Frank depended on Duke for a lot of -- a lot
20 of things. Duke Carter knew a lot of his business. He knew
21 a lot of the things that -- that Frank did. And -- and
22 just, you know, I would say that because I had worked with
23 -- with Duke Carter before doing paving work with Tommy
24 Stanley and Albert Stanley. Duke Carter worked with Albert
25 Stanley. So, you know, they were -- they knew each other,

1 you know, very well.

2 And now me, on the other hand, you know, I -- I
3 stated why I was, you know, there, you know, to try to, you
4 know, basically to go see my sister and whatever, make plans
5 to go. Well, that day Duke came up in the yard and -- you
6 know, it's hard to remember exactly what happened because I
7 -- I just have tried to really block it out of my mind. I
8 want to say that there was -- Duke might have washed Frank's
9 truck that day. He may have -- I can't remember if he
10 washed his car or not.

11 But I do know that Frank, Duke Carter driving, and
12 myself went to Plymouth. Frank wanted to go to Plymouth to
13 this gentleman's home. It was -- when you get to Plymouth
14 there on 64, you'll be coming into Plymouth. There's a
15 Makin Tracks on the left. We would be coming in westbound
16 lane coming westbound into Plymouth. There's a Makin Tracks
17 on the left, and Highway 32 turns to the left and goes down.
18 We went out of town there a little ways. I -- I didn't know
19 where we were going. I didn't know who -- who we were going
20 to see.

21 We went out of town just maybe three miles or so.
22 On the right-hand side we turned into a residence. Frank
23 told Duke to turn in, and I just assumed that Frank and --
24 and Duke both knew the -- knew who it was. I mean, I know
25 Frank did 'cause he went inside. We -- we sat out in the

1 car. I'm in the backseat, Frank was in -- Duke was driving,
2 and Frank was a passenger in the front. And he stayed in
3 there for -- for a little period of time.

4 JUDGE WAGONER: What -- what -- what "he" are you
5 talking about? "He"?

6 THE WITNESS: Oh, Frank.

7 JUDGE WAGONER: Okay, thank you.

8 THE WITNESS: Yes, ma'am.

9 A. Frank stayed in the residence there for a short
10 period of time. I don't know who this person was to this
11 day. I don't know who this person was. I've often
12 wondered. And I -- if I remember correctly, I -- I stated
13 that in my earlier testimony back when -- when I gave
14 testimony when I -- when it first happened.

15 And anyway, we left there, and we went back to
16 Frank's residence, and Duke was asking Frank for crack
17 cocaine. He wanted to -- he was -- he was smoking back
18 then, I'm assuming, because he was -- he was asking me about
19 smoking. I told him I didn't smoke anything. I'd just come
20 from rehab, and -- and I didn't drink anything. They --
21 they had purchased a fifth of Rich's Wine from, I believe,
22 Makin Tracks. I'm -- I'm not real sure, but I think it was
23 Makin Tracks that they purchased this wine. And Frank was
24 drinking as well as Duke. I was not drinking.

25 And Duke had asked Frank several times about, you

1 know, smoking crack, wanting some cocaine. And he said,
2 "You already owe me, you know; you know I'm not gonna give
3 you anything." And as far as I know from what I saw, I -- I
4 never saw -- I never saw Frank gave -- give Duke Carter any
5 -- any cocaine as far as I -- as far as I know. He may have
6 done it behind my back or may have slipped him something,
7 you know.

8 BY MS. GUICE SMITH:

9 Q. What -- what else did you do with the victim that
10 day?

11 A. Later on that day Frank and I went to Plymouth.
12 We went to Winn-Dixie or Piggly Wiggly.

13 JUDGE WAGONER: Did you go back to Plymouth?

14 THE WITNESS: Yes, ma'am, in my car.

15 A. I had a brown Buick Skylark. So Frank and I got
16 in my Buick Skylark. My -- my grandparents had helped me
17 get this car. I'd only been working a couple of weeks, and
18 I was working with the Stanleys, paving work. So the car
19 was new to me, and -- and, you know, I had just gotten it.
20 So we went to -- and I -- I had money, you know, from
21 working. And, you know, had -- had gas and everything. And
22 so we went to -- Frank and I went to Plymouth. We went to
23 Winn-Dixie -- I mean, Winn Dixie -- went to Piggly Wiggly,
24 and we got a box of stuff for my sister.

25 And so Frank and I -- well, on the way to

1 Plymouth, we did stop by Henry Freeman. Henry Freeman had a
2 furniture store as you come into Plymouth in the westbound
3 lane on the right-hand side. We stopped there. Frank went
4 in, and he said he had to pay a bill. I sat in the car. I
5 didn't go in. Frank went in. He come back out. He had a
6 receipt. And, anyway, so we went on to -- went on to
7 Plymouth.

8 Well, while we were in Plymouth at this store, I
9 saw my mom and I saw Leroy Spruiell's sister, which they're
10 kin to me. He's like my third cousin. And, anyway, so I --
11 I saw them at Piggly Wiggly. Saw my mom, and -- and I
12 didn't really want, you know, my mom to see me because she,
13 you know, would have said, you know, "Well, what are you
14 doing, you know, with somebody you shouldn't be around?"
15 You know, that was just -- Mom said that about a lot of
16 people over the years.

17 But anyway, we left and -- we left Plymouth, and
18 we went back to Frank's house, you know. And -- and this is
19 Saturday. We just watched some TV, hung around, watched TV,
20 and really didn't -- really didn't do anything.

21 And it got on to about -- you know, it gets dark
22 kind of early, you know, that time of year. So it was -- it
23 was dark outside, and it was getting really cold. And I had
24 a pair of white tennis shoes on, white socks, with a jumper
25 set, and -- you know, shorts and a shirt. And I -- and I

1 was cold, and Frank didn't have any heat in his -- you know,
2 he didn't have hardly no heat in his house. So it was
3 getting on -- it was about, you know --

4 And I told Frank. Frank was -- if -- if I'm
5 sitting where the doorway, the entrance to the doorway, the
6 couch was to my right, and I was sitting on the couch.
7 There was a chair directly across in front of the door, like
8 a recliner-type chair. And -- and so to the right of that
9 chair was a stand with a telephone on it.

10 And about 20 past 7, the phone rang. And I
11 reached over and -- I reached over and picked the phone up.
12 And when I picked the phone up, it was my sister calling
13 from Raleigh, and I talked with her. And Frank was sitting
14 right there in the chair. I talked with her for some time,
15 and then I said, "Well, you know, I know you want to talk to
16 Frank."

17 So Frank -- I handed Frank the phone, and Frank
18 started talking to her. And I told Frank, I said, "Look,
19 Frank." I said, "I'm -- I'm leaving." I said, "I'm -- I'm
20 -- I'm gonna go ahead and go." You know, "Talk to my
21 sister." I said, "But tomorrow, you know, I -- I -- you
22 know, we're definitely gonna go, and I'll be up here to pick
23 you up."

24 And -- and I told my sister. I said, "We're --
25 we're coming." You know, "We're coming up there to get you"

1 or "to see you, so put me on the visiting list if it's
2 possible so I can see you." So she said okay. Well, I -- I
3 left. And -- and I told Frank, I said, "Frank, make sure
4 you lock your door." I said, "Make sure you lock your
5 door." And I -- you know, when a door -- on a door like
6 that, I can't remember if he had a deadbolt or what, but
7 there was a -- a way to lock it. And so I -- I, you know,
8 turned the handle so the door would lock. Checked it. It
9 was locked. And -- and I left.

10 Well, when I -- do you want me to go further?

11 BY MS. GUICE SMITH:

12 Q. Yeah. Keep going.

13 A. I left. Well, when I left, you know, there was a,
14 there was a -- I was just curious as to -- now, back up.
15 Let me back up. Before my sister called, there were two
16 visitors that came to the house. I left that out. And like
17 I said, it's been so long ago I'm trying to put it back
18 together.

19 A girl named Niecey Armstrong -- she's dead now,
20 deceased -- she came up there, and she -- Frank had had a
21 vial, a pill bottle in his pocket. And she got -- he told
22 -- at this point he had told me that he had five rocks of
23 crack cocaine. And she bought two of them. She bought two
24 rocks from him, or got two from him. I don't know what she
25 paid for it or whatever.

1 And -- and another man came up there sometime
2 later, Marty -- Marty Respass. He came up there, and he
3 bought three, three units of crack from -- from Frank. And
4 he said that "This is all I have," and he turned his bottle
5 upside down and, you know, shook, you know, just to show
6 Marty, you know, that's all he had. I -- I don't know if
7 Marty had more money or what. I wasn't involved in the
8 transaction of that.

9 But, anyway, so Frank was -- was still -- he was
10 sitting in that chair, and Marty was still there. And I
11 said, "Look, man. You can't -- you can't smoke this stuff
12 here," you know. I said, "You got" -- I said, "I'm -- I
13 hadn't been around any smoking." And I said -- and he had
14 already made -- Frank had told him he could and, you know, I
15 was sitting on the couch, and he made him a can. And he --
16 and he, you know, put some up there. And I was like, "Look,
17 man, you got to go. You got to go."

18 Q. Did he leave after that?

19 A. Yes, ma'am. He left.

20 Q. Before you go further, I've got some follow-up
21 questions for you. Were you-all drinking that day?

22 A. No, ma'am, I was not drinking. Frank and Duke
23 Carter were drinking.

24 Q. And Duke Carter, what time did -- did he bring
25 y'all home?

1 A. It was probably 4. Maybe 3:30, 4:00 that
2 afternoon.

3 Q. Was it dark or still light outside?

4 A. It was still light.

5 Q. And did Duke Carter hang around after that, or did
6 he leave?

7 A. No, he -- he went ahead and left.

8 Q. So after 3:30 or 4:00, it was just you and the
9 victim in his home?

10 A. Yes.

11 Q. And then you said two individuals came by that
12 night?

13 A. Two individuals came by after dark. I don't know
14 exactly what time it was, but it -- but it was dark.

15 Q. So it was after dark?

16 A. It was dark.

17 Q. And are those the only two visitors that came by
18 that night?

19 A. Yes.

20 Q. And you said that Mr. Swain sold Niecey Armstrong
21 two rocks of crack --

22 A. Cocaine.

23 Q. -- crack cocaine?

24 A. Exactly.

25 Q. How -- how much money did he get for that?

1 A. I do not know.

2 Q. Did you see where he put the money?

3 A. No.

4 Q. What about Marty Respass; he bought three rocks?

5 A. Yes, ma'am.

6 Q. Did you see how much money Mr. Swain got for that?

7 A. No, ma'am.

8 Q. Did you see where he put the money?

9 A. I know -- let me just state for -- for the record
10 I know how much it cost. It was \$20 a rock. That's what
11 they charged for it, and I'm -- and I'm -- I'm guessing that
12 that's probably what Frank was charging for it. But these
13 transactions happened in the kitchen area, and I was on the
14 couch watching TV. And it just didn't mean anything to me
15 that they were there to buy crack, you know. It's just not
16 for me to -- I just felt like it wasn't my business, you
17 know.

18 Q. Do you know what the victim did with that tube
19 that he turned upside down to show Mr. Respass it was empty?

20 A. No, ma'am, I don't.

21 Q. You didn't see him put it anywhere afterward?

22 A. No. No, ma'am.

23 Q. Did you see Mr. Swain with any plastic bags?

24 A. No, ma'am.

25 Q. Did you see any of the money that Mr. Swain had

1 that night?

2 A. No, ma'am.

3 Q. But you knew he had some money.

4 A. I figured he had some money because I thought, you
5 know, that he possibly had some money in his pocket from --
6 from just the fact that, you know, Niecey had came up there
7 and the other boy. So that was probably -- it could
8 possibly have been \$100. If they were -- unless they got it
9 on -- got something on credit or, you know -- I think Frank
10 had been known in the past to give out credit sometimes.
11 But I mean, I don't know, I really don't.

12 Q. Did you see Mr. Swain do other drug deals that day
13 while y'all were out and about?

14 A. No, ma'am.

15 Q. Where did Mr. Swain keep his drugs?

16 A. Ma'am, I have no clue. I saw what he had -- he
17 had that in that bottle. And he said -- he said that he had
18 -- he had five rocks, but he doesn't have any left, you
19 know, and he hit it up on the table, so.

20 Q. So when they came, either Niecey Armstrong or
21 Marty Respass, came to buy drugs, did you see where
22 Mr. Swain got that -- that little tube from?

23 A. I think he had it in his shirt pocket.

24 Q. In his shirt pocket?

25 A. Yeah. He didn't have to get up, you know, and I

1 don't -- I don't know when that -- I don't know if he had
2 that bottle in his shirt pocket when Duke, him, and I went
3 to Plymouth. I don't -- I don't know if that was, you know,
4 when he picked it up and stuck it in his pocket. I just --
5 I didn't pay any attention to that.

6 Q. Did Niecey Armstrong come inside the house to buy
7 the drugs?

8 A. Yes, ma'am.

9 Q. Did Marty Respass come inside the house?

10 A. Yes, ma'am.

11 Q. How long was Niecey Armstrong there?

12 A. Maybe -- maybe ten minutes.

13 Q. Did she sit on the couch?

14 A. No.

15 Q. Did she stand up the whole time?

16 A. Yes, in the kitchen; the kitchen area.

17 Q. How long was Marty Respass in the house?

18 A. Marty Respass was there probably 15 minutes.

19 Q. Did he sit down?

20 A. Yes, he did.

21 Q. Where did he sit?

22 A. He sat in a chair. There was a coffee table. I
23 think it was the coffee table. I think he sat on the coffee
24 table, not the couch.

25 Q. Do you remember what Mr. Swain was wearing that

1 day?

2 A. He had on a work type outfit, pants and shirt,
3 with his name, Frank, on it.

4 Q. Did you see him change clothes that day?

5 A. No, I did not.

6 Q. So from the time that -- you said you were there
7 the night before, correct?

8 A. Yes.

9 Q. You spent the night?

10 A. I spent the night.

11 Q. So from the time that he woke up that morning
12 until you found his body, he was in the same clothes all
13 day?

14 A. As far as I know when I left, when I left Frank's
15 house, he was -- he was in the same clothes when he was
16 sitting in the chair when I left. But I -- I can't remember
17 if that's the outfit he had on when I found him. I -- I
18 can't remember.

19 Q. Do you know if he was wearing a jacket that day?

20 A. I think he very well may have been wearing a
21 jacket.

22 Q. Do you know what it looked like?

23 A. Maybe I want to say it was maybe gray, a grayish
24 color.

25 Q. Was he wearing it when you left the house that

1 night?

2 A. No, he wasn't.

3 Q. So what time did you leave the victim's home?

4 A. Okay. When my sister called at -- like I said,
5 she called about 20 past 7. And I talked with her for a
6 little bit. And it was about 7 -- about 7:30. Maybe not
7 exactly dead on 7:30, but it was pretty close to it.

8 Q. Do you remember a neighbor knocking on the door
9 that night, a woman, and speaking to Frank Swain at the
10 door?

11 A. No.

12 Q. What did you do after you left the victim's house?

13 A. After I left, got in my car, left out of the
14 trailer park, went down, and this is -- this is on Folly
15 Road. And I tried to draw Miss Catherine a little map of
16 that and whatever. Anyway, so I left out of that trailer
17 park and went down to -- there's another trailer park.
18 Hudson's. It would be Hudson's Trailer Park. It's about a
19 half a mile down the road on the left-hand side, the same
20 side of the road that Helena Chemical and some other places
21 are.

22 But, anyway, they were -- they were two trailer
23 parks that were frequented by lots of different people. Of
24 course, at the time when I got to that -- when I got to that
25 trailer park, I backed in. I -- I had to be home -- my

1 grandparents had laid down sort of like a rule. You know,
2 be home by 10:00 or either let us -- or either, you know, if
3 you're not coming home, let us know. And -- but at least
4 try to be home by 10:00. So my -- my thing was I was
5 waiting -- waiting around, you know, until about 10:00, and
6 I was gonna go on home.

7 Q. How old were you at the time?

8 A. How old was I then? I'm 56 today. When was that,
9 in '93? It happened in '93?

10 Q. Yes, 1993.

11 A. I can't --

12 Q. Can you do the math? Okay.

13 A. I mean, I'm sorry. I was maybe 33 -- 32, 33.

14 Well, I'll finish. So I went down to the trailer park, and
15 I backed in. And there was a double-wide trailer that --
16 the driveway that I turned in, there was a double-wide
17 trailer on the right. So I turned my car around and I
18 backed in beside this little barn. They have a -- they have
19 a pool table in there, and -- or they did -- and, you know,
20 years before and up to that point. I don't know if it was
21 still there when I was actually there, but nobody was in
22 there.

23 And like I said, it had gotten really cold. And
24 so at that point I ended up -- look, and here come Alfred
25 Armstrong came -- came out. This is where I saw him at for

1 the first time that day. Do you want me to continue?

2 Q. Yes, please.

3 A. So Alfred Armstrong came over, and he wanted to
4 sit down in the car. I had my car running, the heat going.
5 He sat down. And "I hadn't seen you in a long time."

6 "Yeah. Where you been?"

7 "I've been in Beaver Dam, Virginia, you know, for
8 five months."

9 He's like, "Man."

10 I said, "What's going on?" You know, "What's
11 happening, you know, tonight, or anything?" And as far as
12 what's happening, "What you doing tonight?" You know, what
13 -- and he's, you know, just small talk back and forth. I've
14 known him for years, you know, knew his family. We used to
15 carry deer meat down to his family, down where they live.

16 But, anyway, so we're sitting there just, you
17 know, shooting the breeze, and him and I leave. And we --
18 we turn to the left, not towards Frank's trailer park but to
19 the left, and we go down the road just riding. I said,
20 "This is my new car, you know. It's got, you know, six
21 cylinders. It's pretty -- pretty fast," you know, and we
22 went down to the end of Folly Road. And there's a stop sign
23 so you go left to Plymouth or right back to Mackeys. I
24 turned around right there, and we came on back, and I backed
25 right into the same spot.

1 We -- we was sitting there for a second and a Jeep
2 pulls in. By this time, I -- let me give you the time
3 frame. By this time, it's like about 9:30 -- about 9:30, 20
4 minutes to 10. It's probably like 20 minutes to 10:00. And
5 I can't remember if it was a green -- it's like a Jeep
6 Cherokee, maybe green in color, maybe red. I can't -- I
7 can't remember. But I just -- as good as I can recollect, I
8 believe it was a Jeep Cherokee. There was a white guy
9 driving, and I think his -- I don't know his first name, but
10 I think his name -- his last name is Jett.

11 JUDGE WAGONER: Is what?

12 THE WITNESS: Jett, I think his last name was
13 Jett. I'm not -- I'm not sure about that.

14 A. Well, anyway, pulls in and two guys get out. Now,
15 I don't -- I couldn't see. It was dark. I couldn't see who
16 'cause they didn't actually pull up to the front of my car.
17 They kind of pulled over to the side. And I couldn't see
18 who was actually in the -- in the jeep, but I know two guys
19 got out. So, Alfred Armstrong, he went up to the Jeep, up
20 to the window. And he was sticking his head in there
21 looking and trying to see who was in the vehicle.

22 Now, you know, I -- if he recognized who was in
23 the vehicle, he would know today who he saw, I'm pretty
24 sure, but he went around to the -- kind of like not all the
25 way around to the back, but the two guys that got out went

1 to the back of the vehicle. One of the guys was -- was a
2 fellow by the name of Maurice Wilkins. I didn't know who
3 the other guy was. Maurice is kind of dark, more
4 dark-skinned. This guy was kind of light-skinned. They
5 were kind of at the backdoor, at the -- at the back of the
6 vehicle.

7 They had raised the trunk lid, the hatch up. And
8 I -- when I -- I sort of stepped around, you know, Ducon at
9 a distance, from like say from me to you basically. And I
10 saw it was -- it was -- that it was Maurice. I recognized
11 him. I don't know who the other guy was, and I didn't -- I
12 don't know who the guy was driving, although I've seen the
13 guy driving before. I think he's a Jett. I'm not sure.

14 BY MS. GUICE SMITH:

15 Q. Whose house were you at?

16 A. We were at Maurice Wilkins' mother's house. I was
17 sitting outside of her home, but backed up it's actually --
18 was actually not on her lot, but --

19 Q. Is that house known for drug activity?

20 A. You know, I'm gonna say -- I'm gonna say that I
21 had been gone for five months, you know. If there was drug
22 activity going on there, if there was any selling of drugs
23 there or whatever, I'm not -- I don't know. I didn't see
24 anybody going in and out of -- like going in and out of the
25 house like it was a spot to buy drugs when I was there. But

1 -- so I really wouldn't know what was going on at that
2 point.

3 But, now, let me be -- let me just go ahead and be
4 clear. You know, that trailer park was known for drugs. It
5 was -- it was a drug trailer park, as well as the trailer
6 park that Frank lived in, but there were people -- I must
7 also say there were people there that didn't smoke; you
8 know, that probably lived there that didn't smoke crack.
9 You know, I guess that's like it is every -- you know, just
10 about everywhere. Some places do. Some places people
11 don't.

12 But long story short, getting back to where I was
13 at. The Jeep came in, and -- and the -- and Maurice Wilkins
14 and the other guy ran around -- ran around the back of the
15 home. And I -- I didn't -- I didn't see -- didn't see them
16 come out because for the simple fact that I left.

17 Q. So you left at that point?

18 A. I left.

19 Q. Where'd you go?

20 A. I left at that point. And when I turned out,
21 Frank had bought a doll baby that day for his niece that --
22 it was sitting up in my backseat. And I had all intention
23 of carrying it to Frank and dropping it off. But when I
24 turned out, the doll baby fell over and it made a crying
25 noise. And I was like, man. It kind of spooked me at

1 first. You know, I thought somebody had got in my backseat
2 while I was out -- out of my vehicle. And so I said, well,
3 I'm just gonna stop by Frank's and drop this doll baby off.
4 It's for his niece anyway.

5 So I pull up to Frank's. I've got my lights on,
6 my car running. I open the door. Well, when I run up the
7 -- head up to the steps, I looked. There was a light on,
8 and I looked down. There was a light on the porch, and I
9 looked down. There was a spot of blood about the size of a
10 quarter right on the step, right on the top step. And I
11 looked down and I was like, and it kind of shocked me. I
12 was like, whoa, and I hollered Frank's name out.

13 Q. Did you have the doll with you at that time?

14 A. Yes. I was -- I was carrying the doll in my hand.
15 And I -- I was like whoa. And I noticed that the door was
16 already open about say this much, three inches, three or
17 four inches was open. So I hollered Frank's name several
18 times. Now, Frank had been known to carry, you know, a .32
19 pistol and a -- and a switchblade. You know, you've heard
20 all kind of stories. He had a big scar down his face. He
21 was a fighter, a scrapper, you know, a pretty strong
22 individual.

23 So, you know, and I was like, well, what --
24 something's really gone wrong here, you know. So I pulled
25 my sleeve down on my shirt because if there was any

1 evidence, I didn't want to -- you know, if somebody had come
2 there and turned the door handle and that was, you know, who
3 had done it, I didn't want, you know, my fingerprints to be
4 there.

5 So I pulled the door open, and when I let the door
6 swing open, I peeped inside and looked and it was just a
7 bloodbath. It was blood everywhere, all to the right of the
8 -- of the room. The room was just torn to pieces, and Frank
9 was laying there in the floor with one of his legs turned
10 backwards, and his -- it was -- it was gruesome.

11 If you want me to tell you, I'll tell you, but --

12 Q. I think that's okay.

13 A. It was -- it was gross. I still have nightmares
14 about that.

15 Q. What did you do after you saw Mr. Swain's body?

16 A. After I saw Mr. Swain's body laying in the floor,
17 I immediately turned around and ran to a trailer that was --
18 Frank's trailer -- if you drove straight up, his trailer was
19 sitting here, but there were trailers -- there were two
20 trailers to the left. I ran to the first trailer.

21 I beat and beat and beat on the door. "Somebody
22 help, somebody help me. Somebody -- somebody's killed -- I
23 think somebody's killed Frank. I think somebody's killed
24 Frank." I beat and beat and beat on the door and nobody
25 would come to the door.

1 I ran to the next trailer, and there was a guy in
2 that trailer. And I told him what had happened. I said,
3 "Somebody has killed Frank. Somebody has killed Frank."

4 And immediately he said, "You're lying. You're
5 lying. What are you talking about?"

6 I said, "Man, Frank is laying in the floor of his
7 trailer dead. I need a phone. I need a phone. I gotta
8 dial 911." And he didn't -- he -- he went to the trailer.
9 He said, "Man, I don't believe it." And he went to the
10 trailer and went in the trailer.

11 Q. Do you know who that was?

12 A. I don't know who he is. I don't know his name.

13 Q. Okay. What happened next?

14 A. I went to another trailer that was to the right of
15 Frank's trailer, just kind of a little ways away from Frank,
16 and I -- there was a sliding door. And I -- I beat on the
17 door and said, "Hey," I said, "I need some help." I said,
18 "Somebody's killed Frank. Somebody's killed Frank Swain. I
19 need to use -- I need for you to dial 911." They wouldn't
20 dial 911. They handed me the phone out the door and said,
21 "You dial it." So I dialed 911.

22 Q. Was that other man with you then?

23 A. No. He was -- I don't know, you know, if he was
24 still in the trailer, or -- I don't know where he went. He
25 -- I -- I just don't know.

1 Q. What happened to the baby doll?

2 A. Okay. I kept -- I put the doll baby back in -- in
3 my car, and I gave that to -- Frank Swain's sister worked at
4 Red Apple. And I -- I ended up giving that to her. I told
5 her it belonged to her -- her brother.

6 Q. When you say you put it back in the car, where did
7 you put it in the car?

8 A. It was in the backseat.

9 Q. And when did you give it to his sister?

10 A. I think it was sometime later. It was -- 'cause I
11 spent the night that night at my mother's house. So I don't
12 -- I'm -- I'm thinking it was that Sunday, or it could have
13 been that Monday.

14 Q. Did law enforcement search your car?

15 A. Law enforcement? I don't know that night if -- I
16 can't remember if they did search the car, but I'm --

17 Q. But you believe you gave that doll to Frank
18 Swain's sister by -- by when?

19 A. I'm not real sure. The next couple of -- within
20 the next couple of days I -- I gave it to her because it was
21 -- he said it was for -- it was a black doll baby. It was
22 black in color, and he said it was for his niece. And I'm
23 assuming that it was his sister's little girl or something.

24 Q. I want to take you back to when you were in
25 Mr. Swain's trailer earlier that night. You said you were

1 sitting on the couch.

2 A. Yes.

3 Q. You had been in the trailer earlier in the day.

4 You had slept there the night before, correct?

5 A. Yes.

6 Q. Did you have a cup you were drinking out of that
7 day?

8 A. I could possibly drink out of a cup, probably some
9 water or something from the kitchen.

10 Q. Do you know where --

11 A. I don't remember.

12 Q. -- you left that?

13 A. I don't remember.

14 Q. Is there anything else you remember touching in
15 the victim's home?

16 A. I know he boiled two sausages in a pot, and he
17 said I could get a sausage. So I probably handled the pot
18 probably. It was a little -- little aluminum pot, a little
19 lightweight. It's possible that I touched that and maybe a
20 glass or something, probably the water, turning the water
21 on --

22 Q. But you don't remember a specific --

23 A. -- to get some water. No.

24 Q. -- a specific glass or cup that you had been
25 using?

1 A. No, ma'am. Could I say something else?

2 Q. Yes.

3 A. After -- when I dialed 911 and the -- the
4 ambulance, they didn't exactly know where Swain's residence
5 was at. So I stayed on the phone until the ambulance pulled
6 in and pulled in behind my car and everything. And I think,
7 if I remember correctly, Kent Inscoe with the S.B.I., he --
8 he was on a call somewhere down in Dare County. And he came
9 on the scene. I gave a statement to -- to Ms. Janice
10 Spruiell. She was a deputy sheriff at the time. I gave her
11 a statement.

12 And Janice, you know, we've known each other for
13 years. And she asked me exactly what happened, you know,
14 and I gave her a statement. And Kent Inscoe, also, I gave
15 him a statement. And Kent Inscoe asked me, he said,
16 "Wyatt." He said, "Right now," he said, "I -- I need to
17 know right now if there's anything else, if there's anything
18 else. I need to know right now. Do you know of anything?"

19 And I told him, I said, "This is -- this is my
20 statement. This is all I know."

21 And he said, "Do you have any idea who might have
22 killed him?"

23 And I said, "No, I don't."

24 Q. Are you related to Janice Spruiell?

25 A. No, I'm not.

1 Q. Are you --

2 A. She married a Spruiell. I don't know what her
3 maiden name is.

4 Q. Are you related to the person that she married?

5 A. It's possible. There's a lot of us Spruiells down
6 that way.

7 Q. Are you related to Leroy Spruiell?

8 A. Yes, ma'am.

9 Q. How are you related to him?

10 A. My grandfather, deceased, Johnny James Spruiell,
11 was Leroy Spruiell's dad. They were brothers. Jack Spruiell.

12 Q. Were you present when Frank Swain was murdered?

13 A. No, I was not.

14 Q. Did you set anyone up to rob Frank Swain?

15 A. No, I did not.

16 Q. Tell me a little bit about how friendly you are
17 with individuals in prison. Do you make friends in prison?

18 A. Well, yeah. I mean, I've got a -- I've got a good
19 personality. People have always told me that, you know. I
20 like to make conversations, light conversation. I just --
21 and so yeah, you know, when -- when you're in prison like
22 that, it's a good policy to know who sleeps around you, you
23 know, to -- you know, if somebody's next to you, you'd kind
24 of like to know what they're in there for. You know, I
25 mean --

1 Q. Did you talk about Frank Swain in prison?

2 A. No, I didn't talk about Frank, but I have -- I've
3 -- you know, I've always -- I've always wondered if -- if
4 Leroy actually did the crime or not. So Leroy -- you know,
5 I looked up to Leroy as I was growing up. Our relationship
6 was like -- he was like my big brother, you know, 'cause I
7 didn't have a brother. I had a sister. And, you know, I
8 kind of looked out -- looked up to him like, you know, to
9 look out for me, you know. My parents didn't like me being
10 around Leroy or his dad because of his dad drank and Leroy
11 was subject to get in trouble so.

12 But, you know, we hunted together, fished
13 together. We did all kinds of things together, you know. I
14 was -- you know, I was like 14. You know, I hadn't even
15 smoked any pot, you know. He's coming out, you know, and
16 he's already 18. You know, I thought he was just all that,
17 you know.

18 So anyway, when -- when Leroy, you know, got
19 charged with his murder, and I was like, I couldn't believe
20 it, you know. And I found out he was at Hyde Correctional.
21 And Leroy wrote me a letter from prison. I was at my
22 grandmother's home. That's where the letter came. And he
23 said, you know -- he said to me -- he says, "I can't believe
24 that -- I can't believe that you're gonna let -- that you're
25 gonna let -- you know I'm innocent. You know, how do you

1 know -- if you know anything about it, you know, just tell
2 the people, you know, that I didn't do it, you know."

3 And I felt so sorry for Leroy because I didn't
4 know anything to say. I didn't. You know, as -- as much as
5 I love Leroy, if I knew even -- I mean, you know, I know
6 you've got to know things beyond the shadow of a doubt. But
7 if I knew for a fact that there was some kind of other way,
8 you know, and I don't know that -- that -- what happened, or
9 the testimony that was given against Leroy. I don't even
10 know if that was true, you know. But I'm -- what I'm saying
11 is if I knew that there was another way that it had happened
12 and I -- and I actually knew for a fact, I would have
13 already -- he wouldn't have spent 25 years in prison.

14 Q. Do you have any personal knowledge as to whether
15 Leroy Spruiell committed this crime?

16 A. No, I don't.

17 Q. Do you have any personal knowledge as to whether
18 Wallace Brandon Jones committed this crime?

19 A. No.

20 Q. Do you know Wallace Jones?

21 A. I know him now, but I didn't know him then.

22 Q. Do you know Edward Hudson?

23 A. Yes, ma'am.

24 Q. Who's Edward Hudson?

25 A. Edward Hudson is a fellow I met in the holding

1 cell. I had been trying --

2 Q. When you say in the holding cell, this week?

3 A. Yes.

4 Q. I asked him, you know, because we -- all of us,
5 four of us were in the holding cell together, and I hadn't
6 seen Leroy in 25 years, or however long he's been locked up.
7 The last time I saw Leroy was at my sister's burial at
8 Zion's Chapel Church of Christ. And that's the last time I
9 saw Leroy. He was with Steve Furlough that day, and I
10 think, you know, this was, you know, the -- well, anyway.

11 So Ed Hudson. Getting to him. Ed Hudson was at
12 Carteret. I couldn't remember. I couldn't place the face
13 with the name. If you'd have just said, "Do you know Ed
14 Hudson," like you said, no, I didn't. But now that I have
15 -- I'm pretty good with faces. And it's been, you know,
16 it's 20 -- he's 25 years older. When the S.B.I. came and --
17 and asked me numerous questions about this Ed Hudson, I --
18 at that point -- and that was I think in 2005. I didn't --
19 I couldn't recall any conversation as far as what the -- as
20 the questions were asked, it was my assumption that Edward
21 Hudson knew -- knew Leroy.

22 He told me that he knew Leroy, this person,
23 because Leroy was at Hyde, and he had been at Hyde. He had
24 ample opportunity to talk with Leroy and discuss anything.
25 And it just so happened our paths crossed at Carteret. And

1 I -- when he told me that he was at -- at -- when he told me
2 that he had been down to Hyde, I said, "Well, do you know
3 Leroy Spruiell?" You know, because my cousin Leroy was at
4 Hyde. And naturally, you know, at that point I was like,
5 "You know, that's my cousin. You know, what's he doing?
6 You know, how are they treating him and all?" You know, and
7 I know Leroy loved to play volleyball so, and I love to play
8 volleyball so.

9 Q. So you recall talking to Edward Hudson when you
10 were housed at Carteret Correctional Center with a period of
11 time that he was housed there as well?

12 A. If -- if it's -- if today if I had to say that --
13 if somebody was to asked me, "Was this bald-headed guy the
14 guy that slept beside you at Carteret," I couldn't swear to
15 it. But they say his name's Ed Hudson. And he says he
16 slept next to me at Carteret. And so if somebody was
17 sleeping next to me, I would have had a conversation with
18 them about Leroy if he had been to Hyde.

19 Q. You recall having a conversation with someone in
20 Carteret --

21 A. Yes.

22 Q. -- who had been in Hyde --

23 A. Yes.

24 Q. -- with Leroy --

25 A. Yes.

1 Q. -- and having a conversation about Leroy --

2 A. Yes.

3 Q. -- and how he was doing?

4 A. Yes.

5 Q. Do you recall telling Edward Hudson, or anyone,
6 that you set the victim up to be robbed?

7 A. Absolutely not. Absolutely not.

8 Q. You didn't tell anyone that.

9 A. No, I did not.

10 Q. Tell me a little bit about being in the holding
11 cell with Mr. Hudson this week? What did y'all talk about?

12 JUDGE WAGONER: Is this yesterday? Is that what
13 you're talking about?

14 THE WITNESS: Monday night.

15 BY MS. GUICE SMITH:

16 Q. Monday night. How long were you in the holding
17 cell with him?

18 A. Maybe an hour or so back and forth, downstairs,
19 when they carried us upstairs. We ate together, and then
20 they -- they put us in separate pods.

21 Q. Did you ride in the same vehicle with him from
22 prison?

23 A. Yes, I did on Tuesday, yesterday.

24 Q. Yesterday.

25 A. Coming over here, yeah.

1 Q. Were you transported separately from Dan River to
2 Wake County?

3 A. Well, he's not -- he's at Tillery, and I'm at Dan
4 River.

5 Q. So you all weren't in a prison --

6 A. No, no, this is the first time I've seen him,
7 yeah.

8 Q. What kind of conversation did you have when you
9 were together in the holding cell, eating together, or in
10 the vehicle yesterday?

11 A. It -- you know, it was like, hey, what's going on?
12 You know, I don't know. It seemed like that Leroy knew more
13 about what was going on than anybody.

14 Q. Leroy was with you as well?

15 A. Yeah.

16 Q. And Mr. Jones?

17 A. We were all in the same holding cell. And it
18 seemed like, you know, Leroy knew, you know, how -- how the
19 -- I guess the hearing or whatever was gonna go. He was
20 just trying -- we was just trying to find out that we were
21 absolutely in the -- I mean, I was in the dark completely.

22 The conversation was -- was kind of light because,
23 you know, I -- I actually didn't know -- I don't know who
24 this Edward Hudson is. You know, but now he's saying he's
25 Edward Hudson and he was with me at Carteret. And

1 naturally, when the S.B.I. came to talk to me in 2005 and
2 asked that same identical question, and I was like I've
3 never had a -- I've never had a conversation with Ed Hudson
4 about any conspiracy theories.

5 We may have discussed -- we may have discussed,
6 well -- well, what could have happened? You know, if Leroy
7 says he's innocent, what could have happened? And -- and if
8 he -- if he gave any -- any rebuttal to that conversation, I
9 don't remember it. But it's always, you know, since Leroy
10 has always claimed his innocence, we've always thought about
11 was there any other -- any other way anything could have
12 happened, you know? So I don't know. Our conversation was
13 light. There was, you know --

14 Q. There was conversation about this case?

15 A. Well, we were all talking about it, you know.
16 Leroy was saying, you know, things that had gone on, things
17 that have happened, you know. He was kind of pushing his
18 point, you know, and Wally really didn't say a whole lot.
19 And Edward really didn't say a whole lot other than, you
20 know, when I started putting two and two together, I
21 realized that he was probably the one that was -- had -- and
22 I think he and Leroy had run back up together again at Hyde.
23 I'm not sure. But, you know, I've known for some time --

24 Q. Did he say that?

25 A. Ma'am?

1 Q. Did he say that, or you're just assuming that they
2 got back together at Hyde?

3 A. I think probably I'm just assuming that. I don't
4 -- I don't know that for a fact. But, you know, when --
5 when somebody comes to you, you know, like the S.B.I., you
6 know, I have a lot of respect for, you know, because when
7 they come to you, you know, and they ask you questions like,
8 you know, they asked me, I knew what they were getting at.

9 You know, I'm not naïve to think that Edward
10 didn't say that it's possible a conspiracy that, that I was
11 -- I tried to set Frank up and rob him. But that's --
12 that's ludicrous. I mean that's -- I just can't see how
13 that could have happened, you know. You know, I didn't
14 know. I'd been gone. You know, I didn't know any
15 individuals, and nor would I have ever tried to rob somebody
16 like that, or -- or let alone, you know, sic somebody on
17 somebody. I'm -- I'm totally against gang activity or
18 anything of that nature.

19 Q. Do you know who Dana Maybin is?

20 A. No, I don't. I've -- I've seen her before. I've
21 heard her name, but I don't know her.

22 Q. Did you know a woman named Nikki Tarkington or
23 Talkington [phonetic]?

24 A. No.

25 Q. Did you ever see Leroy Spruiell or Brandon Jones in

1 the victim's trailer park on the day of the crime?

2 A. No.

3 Q. Did you see them anywhere else on the day of the
4 crime?

5 A. No, I did not.

6 Q. Did you see Leroy Spruiell anywhere on the day of
7 the crime?

8 A. No.

9 Q. Did you ever see Leroy Spruiell, Wallace Jones, or
10 Dana Maybin buy drugs from the victim?

11 A. No. That would be impossible because the only
12 time I was ever around -- that -- that was the first time I
13 had been around any drug activity at Frank's house in -- in
14 the two weeks that I was home.

15 Q. Is that because you weren't at Frank's house or
16 because --

17 A. No.

18 Q. -- he wasn't selling drugs on the other days?

19 A. I wasn't there on any other days.

20 Q. So you didn't see them buy drugs from Frank Swain
21 on the day of the crime?

22 A. No. I haven't seen Leroy buy any drugs in --
23 leading up to that point or five months earlier.

24 MS. GUICE SMITH: All right. Commissioners?

25 JUDGE WAGONER: Let me just ask, does the court

1 reporter need a break?

2 COURT REPORTER: Yes, ma'am.

3 JUDGE WAGONER: She does. All right. We're going
4 to be in recess for about ten minutes. You can just sit
5 there.

6 THE WITNESS: Okay. Thank you, ma'am.

7 JUDGE WAGONER: Thank you.

8 (Off the record at 11:10 a.m.)

9 (A brief recess was taken.)

10 (Back on the record at 11:29 a.m.)

11 JUDGE WAGONER: Were you done, did you say, or?

12 MS. GUICE SMITH: I am, but I've got two things to
13 put on the record.

14 JUDGE WAGONER: Okay.

15 MS. GUICE SMITH: During the last little bit, the
16 commissioners have been handed what's been marked as Handout
17 97, the Duke Carter Criminal Record, and Handout 98, which
18 is Wyatt Spruiell's trial testimony. And I think everyone's
19 had an opportunity to review that over the break.

20 JUDGE WAGONER: 97 is Mr. Carter's record?

21 MS. GUICE SMITH: Yes, ma'am.

22 JUDGE WAGONER: And then 98 was what, did you say,
23 Mr. Spruiell's?

24 MS. GUICE SMITH: Wyatt Spruiell's trial testimony.

25 (Handout Numbers 97 and 98 were identified for

1 the record.)

2 MS. GUICE SMITH: And I have completed my
3 examination of Wyatt Spruiell if the commissioners have
4 questions for him.

5 EXAMINATION BY JUDGE WAGONER:

6 Q. Well, Mr. Spruiell?

7 A. Yes, ma'am.

8 Q. Would you explain to me why you spent Friday night
9 with Mr. -- with the victim? You said you spent the night
10 at his house?

11 A. Yes, ma'am.

12 Q. Okay. Why?

13 A. Just to get to know Frank again. You know, he was
14 the only link I had to my sister at that time. She was
15 supposed to have called Friday night, but she didn't call
16 Friday night. And so it carried on into Saturday, and then
17 she called Saturday night. So that's why I ended up
18 spending the night on the couch at Frank's.

19 Q. Okay. Did your grandparents get -- you said you
20 were supposed to be home by ten?

21 A. Yeah. And I had called them from Plymouth and
22 told them that I was going to spend the night out.

23 Q. Did you tell them where?

24 A. Well, not really, but I just told them with a
25 friend, you know. So I didn't tell my grandmother that I

1 was on Folly Road, no. I didn't.

2 Q. All right. Did -- did the victim pay Duke for
3 driving him around, or how did he pay him?

4 A. I don't know how they had that -- that thing
5 worked out, you know. I just know that Frank had lost his
6 driver's license, and Duke was his driver. So any kind of
7 -- you know, any kind of compensation that he did or
8 anything like that, I don't know how they had it worked out
9 whether he would pay him cash money or put gas in his car or
10 -- or whatever.

11 Q. Do you know if Duke lived near -- lived near where
12 Frank lived?

13 A. At that time he was. At that -- at that
14 particular time, I think Duke was living out on 64 Highway,
15 which is like maybe eight blocks. It's right down the
16 street out on the -- the main drag.

17 Q. Now, did I understand you to say that when you
18 left on Saturday evening --

19 A. Yes, ma'am.

20 Q. -- to go down to that other trailer park or
21 wherever, that Frank was on the phone talking to your
22 sister --

23 A. Yes.

24 Q. -- when you left?

25 A. Yes, ma'am. I -- I was on -- I was talking with

1 my sister. And she called about 20 past 7, and then we
2 talked for maybe -- maybe five or ten minutes, and then I
3 gave the phone to Frank. And she wanted to talk with him.
4 And while she was talking to him, I left.

5 Q. You left while she -- while they were on the
6 phone.

7 A. While they were on the phone.

8 Q. And Frank had been drinking that day or anything
9 that you're aware of?

10 A. Yes, ma'am. Yes, ma'am. Frank had been drinking
11 that day.

12 Q. Was he drunk?

13 A. I think at this point, at the point where when I
14 was leaving, or -- or up to the point, I think he was just
15 -- he had -- he'd slept most of it off. I mean, I didn't
16 see Frank consume a whole lot of alcohol that day. A pint
17 of -- you know, that's a fifth is like a pint a piece if --
18 if they -- one got equal share from the bottle. You
19 understand what I'm saying? And so that's all I saw Frank
20 drink that day.

21 Q. But he was on the phone talking to your sister
22 when you walked out of the house.

23 A. Yes, ma'am.

24 Q. Okay. And did -- now, why -- when you left the
25 house, Frank's house, why did you decide to go to that

1 Hudson's Trailer Park? What made you go there?

2 A. Well, I -- you know, it was -- it was like 7:30.
3 I didn't have to be home right away, and I just rode down to
4 the next trailer park just to -- just to see what, you know,
5 if anything was going on down there, if I saw any of my old
6 friends, people I knew from -- from way back.

7 I think I -- I think it was pretty much, if you
8 know anything about Narcotics Anonymous or anything, I think
9 -- and I'm pretty sure Your Honor does -- you know, a person
10 battles with using or not using. And I was at that point
11 probably battling, you know, well, am I gonna use or am I
12 gonna go on to the house?

13 You know, because it doesn't -- you know, somebody
14 like myself -- you know, I've -- I've battled a drug problem
15 for years. You can look at my -- my record. It -- it was
16 all, you know, because of drugs, and --

17 But some days I do good; some days I do bad, you
18 know. And when I say "bad," I mean use. But on the same
19 token, you know, I was kind of proud of myself in a way
20 'cause I didn't use. I hadn't used up to that point. But
21 when I turned out of the trailer park, I went to the left.
22 And I -- I went down to the next trailer park.

23 I backed in and sat there, and I saw Alfred
24 Armstrong. He came up, and he sat in the car for a while.
25 And I was just trying to, like, find out what had been going

1 on lately, you know, because I grew up there, you know, and
2 people around. And that was pretty much it, you know. I
3 just killed some time. We rode down the road, you know,
4 came back, and backed back in the trailer park.

5 And out of the blue this Jeep pops up, you know,
6 and -- and to be -- you know, I mean, I'm just gonna say
7 this. You know, I know it's not the question you asked, but
8 let me just say this. I believe -- I have always thought
9 that there was another thing that could happen with -- with
10 Frank. I mean, I just didn't ever think that Leroy had it
11 in him to kill somebody, you know, or -- or -- or rob
12 somebody. And I didn't know Brandon, so I don't know --
13 Wally -- what he's capable of doing or what he wont.

14 But people know me, and they would say the same
15 thing about me. I'm not capable. "We just can't believe
16 Wyatt would do something like that." And I'm sure you've
17 probably run across people in your lifetime, you know, that
18 you would make that assumption.

19 On the same token, you know, when -- when these --
20 when these guys pulled up, and then after years passed and I
21 -- I was think -- you know, you think it over in your mind.
22 And I found the man dead, you know. It really didn't look
23 good on me. It shed a bad -- a very bad light on me, you
24 know: Last person to see him alive, first person to find
25 him dead. I mean, I watch crime, you know, shows all the

1 time. You know, that's what we do in prison, you know, we
2 watch crime shows.

3 (Laughter.)

4 A. So believe it or not, you know, jail -- people
5 going to jail. I mean, I've -- I can't say I've never
6 discussed that there possibly was a conspiracy with -- you
7 know, or somebody conspired to rob Frank other than Leroy
8 and Wally. I think maybe in my -- in my thinking -- I don't
9 know this for a fact, but in my thinking, I think Maurice
10 Wilkins and that boys -- them boys in that Jeep had
11 something to do with it.

12 Q. The guys in the red --

13 A. Yes.

14 Q. -- or green Jeep?

15 A. Yes.

16 Q. Okay.

17 A. I -- I really -- I think that. I don't know that
18 for a fact. I didn't run with them. I don't -- you know, I
19 hadn't -- that's the first time I had seen Maurice Wilkins
20 in -- in -- you know, at least six months prior. So -- but
21 when I did see him, you know, it was just like, you know,
22 "Hey, man, I've got to be home 10:00. You know, I'm not
23 down with all this mess now." I didn't have any
24 conversation with them. You know, I -- I didn't know --
25 know them, run with them, or anything. I just left.

1 Q. Do you know who BoJack is?

2 A. Yes, ma'am. I do know who BoJack is.

3 Q. Who is he?

4 A. BoJack Clagon was a man that worked at
5 Weyerhaeuser with my dad that was a -- was a big-time drug
6 dealer in Washington County that -- that my dad told me, so
7 I believe this, that made the statement that when he had a
8 million dollars he was gonna tell Weyerhaeuser to shove it,
9 and he did that. You know, and all the boys heard him, you
10 know, and he left, pension and everything. And he was a --
11 he was a drug dealer, had been, but I don't know what his
12 situation was at that time.

13 Q. You don't know if Frank got his drugs from BoJack
14 or -- ?

15 A. Now, I do know that the shop there in Roper where
16 -- well, Mr. Clagon owned that -- owned this -- used to be
17 Jeb Gaylord's store. We used to go out there all the time
18 when I was little. But I do know that that's where a lot of
19 that out -- that -- that crew ran out of. I think it was
20 like 25 of them they indicted and convicted on charges of
21 drugs and -- and buying and, you know, selling drugs or --
22 that's what the paper said anyway. I read it in the paper.

23 Q. Okay.

24 JUDGE WAGONER: All right. Other questions?

25 ALT. COMMISSIONER NEWTON: If no one else does, I

1 have a few.

2 JUDGE WAGONER: Huh?

3 ALT. COMMISSIONER NEWTON: If no one else does, I
4 have a few questions.

5 COMMISSIONER GRACE: Somebody else does, and you
6 can still ask your few.

7 ALT. COMMISSIONER NEWTON: Okay. I'll try to make
8 this quick.

9 EXAMINATION BY ALT. COMMISSIONER NEWTON:

10 Q. Mr. Spruiell, my name is Deb Newton. I'm a
11 criminal defense attorney in Raleigh.

12 A. Uh-huh.

13 Q. I have a few questions. Why did you go to rehab?
14 Was it a result of a probation, or a probation violation?

15 A. I went -- I went to rehab because my mom had told
16 me I had to do something different.

17 Q. Well, you had just gotten multiple misdemeanor
18 charges right on the back of a D.U.I. and some larceny
19 charges, okay, that that was like a page full of charges,
20 and then there was nothing between November of '91 and
21 August of 94. So my question is did you go to rehab as a
22 result of a criminal justice recommendation from a judge?

23 A. I don't think I did.

24 Q. Do you know what your --

25 A. I can't --

1 Q. -- sentence was in all those cases in August of
2 '91?

3 A. No, ma'am, I can't remember.

4 Q. Did you go to jail, or did you get on probation?

5 A. I can't -- I can't remember. You'll have to tell
6 me.

7 Q. Well, I'm asking you.

8 A. I mean, it's been so long ago. My record is so
9 extensive, I hate to say, but --

10 Q. This was just before Mr. Swain died. So do you
11 remember when you went to Virginia to rehab?

12 A. Yeah. It was -- I'm going to say it was five
13 months prior to December of the year that Frank was killed.

14 Q. Okay. And had you gotten in trouble again just
15 before you went to rehab? Did you have to go, or were
16 you --

17 A. No, I didn't -- I didn't have to go.

18 Q. Okay. Were you under a criminal justice system
19 sentence when you went?

20 A. No.

21 Q. Okay. So you went for five months --

22 A. Yes, ma'am.

23 Q. -- voluntarily?

24 A. Yes, ma'am.

25 Q. You paid for it?

1 A. Well, it -- you -- it was free. It was New Life
2 for Youth. It's a Christian rehab center.

3 Q. Okay.

4 A. And --

5 Q. And they didn't charge for it?

6 A. Huh-uh.

7 Q. Okay.

8 A. They -- you signed up for food stamps, and they --
9 they used your food stamps to feed you. And you, in turn,
10 worked for them.

11 Q. Okay.

12 A. We sold bumper stickers and this type thing. We
13 came to Plymouth actually selling "Kids Hey, No Hope in
14 Dope" bumper stickers at Food Lion.

15 Q. Well, just before you went to Virginia, did you
16 get out of jail?

17 A. I can't remember.

18 Q. Okay. Well, the reason I ask you that, you -- you
19 -- you said that you were clean when you came back, and you
20 went to see your sister.

21 A. I was what now?

22 Q. That you were clean. You had been --

23 A. Right. Right.

24 Q. -- to rehab, and you had, what, come to the Lord,
25 or you were talking about --

1 A. Well --

2 Q. -- the Christian part of that. So you think you
3 recovered?

4 A. I don't think anyone ever completely recovers.

5 Q. Well, aside from that, how long had it been since
6 you'd had any drugs or alcohol in your system?

7 A. About six months.

8 Q. Six months.

9 A. Yeah.

10 Q. Just before you left, and --

11 A. Yeah, probably before I left. About two weeks
12 before I left and then the five months.

13 Q. And how long did it take you to fall off that
14 wagon?

15 A. By February.

16 Q. Now, at the trial -- February of '94?

17 A. Yes.

18 Q. Okay. Now, at the trial, Mr. Norton asked you
19 about whether you were smoking crack. Crack is your drug of
20 habit?

21 A. Yes.

22 Q. Okay. Is there anything else aside from alcohol?

23 A. No.

24 Q. Just crack?

25 A. (Nods head affirmatively.)

1 Q. Okay. He asked you if you'd been using -- smoking
2 crack cocaine that day and you said no. But then he said,
3 "How about later?" And you told him at the trial that you
4 were, in fact, smoking crack cocaine that night, correct?

5 A. No. I don't -- I don't remember that testimony.
6 I know that -- that Alfred Armstrong had had a stem and he
7 smoked some crack in my car.

8 Q. So you didn't tell Mr. Norton at the trial that
9 you were smoking crack cocaine at least once that night
10 after you came back from rehab?

11 A. I can't remember if I did or not.

12 Q. All right. How about drinking alcohol? You drank
13 some alcohol that night, didn't you?

14 A. I can't remember if I drank any alcohol.

15 Q. At Mr. Swain's house?

16 A. If -- if I testified to it then, yes.

17 Q. Okay. Do you remember if you had had alcohol at
18 Mr. Swain's house, what you would have drank it out of?

19 A. No.

20 Q. Do you remember any of the cups or glasses at his
21 house?

22 A. I probably -- if -- if I had a drank anything, it
23 would have been out of a -- out of a bottle.

24 Q. Out of a bottle? Would it have been beer?

25 A. It could have been. It could have been, but I

1 don't remember drinking anything. It's -- it's been so long
2 ago I can't remember if I did or didn't.

3 Q. So when you went back to Frank's house, you said
4 you went back to give him the baby doll?

5 A. Yes, ma'am, he had purchased a doll baby that day.

6 Q. Well, did --

7 A. Earlier that day.

8 Q. Didn't you also say at one point in the statement
9 that you went back to check on him because he had been so
10 drunk before you left the first time?

11 A. No.

12 Q. Do you remember saying that?

13 A. I didn't go back to check on him. The only time I
14 ever went back to Frank's is when I went back to carry that
15 doll baby.

16 Q. And what's your sister's name?

17 A. Sonja Day.

18 Q. Do you have any reason to know why anyone would
19 kill her?

20 A. Yes, I think I do.

21 Q. Why?

22 A. I think that she found out. I think she possibly
23 found out who killed Frank when she went to New York. And
24 with the people that she was with, I think that then she
25 found out and they realized that she -- that she knew and

1 she was trying to get away from them, when she ran
2 downstairs and told my nephew, which is Matt, her son, at
3 nine years old to, like, "You wait here. If your mom
4 doesn't come back downstairs, then you find a police officer
5 because they're going to try to hurt your mother."

6 And so I believe that once she found out who had
7 something -- who was involved in my -- in Frank's murder, I
8 think that they were out to get her, so she left. And my
9 mother picked her up in Virginia. She left LaGuardia
10 Airport at some point, went to an Italian -- Italian
11 restaurant, and the maître d' hooked her up with a cab and
12 got her to LaGuardia.

13 She had money, as well as my nephew had money, and
14 they -- she got a flight to Norfolk and stayed in, I guess,
15 a motel there until my mom would go get her. My mom didn't
16 want to go get her 'cause she was disgusted with how she was
17 running here and there with Matthew. And my grandmother
18 talked her into going to get her -- getting my sister. And
19 so she went to get her and brought her back, and my sister
20 told my mother that she was running for her life. And --

21 Q. And you were told this by your mother?

22 A. No, I was told this by Matthew.

23 Q. The nine-year-old?

24 A. And -- and my mother.

25 Q. Do you know who she was with in New York when

1 she --

2 A. No, ma'am. I'm -- I'm not -- I'm not really sure.
3 I know one man was from Dardens. He had gotten a settlement
4 for a check -- a check settlement with several thousand
5 dollars. I don't know the dollar amount. And I think that
6 he was -- they -- they had gone up there for the purpose to
7 buy crack cocaine.

8 Q. Was that Frank's source also, or just your --

9 A. Ma'am?

10 Q. Was it your sister's source of cocaine in New York
11 or Frank's?

12 A. What did you say again now?

13 Q. The people in New York, who were they?

14 A. I don't -- it was -- the people in New York, they
15 were kin to the man that had gotten the check, I think, from
16 what I --

17 Q. Who -- who was the source of the cocaine? Whose
18 source was it?

19 A. The man in New York.

20 Q. But whose source was it, your sister's or Frank's?
21 Source for cocaine.

22 A. The source for cocaine?

23 Q. They go up -- your -- your sister went up north in
24 New York to get cocaine, to meet up with those people?

25 A. Right.

1 Q. You said they were the source of cocaine, right?

2 A. I don't understand what you're --

3 Q. Why did your sister go to New York?

4 A. I don't know. See, I was -- I was told that it
5 was to get crack cocaine --

6 Q. Okay.

7 A. -- to buy cocaine.

8 Q. Do you know who her source was?

9 A. No. It -- it was the man that she went with --
10 went to New York with. There were several that went: Two
11 drive -- I think one driving, one passenger, my sister,
12 another man, and Matthew. I think the man that my sister
13 was going with had got -- had received disability, and you
14 know, it had finally come through and he had several
15 thousand dollars and went up there to see his brother or his
16 -- some of his kinfolks that lived in Lower Manhattan and to
17 purchase the drugs.

18 And once they got there, things didn't pan out, or
19 she found out something that she wasn't -- she either
20 overheard something. I mean, if you're in a room -- you
21 know, it's common sense. If you're in a room and you find
22 out something, hey, that's happened like detrimental that
23 you could go to prison for for the rest of your life,
24 naturally you're going to want to say, look, you know, I
25 need to get out of here if it's --

1 Q. Have you ever told anybody about what your --
2 about what Matthew told you about what his mother said?

3 A. (Shrugged shoulders.)

4 Q. Nobody's ever asked you?

5 A. Nobody ever asked me.

6 Q. So where's Matthew?

7 A. Matthew -- who is he?

8 Q. Where?

9 A. Where? He's -- he works for Speedway now. He
10 just got a job, thank goodness.

11 Q. Did you have a conversation with him about this?

12 A. Yeah, a little bit. He's -- he's real reserved.
13 He found her at nine years old dead, you know, in her -- in
14 her bedroom, cut and stabbed and --

15 Q. So you think that that's a possibility or
16 explanation for at least your sister's murder.

17 A. I think they're related.

18 Q. Why do you think they're related?

19 A. Because I think that when she found out, the same
20 people that -- that had something to do or conspired to run
21 over Frank, I think probably when she found out about it --
22 my sister would just -- she just didn't make good choices,
23 you know. I don't make good choices, you know. I think she
24 found out something because she ran. I know my sister. If
25 my sister ran, it was because she was in trouble, you know,

1 and --

2 Q. Did -- did you personally know where Frank's
3 source of his crack cocaine was?

4 A. No, I did not. Absolutely not.

5 Q. You said that Mr. Swain had a switchblade. Did
6 you see that knife when you went back in the house?

7 A. No, but it -- it's just -- it's just like when I
8 was in the -- when I was in, like, the sixth grade, Frank --

9 Q. I know. He -- he had a knife.

10 A. I don't know.

11 Q. Did you see it --

12 A. No. I didn't --

13 Q. -- when you went back?

14 A. -- see it that night.

15 Q. Did you ever see it again?

16 A. No, ma'am.

17 Q. Did you go into his car and see it?

18 A. No. He had a truck.

19 Q. Or the truck. Did you see it there?

20 A. No.

21 Q. After the -- after the murder, did you go into his
22 truck?

23 A. No.

24 Q. You don't happen to know if he changed pants or
25 bought clothes at Goodwill or anything --

1 A. No.

2 Q. -- like that, do you?

3 A. I don't know.

4 Q. Now, you -- you said you were against robbing
5 people in the course of talking or examination by the
6 Commission.

7 A. No, I wouldn't -- go ahead.

8 Q. Okay. But you -- you have been charged with
9 offenses --

10 A. I was charged with -- with common law robbery.

11 Q. Now, do you know if Leroy Spruiell had a drug
12 problem?

13 A. Yeah, I think he had a drug problem.

14 Q. Was his also crack cocaine?

15 A. Yeah.

16 Q. His whole life? As long as you knew him? Or?

17 A. When crack came around, I think he had his ups and
18 downs with it.

19 Q. Do you know who Janice Spruiell is?

20 A. Yes, I know Janice Spruiell.

21 Q. How do you know Janice Spruiell?

22 A. Just 'cause she's on the sheriff's department,
23 and --

24 Q. Do you --

25 A. -- she's in our hometown.

1 Q. You grew up with her?

2 A. I grew up around her, but I didn't know her like
3 that. I didn't grow -- I didn't grow up with her. She
4 didn't go to -- wasn't in our youth group, or she wasn't,
5 you know, somebody I went to school with. She's a whole lot
6 older than me.

7 Q. Anything you know about her, her reputation for
8 anything?

9 A. She had a reputation to go with the black guys,
10 and she -- I heard that she was smoking crack.

11 Q. Thank you, sir.

12 A. Could I say one more thing? The -- the robbery,
13 common law robbery, I snatched a woman's purse at a -- at a
14 time in my life when I was -- I was doing cocaine, and I
15 actually -- and wrote some checks on her. And I turned
16 around and after I came to my senses, I called her. And
17 she's a doctor at East Carolina University.

18 I called her and I talked with her on the phone,
19 and I -- I explained who I was and I also asked her
20 forgiveness. I told her that I was -- how sorry I was, that
21 I had acted very irrationally, and if she could find it in
22 her heart to forgive me, I -- I would appreciate it, and
23 that I was going to turn myself in that day. And -- and I
24 did go turn myself in that day, and she told me, she said,
25 "I forgive you."

1 Q. Thank you, Mr. Spruiell.

2 A. Uh-huh.

3 JUDGE WAGONER: Questions? Yes, sir, Mr. Boswell.

4 EXAMINATION BY COMMISSIONER BOSWELL:

5 Q. Did you ever think you had AIDS?

6 A. No, sir.

7 Q. In prison -- in any of the prison places that you
8 were, were you ever really, really sick?

9 A. No, sir.

10 Q. In your trial testimony, you talked about when you
11 were in -- between the time you left Frank and found him
12 again, that you were with a person named Sweet Pea. Do you
13 remember that?

14 A. Sweet Pea lives in that trailer park, but far as
15 -- as -- I may have seen Sweet Pea. I may have. It's a
16 possibility that I did see Sweet Pea because Sweet Pea and
17 P.J., which is Wilkins' mother, they were kind of, you know,
18 going together among other men she was going with. But he
19 was one of them, this Sweet Pea.

20 Q. You said earlier tonight -- today that -- that you
21 didn't think that Frank had a coat on. In your trial
22 testimony, you said you thought he did have a coat on.

23 A. Okay. That's possible.

24 Q. Yeah. I mean, you don't have a clear memory now
25 of 25 years ago?

1 A. Exactly.

2 Q. I don't blame you. I wouldn't either.

3 A. I mean, I'm just going to keep it real with you.

4 It's hard to remember, I mean --

5 Q. Oh, yeah.

6 A. -- you know, back, you know, the little minute
7 details.

8 Q. Sure. You know, I understand.

9 A. But for me, you know -- hey, man, I found a man
10 dead. You know what I'm saying? I thought I was going to
11 Raleigh to see my sister. I called 911. I mean, the S.B.I.
12 -- you know, I took a -- took a lie detector test. I passed
13 it with flying colors. You know, they sprayed the Luminol
14 inside of my car. If -- if whoever was in that -- in that
15 -- Frank's home, when they came out, they had to have blood
16 on their shoes because there was blood all on the floors and
17 everywhere. The blood wasn't in my car, nor was it on my --
18 I had the same outfit I had on for two days.

19 Q. Right.

20 A. You know -- I mean, I know -- I know in -- in a
21 lot of people's minds, you know, you're trying to find out,
22 you know, is -- is this really what happened? We've got two
23 men convicted. But in all honesty, it could have been
24 something else. It -- it very well could have been
25 something else.

1 But my involvement in it was finding the man, you
2 know. I had no idea if Frank was in debt to somebody or if
3 he was -- if somebody was looking to get him. I had no clue
4 of anything like that. And -- and for God's sakes, I
5 wouldn't have -- you know, two days of being home or -- or
6 two weeks of being home would've had time to try to conspire
7 or any kind of conspiracy theory to -- to try to rob and
8 kill a man --

9 Q. Right.

10 A. -- that -- that I honestly thought was a pretty
11 decent guy 'cause of just the way he grew up, besides the
12 fact that he sold drugs.

13 Q. Why do you think Mr. Hudson would have said that
14 you had told him that you were part of a conspiracy?

15 A. I think that Mr. Hudson collaborated with Leroy.
16 And, you know, a drowning man'll grasp for a straw. You
17 know, hey. I can't blame Leroy and -- you know, and -- and
18 it -- and it very well may be possible that this -- that
19 this Maurice Wilkins -- he had a -- for God's sakes, he had
20 a cut on his arm when he testified. You know, you don't get
21 that cut from slicing a orange or a apple, you know, not
22 where I come from. You know, and -- and there was a spot of
23 blood on the steps when you walked out the door.

24 I mean, you would think that there was -- would --
25 you know, when they did the investigation that they would

1 have gotten that blood. What happened to that sample of
2 blood for that? And I told, you know, the S. -- Kent Inscoe
3 and Miss Janice, as well as, you know, whatever else they
4 had to -- you know, get up. It just --

5 JUDGE WAGONER: Okay. Yes, ma'am.

6 EXAMINATION BY COMMISSIONER THOMPSON:

7 Q. Hi.

8 A. Hey.

9 Q. I'm Jennifer Thompson. I'm one of the
10 commissioners, and thank you for being here. And I also
11 understand that trying to remember something 25 years ago is
12 just really hard --

13 A. Thank you.

14 Q. -- to remember.

15 JUDGE WAGONER: If you could speak up a little
16 bit --

17 COMMISSIONER THOMPSON: Yeah.

18 JUDGE WAGONER: -- please, Ms. Thompson.

19 BY COMMISSIONER THOMPSON:

20 Q. I just -- I can't remember what I did last week,
21 so I can't imagine trying to piece together 25 years ago.

22 But in your testimony it says that you saw a four
23 by four blue extend [phonetic] cab truck over in front of
24 P.J.'s house the night of the murder.

25 A. It may have been somebody that came and -- and --

1 and left or -- or -- or maybe came for a period of time, but
2 I -- I don't know. I don't remember that.

3 Q. Can you remind me who P.J. is?

4 A. P.J. is -- is -- she lived in that -- that
5 double-wide trailer where I saw -- where I was parked,
6 backed up, and I saw that Jeep come in. She lives in
7 Hudson's Trailer Park.

8 Q. Okay.

9 A. She is the mother of Maurice Wilkins.

10 Q. Okay. So she's his mom.

11 A. She's also the girlfriend of probably -- I think
12 BoJack Clagon is probably the father of Maurice Wilkins.
13 They had some type of relationship together.

14 Q. But you don't know whose blue extended cab truck
15 that was --

16 A. I can't remember.

17 Q. -- in front of P.J.'s house?

18 A. I can't remember.

19 Q. Do you remember seeing it when -- when you think
20 back?

21 A. Right now, to be honest, I can't remember.

22 Q. Okay. Thank you.

23 A. Uh-huh.

24 JUDGE WAGONER: All right. Yes, sir, Sheriff.

25 EXAMINATION BY COMMISSIONER FRYE:

1 Q. I understand putting things together from that
2 many years ago is difficult, but this was a traumatic
3 event --

4 A. Right.

5 Q. -- and certain things should be sticking out in
6 your mind. At one point in time, you said you left and
7 Frank was laying on the couch and the reason you come back
8 is you was wanting to see if he was okay. Then another
9 point you say you were taking back this doll baby.

10 Why would there be inconsistencies there? Why
11 would you tell two different stories at that time when your
12 memory's fresh?

13 A. I don't remember. I don't remember telling that
14 Frank was on the couch and I was just coming back to check
15 on him. I -- I don't remember that. When I -- when I went
16 back to Frank's house, I had a doll baby with me. I was
17 leaving Hudson's Trailer Park.

18 Q. Okay.

19 A. And I dropped that -- I was gonna drop the baby
20 off.

21 Q. The S.B.I. searched your car, correct, that night?

22 A. I'm not sure. They -- they may have.

23 Q. They did. There was a doll in your car, but it
24 was in a box in the trunk, not in the backseat.

25 A. I -- I probably put it in my trunk. I may have

1 put it in my trunk. It was on my backseat.

2 Q. But you said just a while ago you put it in the
3 backseat.

4 A. I -- I did. It was on my backseat. When it fell
5 over, it was on my backseat. I more than likely put it in
6 my trunk when all this was going on, when -- when the car --
7 you know, my car was sitting there, and -- and I had cut my
8 car off. I had my keys. I may have put it in the trunk. I
9 didn't remember doing that, but it's possible that I put it
10 in the trunk because, you know, the crowd was gathering
11 around. A lot of blacks were gathering around. Frank's
12 dead, white man in a black neighborhood, and things were --
13 didn't look too good.

14 Q. Was the doll in a box, or was it loose?

15 A. It was in -- it was just like it was bought. It
16 was -- I mean, it -- it was bought in a package. It was a
17 -- in a package.

18 Q. In a box.

19 A. If you want to call it a box. It was how they
20 wrap up doll babies, I guess, yeah. It was, like, in a card
21 -- pasteboard -- not in a cardboard box like, you know, just
22 throwed in a cardboard box. It was in a -- wrapped up. It
23 was brand new, you know.

24 Q. And you may have put it in the trunk.

25 A. Possible that I put it in the trunk.

1 Q. Okay. You've told us numerous times today that
2 you didn't use any drugs that day, and yet you testified
3 that you did use crack cocaine that day. Why the
4 inconsistency?

5 A. Well, to be honest with you, you know, I'm
6 thinking that, you know, I didn't use that day, you know.
7 It's -- I know Duke come and got in my car that night. I
8 didn't use anything that Saturday. I didn't use anything as
9 far as crack or smoke any crack or drink anything.

10 COMMISSIONER GRACE: Madam Director, will you show
11 him his trial testimony, please, and let him read it?

12 JUDGE WAGONER: Yeah, that might be helpful.

13 ALT. COMMISSIONER NEWTON: I've got the numbers if
14 that's helpful.

15 MS. GUICE SMITH: Mr. Spruiell, I'm handing you
16 your testimony, a transcript of your testimony from the
17 trial.

18 THE WITNESS: Uh-huh.

19 JUDGE WAGONER: You can take your time to look at
20 that if you want to.

21 COMMISSIONER GRACE: Do you know where?

22 ALT. COMMISSIONER NEWTON: Judge, it's Bates stamp
23 2686 to 2695.

24 JUDGE WAGONER: Yeah, 2686 and 2 -- ?

25 ALT. COMMISSIONER NEWTON: 695.

1 JUDGE WAGONER: 2695 are the pages I believe that
2 he's talking about.

3 (Pause in proceedings.)

4 MS. GUICE SMITH: Mr. Spruiell, the page numbers
5 they're referring to are the ones at the bottom of the page.

6 JUDGE WAGONER: 2686 is the first page --

7 MS. GUICE SMITH: They'd like for you to --

8 JUDGE WAGONER: -- that we're talking about.

9 MS. GUICE SMITH: -- look at page 2686 at the
10 bottom of the page.

11 THE WITNESS: 2686?

12 JUDGE WAGONER: In big, black numbers.

13 THE WITNESS: Is it further to the back?

14 COMMISSIONER GRACE: Please somebody step over --

15 MS. GUICE SMITH: On the very bottom.

16 COMMISSIONER GRACE: -- and -- and help him.

17 THE WITNESS: I can't hardly do it with --

18 JUDGE WAGONER: Yeah.

19 THE WITNESS: -- these cuffs on.

20 JUDGE WAGONER: Find 2686.

21 MS. MATOIAN: Let me see real quick.

22 THE WITNESS: Uh-huh.

23 MS. MATOIAN: So go by those numbers right there.

24 THE WITNESS: Uh-huh.

25 JUDGE WAGONER: Thank you.

1 (Pause in proceedings.)

2 THE WITNESS: You should have showed me this
3 before. I can't remember -- I didn't remember any of this.

4 MS. GUICE SMITH: Commissioners, while he is
5 looking at that, I want to make a correction. The car was
6 searched on December 22nd, 1993, not the night of the crime.

7 JUDGE WAGONER: December 22, thank you.

8 (Pause in proceedings.)

9 A. Okay. What were we saying now?

10 BY COMMISSIONER FRYE:

11 Q. So did you use crack cocaine that night?

12 A. If my testimony says it, this is -- this is all
13 true right here. I just can't remember it, it's been so
14 long ago.

15 Q. Which would make sense as to why you went to the
16 Hudson Trailer Park, correct? That was a place known for
17 crack cocaine.

18 A. It's -- that's possible.

19 Q. You knew there's this building -- outbuilding
20 there that had a pool table. Everybody hung around there.

21 A. But I don't know that for a fact, you know,
22 because I hadn't been there. I'm only going to Hudson's
23 Trailer Park now, this is for the first time in like five
24 and a half months.

25 Q. But that's what was going on there when you left

1 five and a half months ago.

2 A. Yeah. A lot can change, but there was nobody
3 there night, sir.

4 Q. Ducon was there, correct?

5 A. Well, he -- he was outside, but Ducon was always
6 around somewhere.

7 Q. And Wilkerson [sic] showed up, correct?

8 A. Wilkerson?

9 JUDGE WAGONER: Maurice.

10 BY COMMISSIONER FRYE:

11 Q. Maurice.

12 JUDGE WAGONER: Maurice --

13 A. Maurice.

14 JUDGE WAGONER: -- Wilkins.

15 A. Maurice pulled up --

16 BY COMMISSIONER FRYE:

17 Q. Wilkins. Wilkins.

18 A. Yes, sir. Maurice Wilkins pulled up.

19 Q. Okay. Now, you answered a question a while ago
20 have you ever been really sick or had any kind of really bad
21 medical issues while you were in prison, and you said no.

22 A. I can't -- I can't remember. No, I don't think --
23 I don't think I ever have.

24 Q. Okay. So the alternative theory here is -- that
25 Mr. Hudson supplied was that you set him up to be robbed by

1 Wilkins -- Maurice and others, correct?

2 A. I -- I don't know if that's what he's saying. I
3 don't -- I haven't heard what he said, but I'm -- I'm
4 assuming that that's what he's saying.

5 Q. And you did see him that night?

6 A. I did see him.

7 JUDGE WAGONER: Say who "him" is. Him. What him?

8 BY COMMISSIONER FRYE:

9 Q. "Him" -- "him" as in Wilkins. You did see Maurice
10 that night.

11 A. Yes, I saw him. I saw him get out of that Jeep,
12 but I hadn't had any contact with him, no conversation with
13 him in God knows when. I don't even --

14 Q. Have you told -- have you told anyone prior to
15 talking to -- have you told anyone other than when you
16 testified that you seen him get out of the -- out of the
17 Jeep? Have you and Leroy talked about that any at all?

18 A. It's possible that I did -- that I did tell Leroy
19 here just as -- just a few days ago, yeah.

20 Q. But not prior to that?

21 A. No. I've -- I've never told him anything or --
22 I've never -- 'cause I haven't -- I haven't seen Leroy.

23 This is the first time I've seen him in -- and I didn't hang
24 around with Leroy, so I wouldn't know.

25 Q. Okay. Again, I -- and I'm like the other

1 commissioner here. I can't remember yesterday very good, so
2 I understand how memories go, but this is a -- this is a
3 very traumatic thing that happened.

4 Who is the person that went -- that you went to
5 and run back to -- they run back to the trailer? I mean,
6 that should be in your memory.

7 A. That -- yeah. That -- that person that -- where I
8 knocked on the door to try to get to the phone --

9 Q. Uh-huh.

10 A. -- to dial 911, that -- I don't know who that
11 black man is, but I never saw him --

12 Q. So Sweet Pea didn't run with you back to the
13 trailer?

14 A. Who?

15 Q. Sweet Pea.

16 A. Sweet Pea wasn't with me. Was -- there was nobody
17 with me.

18 Q. Okay.

19 COMMISSIONER FRYE: Okay.

20 JUDGE WAGONER: Did you want a turn?

21 COMMISSIONER GRACE: I -- I have a couple of
22 questions.

23 JUDGE WAGONER: Have at it.

24 EXAMINATION BY COMMISSIONER GRACE:

25 Q. Good afternoon, Mr. Spruiell. My name's Mike

1 Grace. I'm a commissioner here and an attorney from
2 Winston-Salem. How are you?

3 A. How are you, sir?

4 Q. What I'd like to direct your attention to is the
5 two and a half hours between when you left Frank's home and
6 when you returned. What did you do for two and a half
7 hours?

8 A. It's hard to put it together, man. Without --
9 without looking at, you know, looking at testimony like you
10 guys have looked at and had plenty of time to actually, you
11 know, read through word for word --

12 Q. Well, let me --

13 A. -- and me trying to go back and say off the top of
14 my head, well, what were you doing 28 years ago, 25 years
15 ago? What were you doing actually that day? How much did
16 you have to eat? I -- I can't remember. But -- but in that
17 two and a half hours, to answer as close as I can to your
18 question, I did go to that -- to the other trailer park
19 after I left Frank.

20 Hanging around, we -- I saw Ducon, me and -- I
21 call him Ducon, but that's his nickname. Alfred Armstrong.
22 I saw him. We rode down the road. And I think Duke had a
23 crack pipe. I think he was smoking in my car. He had
24 smoked something in my car, and I may have -- I may have had
25 some other -- I can't remember if I did or not. I don't

1 think I did. I actually do not believe that I did, but it's
2 hard to remember.

3 Q. Well, you read the testimony, didn't you from --

4 A. What --

5 Q. -- so many years ago?

6 A. What page are you talking about?

7 Q. The 2686.

8 A. 2686, okay.

9 ALT. COMMISSIONER NEWTON: It's 2686 --

10 A. These are -- these are things --

11 ALT. COMMISSIONER NEWTON: -- and 2695.

12 BY COMMISSIONER GRACE:

13 Q. Well, I'm -- I'm looking at trial testimony from
14 2686 --

15 COMMISSIONER BOSWELL: At the very bottom.

16 BY COMMISSIONER GRACE:

17 Q. -- at the very bottom starting with line --

18 JUDGE WAGONER: 21.

19 A. Yeah. Where it says line 22?

20 Q. Line 12 says, "How about you, Mr. Spruiell, what
21 did you have to drink that day?"

22 A. Okay, and when I say, "I had a couple of swallows
23 leaving Carly Swain's house." Is that where you're --

24 Q. That's -- that's what it says. You said --

25 A. Okay.

1 Q. -- you had a couple of drinks at --

2 A. I may have.

3 Q. You -- it didn't say you may have, did it?

4 A. No, I'm saying I did. If that's what it says here
5 in this testimony, that's what I did.

6 Q. Well, then -- then help us. Is your memory better
7 today --

8 A. It's coming back now --

9 Q. -- about the events --

10 A. -- that I'm reading it, yes, sir.

11 Q. Let me finish my question.

12 A. I'm sorry.

13 Q. Is it better today about those events than it was
14 back then when you testified?

15 A. My -- my testimony back then was a whole lot
16 sharper than what it is today.

17 Q. That -- that's what I'm asking you about your --

18 A. Yes, sir.

19 Q. -- testimony back then.

20 A. Well, if you're asking me about then, and if I had
21 to look at it here on this paper, I would agree with what's
22 on this paper.

23 Q. So you did have something to drink that day.

24 A. It's -- yes, sir.

25 Q. And it went on to ask -- the question was asked,

1 did you have something to smoke, and you admitted that you
2 had something to smoke that day.

3 A. Yes, sir, later that night.

4 Q. Later that night. Would it have been when you
5 were at the trailer park there?

6 A. It's when I -- it -- it could possibly be when I
7 picked up Ducon -- when I picked up Alfred Armstrong, and we
8 rode down to the end of the road and turned around and come
9 back. It's possible that I did.

10 Q. Do you understand that it would help us to -- to
11 understand your testimony better if you admitted that you
12 were getting high and drinking that day as opposed to
13 denying it?

14 A. Well, okay, let me say this. Yes, sir, that would
15 mean -- I -- I probably would. But taking a couple of
16 drinks for me is not drinking.

17 Q. Well, we're gonna start --

18 A. I mean, that --

19 Q. -- with the couple of drinks.

20 A. If you take two drinks at a bar, but -- but you've
21 been drinking all day, no, that's not really what -- how it
22 is.

23 Q. As opposed to not having anything at all, that's
24 maybe --

25 A. As opposed to not having anything at all.

1 Q. Please let me finish.

2 A. I'm sorry.

3 Q. I'll let you finish. I'm sorry.

4 A. I'm sorry.

5 Q. I don't -- I don't want to put words in your
6 mouth.

7 JUDGE WAGONER: And the court reporter needs to
8 put down what he says and what you say, and if you're both
9 talking at the same time --

10 THE WITNESS: I'm sorry.

11 JUDGE WAGONER: -- she can't do that. So you ask
12 your question.

13 BY COMMISSIONER GRACE:

14 Q. So you started out telling us you didn't have
15 anything to drink or smoke, and now you've admitted to some
16 drinking and smoking.

17 A. Because I did not remember, sir, it had been so
18 long ago.

19 Q. Now, is it possible that you had more to drink
20 that day than you admitted to in your testimony?

21 A. No, Because my testimony is true. This testimony
22 is true.

23 Q. How about when you dropped Mr. Swain off and he
24 was watching the ball game. You said you left and went to
25 the trailer park. Do you remember that?

1 A. No, sir, I do not. What page is it on?

2 Q. Somebody help me.

3 JUDGE WAGONER: 260 -- 2687's talking about the
4 ball game, but I don't see Mr. Swain talking about it,
5 though.

6 BY COMMISSIONER GRACE:

7 Q. Would you go to page 2666?

8 A. What line would that be on, sir?

9 Q. It starts at line 2.

10 A. (Reviewing document.) Yes. Yes. This is --

11 Q. And it indicates --

12 A. This is what happened. This is what happened. I
13 left him at -- I remember going to Carly Swain's house now,
14 yes, and I left him there. (Reviewing document and reading
15 to himself.) Okay.

16 Q. And do you --

17 A. I remember -- I remember now going to Carly
18 Swain's, dropping Frank off and going back and picking him
19 up.

20 Q. And you, in the interim --

21 A. I think, yes.

22 Q. -- in the interim you went to the trailer park,
23 didn't you?

24 A. In the who?

25 Q. In the -- when you left him there, you left him --

1 A. And went -- went to Hudson's Trailer Park.

2 Q. -- went to Hudson's Trailer Park. What did you do
3 there?

4 A. I can't remember, sir.

5 Q. Is it possible that you had --

6 A. I probably just set -- set around waiting because
7 I think it was only like ten minutes and a -- how long was
8 it? I guess it was about ten minutes, and I went back and
9 picked him up.

10 Q. You sat around where, in your -- in your vehicle
11 or at --

12 A. Yeah.

13 Q. -- someone's home?

14 A. I'm saying in my vehicle. And -- and this is --
15 this is where Sweet Pea and P.J. and all them live, you
16 know. They -- they live out there. So it's possible that I
17 may have got out of the car or stood around or, you know,
18 got back in my car. But I'm thinking it's saying only ten
19 minutes, so I was probably just waiting for -- for Frank to
20 do whatever he had to do.

21 Q. Is it so terribly hard to tell us that you may
22 have fallen off the wagon that day?

23 A. No, it's not a hard thing to do, although from my
24 testimony it says that I would say that, yeah, I had -- I
25 had started drinking, and that I had -- had -- it's possible

1 that I had used later on that day -- later on that night
2 when -- when Ducon got in the car. But none that day. I
3 didn't want to shame myself in front of all those people and
4 to let them know that I had gotten back -- started getting
5 high again.

6 But drinking is not the same thing as getting
7 high. So later on that night I probably did smoke something
8 with Ducon riding down the road, and turning around and
9 coming back. But if it was anything, it was some leftover
10 that was -- that he had in his -- in his smoking apparatus.
11 But as far as me purchasing anything or -- no, I don't
12 remember anything like that.

13 Q. What kind of relationship did you have with
14 Mr. Swain before you went into rehab?

15 A. I liked Mr. -- you know, Mister -- Mister Frank.
16 He was good. He was a -- he was a good guy. He had taken
17 my -- he had -- I introduced him to my sister because my
18 sister didn't have anybody to help her take care of her son
19 Matthew, and -- and Frank meant a lot to me. Frank was a
20 good-hearted guy, you know. He sold drugs, but he worked
21 every day at Weyerhaeuser up at the mill. He -- he -- he
22 didn't flaunt. He always had on work clothes. And he was a
23 good guy, you know.

24 Q. If you don't mind me interrupting, I want to
25 reiterate my question. My question was what kind of

1 relationship you had and not what kind of guy he was.

2 A. It -- we had a good relationship.

3 Q. Did you spend time in his home before going off to
4 rehab?

5 A. No, I didn't.

6 Q. Did you-all hang out and have drinks together?

7 A. No. I just saw Frank back when I -- when I was
8 using before the five months on a every-other-day basis
9 probably. Frank would pull up only to sell drugs at the
10 drug spot.

11 Q. You would get drugs from him?

12 A. I had bought -- purchased drugs from him in past
13 -- in past times, yes.

14 Q. And I think by your account, according to your
15 trial testimony, you were back in town eight, nine days
16 before that Friday night that you spent at his home?

17 A. Right.

18 Q. You went there to get drugs, didn't you?

19 A. When?

20 Q. That Friday night.

21 A. No, sir, I did not.

22 Q. Well, you hadn't been working, had you?

23 A. Yes, sir, I had been.

24 Q. You had money?

25 A. Yes, sir, I had money. I testified to that

1 earlier.

2 Q. Well, then, tell me why Frank had to buy your
3 license tags if you had money.

4 A. I don't know. He offered to do it. I guess if he
5 -- if he bought my license tags, if that's the testimony,
6 it's because I was going to carry him up there to see my
7 sister. That's probably -- probably why he did it.

8 Q. What kind of conversation did you have with
9 Mr. Wilkin [phonetic]? How long did you talk to him in the
10 trailer park after you left Frank at 7:00?

11 A. I never saw Mr. Wilkins until right before I got
12 ready to leave, which was about 10 minutes to 10. That --
13 that's when I -- when Mr. Wilkins pulled up, I -- I -- Ducon
14 was sitting in my vehicle. He got out and walked over to
15 the window of that vehicle to see who it was.

16 And so I got out. And when I got out, I walked
17 over that way. And that's -- I did see Maurice Wilkins for
18 the first time in God knows when. And -- and it was just
19 briefly. I -- as a matter of fact, if he'd had a cut on his
20 arm or anywhere or he had, you know, if -- if his clothes
21 were -- if he had a been involved in something like that and
22 he had blood on him, I wouldn't have known it because I -- I
23 didn't get a good look at him. I just -- I knew it was
24 Maurice Wilkins kind of like at a glimpse, and that was it.
25 And they were at the back of the truck. I just turned

1 around and walked on off, got back in my car, and I left.

2 Q. Did either of the two men, Ducon or Mr. Wilkins,
3 ask you why you were in the neighborhood?

4 A. No.

5 Q. Did you tell them?

6 A. I can't remember. I can't remember them asking me
7 "What are you doing back here" or something. "I just got
8 back from rehab." I may have said that if my testimony says
9 it.

10 Q. Did you tell them that you were down in Frank's
11 place?

12 A. I can't remember. I -- I may -- they may have
13 already known that prior. I can't remember. They knew I
14 would -- I guess maybe they might have known I was with
15 Frank that day. That -- that's possible.

16 Q. How would they have known that?

17 A. I don't know. Just from being in the trailer park
18 for that ten minutes and picking Frank up and maybe carrying
19 him back to his house. Somebody might have said, "Yeah,
20 Wyatt's gone to pick up Frank." And they might have got
21 wind of that. It's possible.

22 Q. Frank's phone a landline or a cell phone, the one
23 you answered that night?

24 A. Back then it was a landline, sir.

25 Q. Is there any other evidence you have that you left

1 his trailer at around 7:30?

2 A. As far as me talking to my sister and -- and
3 leaving at that point after he got on the phone, the only
4 other evidence would be that I left his trailer park and
5 went down to Hudson's Trailer Park.

6 Q. That phone call from your sister would have been a
7 long-distance call, wouldn't it?

8 A. From Raleigh, yes, sir.

9 Q. Did you answer the phone, or did Frank?

10 A. I answered it.

11 Q. Was it a collect call?

12 A. Can't remember. I can't remember. It seemed like
13 it was. Would you accept. Yes, sir. It seems like it
14 probably was.

15 Q. Now, in one of your statements at trial you said
16 you left Frank there talking to your sister. Do you
17 remember that, or do you need to refer to it?

18 A. It said what now?

19 Q. You left Frank's trailer while he was talking to
20 your sister.

21 A. I did leave Frank's trailer while he was talking
22 to my sister.

23 Q. Do you also remember giving a statement and
24 testifying that Frank was passed out and incoherent and --
25 and -- and couldn't talk?

1 A. Frank had been drinking.

2 Q. No, I asked you if you remember, first of all, and
3 then you can explain. Do you remember?

4 A. No, I don't remember.

5 Q. You don't remember saying that?

6 A. I don't remember what I said. If it's in my
7 testimony, it's probably -- probably would be true.

8 Q. And -- and since it was given back then, it's
9 probably true, isn't it?

10 A. True now. True then, true now.

11 Q. Which one is true, that he was talking to your
12 sister, or that he was drunk and passed out and couldn't
13 talk?

14 A. I don't know what the testimony says. What page
15 is it on?

16 Q. No, I'm -- I'm asking you which is probably true.
17 We have both testimonies.

18 A. I would say that -- that I had to -- we'll put it
19 like this. I had to wake Frank up to get him to talk on the
20 phone. If he was -- I guess I'm thinking he was sleeping it
21 off -- sleeping off his drinking for that day. My sister
22 said he's not supposed to be drinking. She told me that on
23 the phone. That was some of her conversation, he's not
24 supposed to be drinking. He ain't drunk -- he's not passed
25 out or drunk. I can't remember exactly what she said, but

1 it was something along those lines.

2 Q. But he couldn't have been both, could he? He
3 either talked to your sister or he was passed out and
4 couldn't talk to your sister. It couldn't have been both,
5 could it?

6 A. I -- I can't say he was -- he was asleep.

7 Q. No, no, no.

8 A. He was asleep --

9 Q. Please answer my question.

10 A. -- passed out asleep.

11 Q. I'm asking you if he could have been both.

12 A. You're asking me if it could have been both.

13 Q. If he could have --

14 JUDGE WAGONER: Rephrase your question.

15 BY COMMISSIONER GRACE:

16 Q. Could he have been both passed out and drunk and
17 able to talk to your sister?

18 A. Well, sir, no.

19 Q. All right. That's -- that's the answer, if that's
20 your answer. Do you know whether anyone else verified that
21 that phone call came in on that landline at that time?

22 A. I would hope that -- that North Carolina would
23 have records. In prison, you know, they record everything
24 you say on the phone. I'm -- I'm pretty sure that somebody
25 had a record of that phone call or the time it was made. I

1 just --

2 Q. I asked you --

3 A. -- always assumed that it was -- it was -- had
4 been researched by the S.B.I. That's all I was thinking.

5 Q. But at least at the time you gave that testimony,
6 you were pretty sure about the time line.

7 A. Yes, sir. Yes, sir. I'm sure about the time
8 line.

9 Q. One last question, and I'll ask again: You didn't
10 talk to Wilkins or Ducon about Frank at any point while you
11 -- those two and a half hours while you were at the trailer
12 park?

13 A. No, sir.

14 Q. Thank you, sir.

15 COMMISSIONER FRYE: I want to --

16 THE WITNESS: Thank you.

17 COMMISSIONER FRYE: -- I want to say something,
18 and this don't have no question to it. I want to apologize
19 to you. I got Tim Swain and Sweet Pea mixed up when I was
20 talking to you. At one point in time you had said that it
21 was Tim Swain who went back with you to the trailer, and I
22 got his name mixed up with Sweet Pea. So I apologize to you
23 for that.

24 THE WITNESS: Yeah. Sweet Pea's last name is
25 McCray.

1 COMMISSIONER FRYE: Right.

2 THE WITNESS: I remember that now.

3 JUDGE WAGONER: Okay, thank you. Yes, sir.

4 EXAMINATION BY COMMISSIONER BARROW:

5 Q. Where was your sister when she was murdered?

6 A. She was in Plymouth in Sawmill Circle on Mack --
7 on -- I can't even remember the name of the street now.

8 Q. Was she in an apartment or a house?

9 A. Apartment. Upstairs apartment.

10 Q. And at that time, how -- how had she paid for the
11 apartment?

12 A. She was on Section 8.

13 Q. So she -- she had a Section 8 house or apartment?

14 A. Yes, sir.

15 Q. And how was she employed at that time?

16 A. Sir?

17 Q. How was she employed?

18 A. I don't know. I was in prison.

19 Q. You were back in jail by that time?

20 A. I was -- I was in prison. In February after
21 Frank's murder and everything, I started drinking heavily.
22 Started drinking, not heavily, but more drinking than --
23 than smoking crack. It just -- you know, it was just
24 devastating, you know, what happened. You know, found a man
25 dead, you know. It was hard on me, you know, finding that

1 man like that.

2 You know, if you ain't never found somebody dead
3 like that, do you dial 911? Would I suggest to any of you
4 to dial 911? I did, and look where I'm at, sitting in front
5 of you today. You know, come on, man.

6 Q. Was your sister ever a prostitute?

7 A. Yes, sir.

8 Q. And was she a prostitute when you introduced her
9 to Mr. Swain? And I apologize, I'm just --

10 A. I know.

11 Q. -- asking.

12 A. I know. I -- I don't know, sir. My sister was
13 looking for somebody to fall in love with, somebody to help
14 her take care of Matthew. And Frank fit the bill, so I
15 introduced them. Frank would come up to the house at the
16 end of the road. All of my folks are prejudiced, a lot of
17 them, where I come from. You know, you don't do them
18 things. You -- a black man ain't supposed to be with a
19 white woman, you know, and things like that.

20 I mean, it's not how I feel, but it's how my folks
21 feel. My grandma and my granddaddy had a house at the end
22 of the road, and that's where she -- they bought that house,
23 and that's where she stayed at. That's where she was when -
24 - when I introduced them.

25 Q. You say "they" bought the house. You mean your --

1 A. My grandma and --

2 Q. -- grandparents?

3 A. -- granddaddy.

4 Q. After you introduced her to Mr. Swain, did -- did
5 she continue to work as a prostitute?

6 A. No, sir. As far as I know, she -- they -- they
7 were going together, and she didn't -- she didn't -- didn't
8 do any prostituting.

9 Q. So --

10 A. No -- no traffic in and out. No traffic in and
11 out. When she was in Plymouth, the S.B.I. agent said, you
12 know, it's going to be a hard case to prosecute or find
13 anybody that's guilty 'cause there was so many that come in
14 and out of that house. Not necessarily saying they all
15 slept with her. It was a lot of people in and out of the
16 house.

17 Q. And that's at the time or shortly before she was
18 murdered.

19 A. Right.

20 Q. When -- when she went to New York, you testified
21 that you thought that was a drug trip to turn the one man's
22 money into cocaine.

23 A. Uh-huh.

24 Q. Had your sister ever dealt drugs --

25 A. No, sir.

1 Q. -- in the past?

2 A. Not that I knew of. No, sir.

3 Q. And she took her son with her on that trip?

4 A. Yes, sir. That's why my mama was so -- didn't
5 want to go get her 'cause she took Matthew. She didn't like
6 for her to take Matthew in places. Didn't like for him to
7 be up there around that -- what she was involved in.

8 Q. Do -- do you think the -- the prostitution had
9 anything to do with her trip to New York in addition to the
10 drugs, or do you think it was purely drugs?

11 A. I think it was -- was just to go up there and buy
12 drugs. From -- from what Matthew had told me was that when
13 they got there, they -- they sent somebody out to go get
14 some drugs, and they come back and, you know, with them.
15 And they were using. But the autopsy, from what I
16 understand, my sister -- she had AIDS. That was discovered
17 in the autopsy. And it also said that there were no drugs
18 in her system.

19 I don't think she was up there smoking. I think
20 that she was up there with that man, you know, on a business
21 type thing, and it led to where it led. 'Cause whoever --
22 whoever -- whoever she went up there with, they had to know
23 something. They had to. There's no question in my mind
24 that -- that -- that who she was with would -- would
25 possibly know why she was running for her life. Why would

1 she leave out of there, you know, and she told Matthew --
2 Matthew told us that that's -- she said she was running for
3 her life. And mama said she was running for her life, that
4 that's what she told her.

5 Q. Did your sister have a regular pimp?

6 A. I don't know, sir. I -- I don't know. It's
7 possible. My sister knew a lot of upstanding men in the
8 community, as well as others, not in just Washington County.
9 Martin County. Landowners, lawyers, doctors, people of that
10 nature. She was a very -- a very beautiful woman. She was
11 a redhead.

12 Q. Did your sister have any brands?

13 A. Have what, sir?

14 Q. Any brands?

15 A. Brands?

16 Q. You know, like --

17 COMMISSIONER BOSWELL: Tattoos?

18 A. Oh, tattoos?

19 BY COMMISSIONER BARROW:

20 Q. Or -- or cattle brands, or you know.

21 A. I don't know of any.

22 JUDGE WAGONER: Tattoos?

23 THE WITNESS: I don't know of any.

24 (Pause in proceedings.)

25 A. I don't either. I don't -- I just don't believe

1 in tattoos. A lot of people like them.

2 BY COMMISSIONER BARROW:

3 Q. Thank you. And I apologize.

4 EXAMINATION BY COMMISSIONER BRITT:

5 Q. Mr. Spruiell, I'll just ask you some questions. My
6 name's Johnson Britt. I'm the District Attorney down in
7 Robeson County, and I serve as a commissioner here.

8 Let me first ask -- follow up on some of the
9 questions Mr. Barrow asked you. You said your sister went
10 to New York with a man to buy drugs.

11 A. Yes, sir.

12 Q. All right. Who was that man?

13 A. He lived in Dardens. I don't -- I don't know what
14 his name is. He lived in Dardens.

15 Q. Where? What is Dardens?

16 A. It's a little -- little township. It's right out
17 -- it's between Plymouth and Jamesville. If you're leaving
18 out of Plymouth, it would be on 64. It's right there on 64
19 West leaving out of Plymouth about eight miles out of town.
20 It's a little -- little place called Dardens, they call it.

21 Q. All right. But you don't know his name, but you
22 know who he is?

23 A. I can't -- I don't know what his name is.

24 Q. And did your sister go to New York often to buy
25 drugs?

1 A. Now, as far as I know, no, sir. This is the first
2 trip I -- that I ever knew she went. I knew she had been to
3 Philadelphia one -- at one time, but --

4 Q. Who did she go to Philadelphia with?

5 A. On a wild goose chase with some man she'd hooked
6 up with.

7 Q. Did your sister sell crack? Did she sell --

8 A. No.

9 Q. -- powder cocaine?

10 A. No, sir.

11 Q. But Frank Swain did.

12 A. Yes, sir.

13 Q. If your -- was your sister into the crack scene
14 there in Plymouth, there in Washington County?

15 A. At the time of her murder?

16 Q. Yes, and before. And before.

17 A. Before -- before, yes, she -- she knew the scene.
18 She knew what -- you know, you have to be in the loop on a
19 daily basis. If you know anything about drugs and how it
20 operates, and you -- I'm quite sure --

21 Q. I -- I've got --

22 A. -- a whole lot of you do.

23 Q. -- a little bit of an idea.

24 A. Based in Robeson County. If --

25 Q. That -- that's --

1 JUDGE WAGONER: Truer words have never been
2 spoken.

3 BY COMMISSIONER BRITT:

4 Q. -- that's a very accurate statement. And I'm not
5 trying to be smart with you --

6 A. I know.

7 Q. -- but let me just ask you this. You knew Frank
8 Swain, and you knew that Frank Swain sold drugs.

9 A. Yes, sir, I knew -- I knew he sold drugs.

10 Q. Okay.

11 A. I knew he was a drug dealer.

12 Q. And you're telling us that your sister wasn't in
13 that business, but you thought that Frank Swain was an
14 appropriate person to hook your sister up with.

15 A. Well, it's -- it's like this. She -- she was --
16 she was going from -- from pillar to post, like they say,
17 you know. If you know -- don't know what that means, she's
18 going from man to man. And any shelter in a time of storm,
19 and she had a son to raise, and she was -- didn't have much
20 money. And Frank had -- had a drug business plus he worked
21 at -- at Weyerhaeuser every day. He worked -- worked his
22 job.

23 And, man, my sister needed somebody, and she
24 needed somebody to help her discipline that boy, Matthew,
25 'cause he was running in the streets at nine years old, up

1 and down, here, there, and everywhere. And Frank laid the
2 law down when he came in there, and -- and Matthew listened
3 to everything he said.

4 He bought him a bicycle. He made him put the kick
5 stand down, you know, not just throw it in the yard, things
6 like that, you know? He looked out for that boy, and so he
7 got my respect for that, you know.

8 Q. All right. Do you know who Frank Swain's cocaine
9 source was?

10 A. No, sir, I don't. I can tell you who I think it
11 could have been.

12 Q. Who was that?

13 A. It probably was BoJack Clagon when he brought over
14 75 kilos into Washington County in the form of base cocaine
15 and cooked it up into crack. Yeah, it probably -- probably
16 was one of the main sources.

17 Q. And did your sister know or hang out with BoJack
18 Clagon?

19 A. As far as I know she didn't, but she hung around
20 P.J., Priscilla Wilkins, which is Maurice Wilkins's mother.

21 Q. Maurice Wilkins. And you described earlier
22 Maurice Wilkins' cut, and you said that didn't happen
23 slicing an orange.

24 A. Well, I'm just saying, you know, that's just a
25 figure of speech.

1 Q. Did you ever see it?

2 A. No, sir, I never did see it.

3 Q. Did you ever --

4 A. The only time I saw it, I -- I did see the bandage
5 in court that day when -- when -- at the trial.

6 Q. And on what part of his arm was his cut?

7 A. I think on his forearm, somewhere on his forearm
8 up here.

9 Q. Front, back, side?

10 A. I can't -- I think it was on the top. Maybe --
11 yeah, I don't know -- I can't remember which arm it was.
12 Possibly his right arm.

13 Q. All right. And when you were at Frank's the day
14 he was killed, and into the night, you testified there was a
15 -- or made a statement there was a set of jumper cables
16 inside the trailer.

17 A. If I made jumper cables -- said there were jumper
18 cables in there, they were in there.

19 Q. Why would Frank have had jumper cables inside the
20 trailer?

21 A. I don't -- I don't know. Maybe to keep somebody
22 from stealing them. I don't know.

23 Q. And you testified that you never saw a tire tool
24 inside of the trailer.

25 A. Right.

1 Q. Did Frank keep a tire tool on his truck --

2 A. He could have.

3 Q. -- or the vehicles?

4 A. He could have, I mean, you know, to take -- to
5 take his lug nuts and all off. It's possible that -- it's
6 possible that there was a tire tool in the house, but --

7 Q. And you-all washed cars that day, didn't you?

8 A. Yeah. According to testimony, now, I do remember
9 that -- that William Chesson -- he's a high school
10 classmate; we were in school together. And he and I were
11 washing that car. You know, when I read in the testimony, I
12 -- I remembered it. It comes back to me then, you know, so
13 that's true.

14 Q. Do you recall anybody changing a tire that day?

15 A. It could have been. It could have been, but I --
16 I don't remember. If it's in the testimony, it's -- yeah.

17 Q. Where was Frank when you and William Chesson were
18 washing cars?

19 A. He may have been in -- in and out of the house,
20 I'm thinking.

21 Q. And was he drinking?

22 A. If I have to remember back from now without
23 looking at testimony, I'm thinking he -- he was probably in
24 and out of the house.

25 Q. Do you recall him drinking that afternoon?

1 A. He was drinking. They were drinking --

2 Q. What was he drinking?

3 A. -- on a pint of Rich's Wine, a fifth of Rich's
4 Wine.

5 Q. Do you ever remember going to the Red Apple and
6 somebody buying beer that day?

7 A. I think I did go. I may have gone, and they may
8 have bought beer. I probably carried somebody to the store.
9 Nobody got transportation down that way hardly, so --

10 Q. Now --

11 A. -- probably.

12 Q. -- when you say that Frank was drunk that night,
13 describe what you're talking about that he was drunk.

14 A. Okay. He had too much to drink.

15 Q. No, I mean physically. I understand that, but
16 physically describe him.

17 A. Okay. He had been drinking on and off. Now
18 things were slowing down. I think maybe Marty Respass had
19 come and Niecey had come, maybe not in that order, but
20 Niecey first, then Marty Respass and all. He -- he was
21 awake and coherent at that -- at those times, you know, but
22 he was tired. He was dead tired, you know, and -- and so he
23 was sitting in the chair, and he fell off to sleep snoring,
24 you know.

25 But now, so that's -- that's when my sister

1 called. That's why I had the phone. And when I answered
2 the phone, it was her. I talked on the phone and I'm
3 punching him on the arm. I was like -- not punching him,
4 but like, "Hey, Frank, Frank, my sister's on the phone, my
5 sister's on the phone." I remember things like that because
6 that really stands out in my mind, you know. And -- and --
7 "My sister's on the phone." I said, "Wake up, boy, wake
8 up." I didn't want to tell my sister he was drinking, that
9 he had been drinking that day 'cause he was not supposed to
10 be drinking. He's got liver -- I think he had liver
11 problems or something.

12 Q. Let me ask you this: He wasn't so drunk that he
13 couldn't transact his dope business.

14 A. That's right. Oh, the man won't that drunk.

15 Q. All right. Now, let me ask you this with regard
16 to -- to that. You said two people came to the trailer.

17 A. Right.

18 Q. Did they just walk in?

19 A. No, no, no, no, they came to the door.

20 Q. Nobody -- nobody just walked into --

21 A. No, no --

22 Q. -- Frank's trailer --

23 A. -- they came to the door --

24 Q. -- did they?

25 A. -- and knocked.

- 1 Q. He had to knock. He had -- he had to be let in.
- 2 A. Yeah. I let them in.
- 3 Q. And did you tell him -- or did you tell Frank who
- 4 it was at the door --
- 5 A. Right.
- 6 Q. -- each time?
- 7 A. I said, "You've got -- there's Niecey Armstrong at
- 8 the door."
- 9 And he's like, "Oh, Lord."
- 10 I said, "You want to let her in?"
- 11 He's, "What's she want?"
- 12 I asked her what'd she want. And she said, "You
- 13 know. You -- just open the damn door." You know --
- 14 Q. I mean --
- 15 A. -- so --
- 16 Q. -- you knew what she was there for.
- 17 A. Yeah, and I told him that.
- 18 Q. The question was, was she there for a \$10 rock,
- 19 \$20 rock, or --
- 20 A. Exactly.
- 21 Q. -- whatever he --
- 22 A. Now you're getting it.
- 23 Q. -- had available, right?
- 24 A. Right.
- 25 Q. So you, in essence, were kind of his lookout.

1 A. Well, you could call it that. It's possible that
2 you could -- you could say that.

3 Q. Well --

4 A. I wasn't his look -- I mean, I was looking out for
5 the man; don't get me wrong, you know, 'cause he was in the
6 chair trying to sleep. You know, he'd fall off asleep and
7 he'd wake up when somebody'd come to the door. I'd say,
8 "Hey, Frank, you got somebody at your door," you know.

9 Q. So you know -- you recall at least two sales that
10 evening.

11 A. Right. He'd -- two people came, and -- and I --
12 I'm pretty sure they purchased drugs.

13 Q. And then he ran out of -- he ran out of dope.

14 A. As far as I know, he -- that was it.

15 Q. He didn't ask you to take him anywhere --

16 A. No.

17 Q. -- so he could re-up or he didn't go into another
18 part of the trailer --

19 A. No, sir.

20 Q. -- and break up a rock and --

21 A. No, sir --

22 Q. -- put them in the --

23 A. -- nothing like that.

24 Q. -- little container.

25 A. No, sir.

1 Q. And so then you left.

2 A. I left.

3 Q. And that was after the second person who had come
4 and --

5 A. That's right.

6 Q. -- actually sat --

7 A. After Marty --

8 Q. -- down and smoked inside the house.

9 A. After Marty Respass.

10 Q. How long would you say that you used, or do -- had
11 you been using?

12 A. Have I been using? I had just started using in
13 '91. I was working at T.R.W. in Greenville --

14 Q. All right.

15 A. -- when I first --

16 Q. Did you start off using powder, or did you start
17 off using crack?

18 A. I had snorted a little powder on and off ever
19 since I was like 18, 19 years old, and -- but it was -- I
20 just couldn't afford it. I was working farming and --

21 Q. So you -- wait, wait. You started using powder
22 when you were 18 or 19.

23 A. Yes, sir.

24 Q. And when Frank got killed, how old were you?

25 A. Like 32, 33.

1 Q. Okay. So between 18 and 19 were you using powder,
2 or had you been introduced to crack?

3 A. I hadn't -- I didn't -- I hadn't used any crack.

4 Q. Did you smoke weed? Did you --

5 A. Smoke a little weed.

6 Q. -- just drink?

7 A. Drink a little bit on Friday night, and snort a
8 little powder on maybe Saturday night or something, down in
9 Columbia, Tyrrell County.

10 Q. And then crack came along.

11 A. Yeah. That messed the whole world up.

12 Q. Crack's like a bad itch, isn't it?

13 A. Yeah, it's bad.

14 Q. And when you get that itch, you gotta scratch it.

15 A. Well, you know, if -- if you're a everyday smoker
16 -- if you're a everyday smoker and you're smoking every day
17 and when you start, when you get up that morning and start,
18 you're gonna -- you're gonna want some more, and the train
19 may not end where you want it to.

20 Q. You go on a binge.

21 A. Pretty much, that's the way --

22 Q. All right.

23 A. Now, some people are different, but me --

24 Q. Now, let me ask you this: Now, you -- you --
25 well, you've testified that you were in rehab for five

1 months.

2 A. Right.

3 Q. You'd been without.

4 A. Right.

5 Q. Didn't use at all when you were in rehab.

6 A. Right.

7 Q. And you got out, and you'd been home about a week.

8 A. Right.

9 Q. And then you started basically back down the same
10 path you'd been on before you went to rehab, hanging out
11 with some of the same people?

12 A. Yeah, that night. That night -- that night pretty
13 much started it.

14 Q. So that was the first night that you had been
15 around any of those people.

16 A. That was the first night I'd been around any of
17 those people. Now -- now, William Chesson, my old high
18 school classmate, I've known him all my life. And -- and I
19 knew he was getting high. He wasn't getting -- I didn't see
20 him smoke nothing that day, but I knew he was a smoker, and
21 -- and Ducon -- Duke Carter's a smoker. They're in it every
22 day. They're in it every day.

23 Now, here I come. I -- I hadn't done anything for
24 five months or so. Well, if a person gets hold of, you
25 know, some. If I was to smoke some, it's -- it's not saying

1 that I would go on a binge, you know. I wouldn't go on a
2 binge, knowing myself. I'd feel so bad about what I'd done,
3 I'd probably carry my ass home, and that's what I did that
4 night.

5 Q. How much crack did you smoke there at Frank's?

6 A. Did I smoke?

7 Q. Yes.

8 A. None.

9 Q. You didn't smoke any.

10 A. No.

11 Q. Didn't you tell us a minute ago that you may have
12 smoked the remnants of -- was it Chesson?

13 A. No, Marty Respass.

14 Q. Marty Respass. He came to Frank's.

15 A. Marty Respass came, and he made a can. I told him
16 I didn't want any.

17 Q. Folded it up?

18 A. He was -- yeah, he was blowing the smoke, but I
19 didn't smoke any of it.

20 Q. You didn't smoke any of the crack. You said he
21 was blowing the smoke.

22 A. The remnant -- the remnants of what was probably
23 -- what I did say was that when I -- Mr. -- I call him
24 Ducon, but it's Alfred Armstrong. His nickname is Ducon.
25 The remnant of what I did smoke was when I carried him down

1 the road to the end of Folly Road, away from Frank's house,
2 going that way and turn around and come back. He had a pipe
3 and he smoked -- he -- he smoked some in the car.

4 I said, "Man, you've got to roll that window
5 down." He said "Here, try it." And I was weak, man, I
6 probably tried it.

7 Q. That's when you were at Hudson's Trailer Park.

8 A. Yeah, and then pulled back into Hudson's, and it
9 -- and it wasn't even worth it. It wasn't even worth one
10 pull off of it. It won't be worth it,

11 Q. Now, were you at Hudson's Trailer Park the whole
12 -- the entire two-plus hours before you went back to
13 Frank's?

14 A. I think I was. I'm not sure. I -- I may have --
15 what time I didn't go down the road -- maybe I rode down the
16 road. I know I did one time with Ducon, just took off
17 riding and back, which that probably wouldn't have taken
18 long. But if --

19 Q. Did you --

20 A. -- if testimony --

21 Q. Did you ride -- did you ride down the road to go
22 -- so he could go smoke?

23 A. Pretty much, yeah.

24 Q. All right. And then --

25 A. 'Cause he said he had something, "come on, to give

1 me a ride," and I rode him down the road.

2 Q. And then you went back to Hudson's.

3 A. Went back to Hudson's.

4 Q. And that shed's the hangout or is a hangout.

5 A. There was nobody in there. It used to be. They
6 had a pool table in there.

7 Q. Okay. And so did you stay in your car? Did
8 you --

9 A. Sat in the car. It was cold.

10 Q. -- hang out?

11 A. Sat in the car. It was cold. Didn't go from
12 trailer to trailer, you know, in -- in his house, out of his
13 house, back and forth, no.

14 Q. So you didn't go anywhere in Hudson's looking to
15 buy cocaine.

16 A. No.

17 Q. Did anyone give you any crack that night?

18 A. No. Not -- not anything like, you know, "Here's a
19 -- here's a piece. Put that in your pipe and smoke it," no.

20 Q. Okay. So the guys drive up in the Jeep.

21 A. Right.

22 Q. Who else was in the Jeep?

23 A. I think a Jett boy was driving, and the reason I
24 say that is because I think that face looks familiar. You
25 know, he was a familiar face. I think his last name is

1 Jett. But anyway.

2 Q. Jet like j-e-t?

3 A. J-e-t-t. Jett's Body Shop. They've got a body
4 shop down that way called Jett's Body Shop. I think he had
5 something to do with Jett's Body Shop.

6 Q. And Maurice was with him.

7 A. Maurice was with him.

8 Q. Anybody else in the Jeep?

9 A. Maurice and a -- and a -- got out and a
10 light-skinned boy got out.

11 Q. Did you know him?

12 A. But I don't -- no, I didn't know him, and I don't
13 know if there was anybody else in the Jeep. I know Ducon
14 stuck his head in there and looked -- looked around like
15 that, you know.

16 Q. Did you talk to them?

17 A. No.

18 Q. Did Ducon talk to them?

19 A. Yes.

20 Q. What'd they say?

21 A. I don't know.

22 Q. What'd they talk about?

23 A. I was probably as far as from here to --
24 Ms. Smith?

25 Q. Could you hear them?

1 A. Mumbling. Mumbling about something.

2 Q. Anybody excited?

3 A. Now -- now, the back of the Jeep as, as -- I was
4 from me to her, but I walked around sort of like toward the
5 back so I could see who was -- who they were talking to, and
6 I saw Maurice. The light-skinned guy was standing on the
7 other side of him. I just saw his arm --

8 Q. So they --

9 A. -- like his hand, like.

10 Q. -- were out of the Jeep? They were outside?

11 A. They were outside, around the back of the Jeep.

12 Q. Were the doors open? Were there lights out there?

13 A. When he opened the trunk lid, the light came on
14 inside, but I didn't -- I didn't see anybody in there.

15 Q. So you were able to see it -- see them pretty well
16 at that point.

17 A. Not -- no, I couldn't see them real well, no,
18 because it was just like open and shut. Just like oomp,
19 boom, like that.

20 Q. Did you speak to either of them when they walked
21 around to the back of the Jeep?

22 A. I said, "Maurice." I said, "Maurice," probably.
23 I probably did say something to him, "Maurice," like that.

24 Q. Did you --

25 A. I can't remember if I said it or not, but I would

1 think that I would have spoken.

2 Q. And other than just speak, like hello --

3 A. Right.

4 Q. -- you didn't ask him what you've been up to --

5 A. Oh, no.

6 Q. -- where are you coming from --

7 A. No, they were --

8 Q. -- where are you going?

9 A. -- they were in a big hurry wherever they were
10 going. They were in a big hurry.

11 Q. And so from there, you then went back to Frank's.

12 A. I left out because it was about ten minutes to
13 ten. I left out with that doll baby in the backseat and
14 went back to Frank's with all intention of giving it to him,
15 and that's when I found what I found.

16 Q. And let me ask you this: The plan was for you and
17 Frank to go see your sister --

18 A. Yes, sir.

19 Q. -- at Women's Prison the --

20 A. In Raleigh.

21 Q. -- next day.

22 A. In Raleigh the next day.

23 Q. Was it your plan to go back and spend the night at
24 Frank's --

25 A. No, no.

1 Q. -- Saturday night?

2 A. No. My plan was to go ahead on and go home, go
3 back to my grandma.

4 Q. Why didn't you just wait until Sunday to go pick
5 Frank up to go to Central -- to Women's Prison --

6 A. Okay.

7 Q. -- rather than --

8 A. When --

9 Q. -- take the doll back that night? What was so
10 pressing about taking the doll back?

11 A. That doll baby -- when I pulled out of Frank's
12 trailer park -- I had been out of my car. When I -- when I
13 pulled out, that doll baby fell over and made a crying
14 noise, and it spooked me. I was like, "Somebody's in my
15 backseat," you know. Call it what you want, you know. I
16 said, "Man, this" -- I grabbed it. I said, "This doll
17 baby's going back to Frank's." I pulled --

18 Q. Who was the -- who was --

19 A. -- I whipped in there as fast as I could 'cause I
20 had to be home by ten.

21 Q. Who was the baby doll for?

22 A. His niece. I'm assuming that it was his sister's
23 daughter. She worked at Red Apple in Roper.

24 Q. That's the store, right?

25 A. Yes, sir.

1 Q. And she was working when he purchased that baby
2 doll, right?

3 A. Yeah, I think she was. I believe she was, and he
4 purchased that right down at -- it's an open lot down there
5 were Dollar General is now.

6 Q. All right. So --

7 A. But it's just a side-of-the-road sale.

8 Q. All right. You leave Hudson, and you go back to
9 Frank's.

10 A. Right.

11 Q. And your intention is to go home.

12 A. Right.

13 Q. But you wanted to get this baby doll back to him.

14 A. Right. So I wheel back in there.

15 Q. But you had to be home by 10:00.

16 A. Had to be home by ten. I'm trying -- you know,
17 I'm cutting it close, but it's only like eight miles, so I
18 can make it.

19 Q. If you don't go by Frank's.

20 A. No, I can go by Frank's and drop this baby doll
21 off and still make it by 10:00.

22 Q. And so --

23 A. In ten minutes you can go a long ways in Roper.
24 It's a small town.

25 Q. So why is 10:00 --

1 A. Kind of like Red Springs.

2 Q. -- your curfew?

3 A. Because my grandma and them lock the door. You
4 can't get in.

5 Q. You don't have a key to get in her house.

6 A. Nope.

7 Q. You can't ring the doorbell.

8 A. No -- no doorbell.

9 Q. Can't knock --

10 A. Never was.

11 Q. -- on the door.

12 A. The doorbell -- the doorbell is, "Hey, can you
13 come open the door, please?" But I respected them enough
14 that they were going to lay down, you know, and I didn't
15 want to --

16 Q. And -- and were you staying with your grandparents
17 when you got out of rehab?

18 A. Yes, sir. That's where I lived, with my
19 grandparents.

20 Q. So Friday night it's okay to spend the night at
21 Frank's. Saturday night --

22 A. No, I -- I can't be away two nights in a row like
23 that.

24 Q. Was that a rule?

25 A. I called and let them know. I called my grandmama

1 and told her, you know, "I'm -- I'm staying out with friends
2 tonight." She said okay. She said -- I said, "You told me
3 to let you know." She was -- she was cool with it.

4 Q. So you could have done the same thing on Saturday.

5 A. I could have, but I didn't -- I didn't want to,
6 you know?

7 Q. All right. Let me ask you this.

8 A. Two nights in a row, she wouldn't -- she probably
9 wouldn't have gone for it.

10 Q. Mr. Hudson that we talked a little bit about
11 earlier.

12 A. Yes, Mr. Ed Hudson.

13 Q. I believe Mr. Boswell asked you if you'd ever been
14 diagnosed with AIDS.

15 A. Right.

16 Q. Do you remember that question?

17 A. Right. I don't know why. I've never been
18 diagnosed with AIDS.

19 Q. Well, let me ask you this: How about H.I.V.?

20 A. No.

21 Q. Ever been diagnosed with any type of disease?

22 A. Venereal disease or nothing.

23 Q. TB, cancer, anything like that?

24 A. I had -- I got gonorrhea one time when I was 21
25 years old in Greenville.

1 COMMISSIONER GRACE: Well, that's like that
2 preacher said. I don't think I'd have told that, brother.

3 (Laughter.)

4 THE WITNESS: Well, man, hey, I feel like --

5 BY COMMISSIONER BRITT:

6 Q. Why -- why --

7 THE WITNESS: -- my ass is on the line here. I'm
8 going to tell it all.

9 COMMISSIONER GRACE: You're not on the line here.
10 You're not on the line.

11 THE WITNESS: I feel like it.

12 BY COMMISSIONER BRITT:

13 Q. If you can answer, why would Mr. Hudson tell us
14 that you told him that you had been diagnosed with AIDS and
15 you needed to get all of this stuff off your conscience?

16 A. That beats me, man. I never in my life.

17 Q. How many times --

18 A. I don't have AIDS now and didn't have AIDS then.

19 Q. How many times do you ever recall being in prison
20 with Mr. Hudson?

21 A. I -- I -- you know, when the S.B.I. came in 2005
22 and asked me did I know a man named Ed Hudson, I told them
23 no, because I didn't. You know, and then they said, "Well,
24 it's the man that slept beside you at Carteret." And I said
25 okay. And naturally, you know, he said -- well, you get to

1 talking and meet the people around you, and you find out
2 he's been to Hyde and I've got a cousin at Hyde, and the
3 conversation went from there.

4 But as far as me ever, ever in my life saying
5 anything to Ed Hudson about, "Yeah, I went down there and I
6 -- I got some boys to go and rob Frank Swain, and my
7 cousin's doing the time for it," come on, man. That's the
8 furthest from the truth.

9 Q. How did you get back into Frank's Saturday night
10 to take the baby doll back?

11 A. Well, like I said, when I went to the door, some
12 things -- although everything don't stand out in my mind --
13 I'm -- I'm getting old; I'm 56 -- but some things stand out.
14 One thing that stands out is the fact that Frank's door was
15 cracked open about like that. It was about three or four
16 inches ajar. It was -- it was not open, but it was three or
17 four inches.

18 Q. Was there any damage to the door?

19 A. I can't -- I don't think there was. I don't think
20 there --

21 Q. Was there any damage to the doorframe?

22 A. Not that I --

23 Q. It hadn't been kicked in, had it?

24 A. No. I couldn't tell -- I wouldn't -- I wouldn't
25 say that it had been kicked in.

1 Q. Did you touch the doorknob?

2 A. The door -- the door swang [phonetic] in -- swang
3 [phonetic] outward.

4 Q. So you had to pull it.

5 A. Well, it --

6 Q. It's a mobile home, right?

7 A. Yeah, yeah. It was a doorknob. It's a doorknob.
8 You had to --

9 Q. I mean, most doors on trailers swing out, right?

10 A. Right.

11 Q. But -- so did you grab the doorknob --

12 A. No, sir.

13 Q. -- to open the door?

14 A. No, sir. It was ajar about this far. I pulled my
15 sleeve up, you know, and I told you why, not to tamper with
16 anything if anybody discovered anything, any evidence, and
17 took my hand and just my knuckles, the backside of my
18 knuckles and just pulled open -- creaked it open actually
19 looking around to see who -- you know, what was going on,
20 you know, 'cause I'd already seen that blood drop on the --
21 on the -- on the step.

22 Q. Were there lights outside?

23 A. I mean, mind you, if somebody had a been there, I
24 could have been killed too. You know what I'm saying?

25 Q. Were there lights outside of Frank's other than

1 the light --

2 A. There was a light on the porch.

3 Q. -- on the trailer?

4 A. There was a light on the porch.

5 Q. Could you see Frank with the door open just two or
6 three inches?

7 A. No, huh-uh. He was laying further that way, like
8 where Ms. Tanner would be.

9 Q. To your right?

10 A. To -- if this was the doorway to the right, he was
11 over that way.

12 Q. Okay. Could you see the couch?

13 A. Yeah, I could see the couch.

14 Q. Could you see the chair or TV?

15 A. I could see the couch. I can see there's a table.
16 I see the TV. I can't remember if the TV is on or not, but
17 I -- I can see -- remember the TV. I remember the -- the
18 chair he set [phonetic] in across from the door. There was
19 a light on. There was a light on over top of that -- where
20 that phone was at. There was a light underneath the bar
21 there or something. It was -- there was some light over
22 that way.

23 Q. Is it fair to say that if Frank was at home alone
24 that he kept the door locked?

25 A. Yeah. The door was locked when I left. I reached

1 up -- you know, when I went out, he was in the chair talking
2 to my sister. I said, "Frank, come lock your door, come
3 lock your door, I'm leaving." I didn't see him getting up.
4 I locked the door and slammed it. You had to --

5 Q. Push it hard?

6 A. -- you had to hit it hard to get it shut.

7 Q. So is it fair to say that for somebody to come in,
8 Frank would have had to have let them in?

9 A. Yes, sir.

10 Q. All right.

11 A. 'Cause and the reason I say that is from the time
12 -- from the time that he was talking to my sister -- now, I
13 don't know how long they talked. You know, I -- I don't
14 know, but maybe -- she may have called back or whatever. I
15 don't know. I didn't ever find out anything like that. So
16 I don't know how long they talked. A lot of times boyfriend
17 and girlfriend, they want -- you know, just the few little
18 minutes they give you on the phone is not long, so they'll
19 call back.

20 Q. How far did you walk inside the house -- I mean,
21 inside the trailer?

22 A. When?

23 Q. When you went back.

24 A. When I went back?

25 Q. Yeah.

1 A. When I went back and I opened the door, I leaned
2 in and looked. I never -- it was like right at -- right at
3 the threshold.

4 Q. Did you step in?

5 A. No, I didn't even step in. I stepped my foot up
6 on the threshold and leaned in and I was looking, and I saw
7 what I saw. I saw the blood first.

8 Q. Where did you see blood?

9 A. Everywhere. Everywhere on -- in that living room.
10 All over the curtains. All over. It was just -- it was
11 horrible, man.

12 Q. Did you see any bloody footprints or shoe tracks
13 in the blood?

14 A. It was sorta dark over there where he was laying,
15 but I -- I did -- the now, the one -- the boy that went in
16 that was in that trailer I'm telling you about, that second
17 trailer, he went on in the trailer and went down the
18 hallway. And I'm outside the door and I look and say, "Man,
19 you don't need to be going in there. You need to come out."
20 And you know. No, I didn't see any -- any bloody foot
21 tracks.

22 Q. Was there blood -- could you see blood --

23 A. But now, there's a backdoor. I didn't ever go to
24 no backdoor or nothing. I don't know.

25 Q. How about in the kitchen? Did you ever go and

1 Look in the kitchen?

2 A. No.

3 Q. Did you see any blood splatter on like the walls?

4 A. Yes.

5 Q. Did you see blood splatter on the ceiling?

6 A. I believe there was. It's -- I believe there was.

7 It was blood everywhere in that room.

8 Q. Was there any blood behind the area where the sofa
9 was?

10 A. I don't remember that. I didn't look that close.

11 Q. Was there blood on the sofa, the back of the sofa?

12 Do you remember?

13 A. I don't -- I don't remember.

14 Q. And so when you -- you went to a neighbor.

15 A. Right.

16 Q. Knocked on the door.

17 A. That's correct.

18 Q. Nobody answered?

19 A. That's correct. The first trailer.

20 Q. Then you ended up going to another trailer.

21 A. To the second trailer right beside it.

22 Q. And did you stay there until the police arrived or
23 did --

24 A. No, no.

25 Q. -- you leave?

1 A. No. I knocked --

2 Q. Why didn't you stay?

3 A. -- on that door, and the -- and the -- and the man
4 came to the door. It looked like a younger boy, kind of a
5 younger boy came to the door, and I said, "Somebody's killed
6 Frank. You got a phone? I need to use your phone." I -- I
7 really went trying to get in no conversation.

8 And -- and he said, "I don't have a phone. I
9 don't have a phone. What did you say now?"

10 I said, "Somebody's killed Frank. Who's got a
11 phone out here?" You know, and -- and he --

12 Q. Did you --

13 A. -- pointed me in the direction of the other
14 trailers.

15 Q. Did you make the 911 call or did someone else?

16 A. Yes, sir, I made it.

17 Q. Did you stay there until --

18 A. Yes, sir.

19 Q. -- the first deputy arrived?

20 A. Yes, sir.

21 Q. How long did you stay there?

22 A. I stayed there till -- till -- well, here --
23 here's exactly what happened. When -- when I made the 911
24 call, I left my flashers going. My flashers are going. My
25 car's cut off. I leave my flashers going so they can -- the

1 ambulance can see when they come up. And I'm talking to
2 them on a -- on a remote phone, you know, with the little --

3 Q. Cordless?

4 A. And when I see them turn in the trailer park, I --
5 "Okay, you're right at it. You're right at it. Come on
6 back." And I guided them back there to the car. I said,
7 "He's in there. Somebody's killed Frank. You'll see him."

8 And by this time, Ms. Janice Spruiell, you know,
9 came on the scene. They -- they all showed up about at the
10 same time. I can't remember who came first.

11 Q. Now, did you know her before this?

12 A. Yes, sir.

13 Q. How did you know her before this?

14 A. Miss Janice has been on the sheriff's department
15 for some time.

16 Q. Has she ever arrested you?

17 A. It's possible.

18 Q. Were you ever a snitch for her?

19 A. No, sir.

20 Q. Were you ever a snitch for Willie Williams?

21 A. No, sir.

22 Q. Do you know who that is?

23 A. Yes, sir.

24 Q. Did you ever -- did you ever act as a snitch or an
25 informant for anybody at the sheriff's office?

1 A. Well, now, if -- if you want -- if you want to get
2 -- get right down to it, yeah, probably.

3 Q. Was it before this happened or after this
4 happened?

5 A. When I was 18 years old, myself and Leroy and
6 several more were -- were charged with breaking and entering
7 Weyerhaeuser trailers and a school at Creswell Prison [sic].
8 And -- I mean -- Creswell Prison -- a school at Creswell
9 High School.

10 Q. Okay.

11 A. Yeah, it was Creswell High School. Well, if you
12 want to call it a snitch, I don't -- I don't -- maybe Leroy
13 called it that, but I didn't. But I cooperated with the
14 District -- with the District Attorney's Office on the
15 simple fact that they said, "Look, admit your guilt, and
16 you'll get probation."

17 Q. Was that Mr. Norton?

18 A. Yes. Oh, yeah, that's who it was, Mr. Norton.

19 Q. I mean --

20 A. Yeah, Mr. Norton.

21 Q. -- the D.A. was trying a --

22 A. Right, red-headed --

23 Q. -- case.

24 A. -- guy. Red-headed fellow. Yeah, Mr. Norton.

25 "Admit your guilt." And Maynard Harrell -- Maynard Harrell,

1 I think, was a lawyer up there. But anyway, my lawyer told
2 me, he said, "Look. You know, you've got five breaking and
3 entering larcenies." That's what I was accused of. "And if
4 you'll plead guilty -- they can try each one separate, and
5 you could possibly get three to five, and they don't need
6 but one to convict you on all the rest of them, so you might
7 as well go ahead and take this plea." So I agreed to take
8 the plea for probation.

9 Well, I left that -- left the courthouse and --
10 and went to Leroy's house right there in Roper. Leroy was
11 asleep in the bed, and I woke him up. I said, "Look,
12 Leroy." I said, "Man, you -- I'm gonna plead. I'm gonna
13 plead guilty, and I'm gonna tell them what I did." I said,
14 "You know, you need to do the same thing."

15 He said, "No, I'm going not guilty all the way.
16 I'm not guilty. I'm not guilty."

17 I said, "No, Leroy, you are guilty. You know
18 you're guilty." I said, "And if I have to get up on the
19 stand and testify against you, I'm gonna do it. Don't make
20 me get on the stand and testify against you, now. Don't
21 call my bluff because I'll do it."

22 And he said, "Well, you do what you got to do."
23 So I did what I had to do. He made -- he made me get on the
24 stand and testify against him, in other words, because I
25 told him, "You could get probation. You don't have to go to

1 prison. You could -- you -- the probation was right there
2 for him. All you got to do is say, "Yeah, I was involved,"
3 and it would have been over for him. He could have got
4 probation and -- and never went to prison.

5 But, no, he said he was not guilty, and they found
6 him guilty. So --

7 Q. And the rest is --

8 A. -- when he went to prison --

9 Q. The rest is history.

10 A. -- when he went to prison, he turned around and
11 called me from prison and said, "Wyatt, do you remember when
12 we stole those doors off this house that belonged to Emily
13 Hinton?" The house was on a Historical Register of Deeds
14 Society or whatever.

15 And I said, "Leroy, I don't remember anything like
16 it. You're the one that stole the doors."

17 He said, "No, you remember. You were with me when
18 we stole them and carried them through the creek."

19 I said, "No, I did not." You're -- Leroy said --
20 when my Daddy asked me, he said -- I was on probation, doing
21 good, and I did that probation really well and -- and paid
22 off all the fines. But, anyway, do you know they came back
23 and -- and charged me with -- with those two doors? And I
24 never had -- I never did it.

25 Q. So --

1 A. On -- on his testimony. So.

2 Q. How many times have you talked with Leroy Spruiell
3 about this case?

4 A. Leroy --

5 JUDGE WAGONER: Let me -- let me just stop you one
6 second because I know we're past --

7 You're still asking questions. Are other people
8 going to have questions of this witness, you think? You
9 might? Do you want to go on a break?

10 Okay. Well, it's -- it's past one, and I think we
11 need to let people eat --

12 COMMISSIONER BRITT: That's fine.

13 JUDGE WAGONER: -- particularly maybe this
14 witness. So why don't we just recess. Is there someplace
15 he can get food here?

16 MS. GUICE SMITH: We will -- we've got food for
17 him. We'll make a plate and take it to him.

18 JUDGE WAGONER: Okay. 30 minutes or 45?

19 MS. GUICE SMITH: You-all need to read some stuff
20 over the lunch break, so it's about 65 or 70 pages total.
21 So however much time you'll need --

22 COMMISSIONER BOSWELL: How much --

23 MS. GUICE SMITH: -- for that.

24 COMMISSIONER BOSWELL: -- longer will -- will you
25 go?

1 JUDGE WAGONER: Well, he's got --
2 COMMISSIONER BRITT: I'm -- I'm --
3 JUDGE WAGONER: -- and then she's got --
4 COMMISSIONER BRITT: -- I don't have --
5 JUDGE WAGONER: -- and then he's got.
6 COMMISSIONER BRITT: I don't have much longer.
7 COMMISSIONER BOSWELL: If we can do it in the next
8 five minutes, then that's great. If it's going to be
9 another --
10 JUDGE WAGONER: I don't think it's going to -- I
11 can guarantee you he's not going to take five minutes.
12 COMMISSIONER BARROW: The voice of experience.
13 JUDGE WAGONER: The voice of experience.
14 COMMISSIONER BOSWELL: I don't have any other
15 questions.
16 JUDGE WAGONER: 45 minutes for lunch, okay?
17 (Off the record at 1:06 p.m.)
18 (A lunch recess was taken.)
19 (Back on the record at 2:20 p.m.)
20 (The witness, Wyatt L. Spruiell, resumed the
21 stand.)
22 JUDGE WAGONER: Mr. Spruiell has returned, and
23 you're still under oath, sir. I believe Mr. Britt had
24 one --
25 COMMISSIONER BRITT: I don't have any other -- I

1 don't have any other questions.

2 JUDGE WAGONER: Oh, come on.

3 COMMISSIONER BRITT: I don't have any questions.

4 JUDGE WAGONER: All right. Yes, ma'am.

5 ALT. COMMISSIONER NEWTON: Thank you.

6 FURTHER EXAMINATION BY ALT. COMMISSIONER NEWTON:

7 Q. Mr. Spruiell, I'm Deb Newton. I had asked you a
8 few questions. I'd like to follow back up with you. And if
9 you would just keep your answers directly to the question.
10 You don't have to elaborate, if you don't mind. We're on a
11 little bit of a tight schedule, but -- but I will try to be
12 brief.

13 I want to get the relationships correct based on
14 your testimony. You knew Frank to be a crack dealer there
15 in town, and he was nervous, your description on the day
16 that he was killed, when you were with him, correct?

17 A. He was a crack dealer.

18 Q. Okay. And Sonja Day is your sister. You
19 connected him with -- her with Frank, and she was also
20 friends with P.J., correct?

21 A. Yes.

22 Q. Okay. And P.J. is the mother of Maurice Wilkins,
23 correct?

24 A. That's correct.

25 Q. And she was also the girlfriend of BoJack,

1 correct?

2 A. I never saw BoJack, but I've heard that.

3 Q. Is Maurice BoJack's son?

4 A. I've heard that.

5 Q. Okay. And BoJack, according to you, is the drug
6 source for Frank locally.

7 A. It's --

8 JUDGE WAGONER: Or at least he was.

9 A. It's possible that he was. I never said that he
10 was his source, but -- and according to --

11 BY ALT. COMMISSIONER NEWTON:

12 Q. BoJack was a big drug dealer there in town, a drug
13 source, too?

14 A. Yeah. I mean, that's common knowledge. Everybody
15 knew that.

16 Q. And -- and specifically, he would bring in
17 cocaine.

18 A. Yes.

19 Q. Okay. Now, did you -- do you have any information
20 where BoJack got his drugs from?

21 A. Well, the paper said he got it from the Dominicans
22 up in New York.

23 Q. Up in New York, okay. And you said that Sonja Day
24 -- you talked to your nephew, and Sonja Day ran from
25 somewhere up in New York. Do you know, or did you hear her

1 say anything in talking to her over these years about
2 running drugs or being a mule for Frank? In other words,
3 running up there and getting drugs and -- and bringing them
4 back?

5 A. No, ma'am.

6 Q. Did you hear --

7 A. I have --

8 Q. -- her say anything about Frank and she cutting
9 out BoJack from the middle and buying drugs from his source
10 directly?

11 A. (Shaking head negatively.)

12 Q. No?

13 A. Huh-uh.

14 Q. Did Frank have a driver's license?

15 A. I think he had lost his driver's license. That's
16 why he had Duke Carter driving him around.

17 Q. Okay. All right. Did you ever know Frank and Duke
18 to run up to New York --

19 A. No.

20 Q. -- to go get drugs?

21 Okay. What was Sonja Day in jail for?

22 A. Credit card fraud.

23 Q. Okay. But she didn't otherwise have a job, you --
24 you -- you said, right?

25 A. As far as I know, she didn't.

1 Q. Frank took care of her, pretty much.

2 A. Well, the State of North Carolina really took care
3 of her. They --

4 Q. How long was she --

5 A. -- provided her a place to stay.

6 Q. How long was she with Frank?

7 A. I -- I really don't know.

8 Q. When did you introduce them?

9 A. I think maybe they had known each other about a
10 year.

11 Q. About a year before you left for rehab.

12 A. Before I left for rehab?

13 Q. Before you left for rehab, you introduced her to
14 Frank.

15 A. Yeah. Before I left to go to rehab, yeah.

16 Q. Okay. And before you left for rehab, you had
17 about 17 charges and had something do -- to do with
18 worthless checks or larceny, correct? And you didn't --

19 A. That I did?

20 Q. Yes.

21 A. I don't know. If I -- I'd have to look at the
22 record, you know.

23 Q. And then when you left for rehab --

24 A. Worthless checks?

25 Q. -- did you make any money when you were in rehab?

1 A. Yes.

2 Q. How were you making money?

3 A. We sold bumper stickers, and they paid us a
4 certain percentage of how -- what we made in a month's time.

5 Q. So when you came back to town and went directly
6 over to Frank's neighborhood, did you have any money on you?

7 A. I don't think I had -- I might have had 25 or 30
8 dollars.

9 Q. When did you first start using crack cocaine?

10 A. In 1991.

11 Q. When you were 30? About 30?

12 A. It was in 19 -- let's see. It was in the fall of
13 1990.

14 Q. Okay. And you said that all of your crimes were
15 drug-related, correct?

16 A. Yes, ma'am.

17 Q. So at least by '91, you were -- you were -- is it
18 always crack?

19 A. Yes, ma'am.

20 Q. Okay. Now, you -- is it your testimony that you
21 did not have any crack cocaine or alcohol or any other
22 impairing substances while you were at rehab until you came
23 back to Frank's neighborhood?

24 A. Right.

25 Q. Right? So you -- all of that had gotten out of

1 your system.

2 A. Oh, yeah.

3 Q. Okay. And now, you testified today that you were
4 smoking crack that night.

5 (A phone sounded FEMA's Presidential alert
6 system test.)

7 A. Well, when you say -- when you say -- when you say
8 a person is smoking crack --

9 ALT. COMMISSIONER NEWTON: It -- it won't stop.
10 I'm sorry, it won't stop.

11 (Laughter.)

12 BY ALT. COMMISSIONER NEWTON:

13 Q. I'm sorry, your question was?

14 A. When you say a -- when you -- when you tell a
15 person -- say that -- okay, so you were smoking crack that
16 night. I can't agree with that because --

17 Q. You --

18 A. -- because --

19 Q. You testified --

20 A. -- I may have --

21 Q. -- you can accept you testified that you were
22 smoking crack with Ducon at least on that night that Frank
23 was killed, correct?

24 A. That I had smoked -- that I had smoked off of his
25 pipe.

1 Q. Okay.

2 A. One inhale, two inhales, like Clinton.

3 Q. With no prior drugs in your system, correct, for
4 six months.

5 A. But I -- but I didn't -- I wasn't just constantly
6 smoking, you know, one right after the other like -- that's
7 what you say by smoking.

8 Q. The question is, with no prior drugs in your
9 system prior to that hit that you took, correct?

10 A. Right.

11 Q. All right. Now, you -- you said something about
12 Frank was wearing his Weyerhaeuser work clothes?

13 A. Well, he didn't -- he worked for -- he worked
14 for --

15 Q. That -- sir, was he wearing clothes with his name
16 on it --

17 A. Yes --

18 Q. -- that you recognized --

19 A. -- Frank.

20 Q. -- to be from Weyerhaeuser?

21 A. He -- he -- I don't know if they were from
22 Weyerhaeuser, but he had -- his pants and shirt had "Frank"
23 on it.

24 Q. Okay.

25 A. His -- his shirt had "Frank" on it, and his

1 pants --

2 Q. And you -- you didn't that day -- when Frank was
3 nervous, did you ask him why he was nervous that day?

4 A. When he was nervous?

5 Q. You said he was -- he was -- he was nervous that
6 day.

7 A. I said he was nervous?

8 Q. I -- I thought you testified. Let me just confirm
9 that you did. So was he nervous that day? Frank.

10 A. I don't -- I don't remember him being nervous.

11 Q. Okay. Okay. Sir, you were asked -- this is the
12 last question. You were asked a couple of times whether you
13 ever had AIDS or whether you --

14 (A phone sounded FEMA's Presidential alert
15 system test.)

16 A. Right.

17 Q. -- remembered, you know, being sick. Back in --
18 when you were at Craven --

19 (A phone continued to sound FEMA's
20 Presidential alert system test.)

21 COURT REPORTER: Just -- could we wait --

22 ALT. COMMISSIONER NEWTON: I'm sorry, it's the
23 president.

24 JUDGE WAGONER: Do you want to put it on mute?

25 COMMISSIONER BOSWELL: Put it on mute.

1 COMMISSIONER THOMPSON: Just turn it off.

2 That's --

3 ALT. COMMISSIONER NEWTON: I have it on mute. I
4 mean, that's the problem.

5 COMMISSIONER GRACE: You can't mute the president.

6 (Laughter.)

7 COMMISSIONER FRYE: A lot of people's tried.

8 COMMISSIONER BOSWELL: I bet John Kelly would like
9 that.

10 COMMISSIONER THOMPSON: I did.

11 JUDGE WAGONER: Just so we'll know, this is some
12 kind of nationwide alert going out that means nothing.
13 Okay.

14 BY ALT. COMMISSIONER NEWTON:

15 Q. Mr. Wyatt, thank you for your patience.

16 A. All right.

17 Q. Back in 2001 and 2002, when you were either at
18 Craven or Carteret -- and I apologize ahead of time for the
19 question, but was there any incident that happened to you?
20 You don't have to describe it, but was there an incident
21 that happened to you at either of the jails that may have
22 led you to be in fear that you had contracted AIDS?

23 A. No.

24 Q. So you don't remember an incident like that at
25 all.

1 A. Now, something like AIDS, I would remember.

2 Q. But you mentioned your sister had it.

3 A. I didn't know my sister had it until after the
4 autopsy. My mother told me --

5 Q. Okay.

6 A. -- that --

7 Q. So you've never had a traumatic incident in the
8 jail which would --

9 A. No.

10 Q. -- lead you to think that -- that you did contract
11 AIDS --

12 A. The only --

13 Q. -- made you think that you might have gotten
14 AIDS?

15 A. No. The only traumatic incident I've ever had is
16 this go-round right here, and I had bilateral hernia surgery
17 in Raleigh.

18 Q. All right. Thank you for answering my questions.

19 A. Yes, ma'am, you're welcome.

20 JUDGE WAGONER: I have one question.

21 FURTHER EXAMINATION BY JUDGE WAGONER:

22 Q. You've indicated, sir, that your -- your family
23 was upset that your sister was living with/dating a black
24 man.

25 A. Yes, ma'am.

1 Q. Is that right?

2 A. Yes, ma'am.

3 Q. Was your sister ever threatened because of that
4 that you know of, by anyone?

5 A. I think some of the -- the girls that Frank
6 probably -- what -- what's the word? -- promiscuous with?

7 Q. Do what?

8 A. I think some of the girls that he was -- he was --
9 had been with, his baby's mama --

10 Q. Yeah.

11 A. -- how they put it?

12 Q. They --

13 A. On how to --

14 Q. -- threatened to make -- possibly your sister.

15 A. And I say "they," white and black, so.

16 Q. Okay. Do you know if anybody threatened Frank?

17 A. No.

18 Q. You don't know, or nobody ever did?

19 A. No. As far as I know, nobody ever did.

20 Q. Okay. That's it.

21 JUDGE WAGONER: Okay. Anything further from
22 anybody?

23 (No response.)

24 JUDGE WAGONER: Okay. All right. Thank you, sir.

25 COMMISSIONER BOSWELL: Thank you.

1 THE WITNESS: That's it?

2 JUDGE WAGONER: Appreciate you being here, and
3 you're --

4 THE WITNESS: Can I -- can I ask a question?

5 JUDGE WAGONER: We probably can't answer, but you
6 can ask -- you can ask it.

7 THE WITNESS: Do you think that this will be the
8 last time I -- you know, I'll be up in front of you guys
9 coming up like this?

10 JUDGE WAGONER: It'll be the last time you're
11 going to be in front of me unless you do something bad in
12 Rowan County.

13 THE WITNESS: Okay. Well, I mean, I just wanted
14 to say that, you know, what you guys are doing, what you
15 guys -- all of you, you know, are doing is -- is really
16 important, you know. And the girls that came to see me and
17 stuff, you know, they acted like they -- they really were
18 concerned, and -- and they did a fabulous job.

19 MS. GUICE SMITH: Good.

20 THE WITNESS: I just wanted to say that because
21 really and truly, and it -- it really played on my nerves
22 for some time that, you know, why -- what is going on, you
23 know? And nobody knows and nobody knows, and it could be
24 this or it could be that. I know you guys have got a big
25 job ahead of you, so I hope -- I hope things -- I hope you

1 get it figured out.

2 JUDGE WAGONER: Okay.

3 COMMISSIONER BOSWELL: Thank you.

4 JUDGE WAGONER: Thank you very much, sir.

5 THE WITNESS: Thank you.

6 JUDGE WAGONER: Okay.

7 THE WITNESS: Can I have this testimony? My
8 testimony? Can I keep it?

9 JUDGE WAGONER: I don't know if it's an exhibit or
10 not.

11 COMMISSIONER GRACE: I don't think they're going
12 to let you take it back into the unit.

13 MS. GUICE SMITH: No.

14 JUDGE WAGONER: They'll probably make you tear it
15 up.

16 COMMISSIONER BOSWELL: They would make him tear it
17 up?

18 WAKE COUNTY DEPUTY: No, he can. He can have it.
19 It'll be --

20 THE WITNESS: I can put it in my personal
21 property, can't I?

22 JUDGE WAGONER: Okay. Let me see. What did you
23 say, sir?

24 WAKE COUNTY DEPUTY: It'll be considered -- it
25 would be considered like legal mail, I guess.

1 MS. TANNER: If he -- if he needs a copy of his
2 transcript, that's probably with the Clerk. So this is a
3 copy from our file.

4 JUDGE WAGONER: Well -- well, getting it from the
5 Clerk, he probably never will, so --

6 MS. TANNER: It's up to you.

7 JUDGE WAGONER: Huh? I'm sure it's long since
8 gone if the Clerk had it.

9 MS. TANNER: It was his transcript from trial, so
10 it was -- that's where we got it from was the Clerk. It was
11 in the Clerk's office.

12 JUDGE WAGONER: But that's -- that was your copy?

13 MS. TANNER: Yeah. But there's an extra copy.

14 JUDGE WAGONER: It's okay with me. If he wants
15 it, it's fine with me.

16 THE WITNESS: Thank you very much.

17 JUDGE WAGONER: Thank you, sir. He may have it,
18 yeah. Just consider it --

19 THE WITNESS: Appreciate it.

20 JUDGE WAGONER: -- legal mail.

21 (The witness left the room.)

22 (Discussion off record regarding the alert.)

23 JUDGE WAGONER: Okay. Now, next we're going to
24 have the patient lady.

25 MS. GUICE SMITH: She is patient. I'm going to

1 clear up just a couple of questions that you-all had asked
2 earlier, and then we will call Ms. Clement back in.

3 There was a question about whether Mr. Spruiell
4 and Mr. Jones's prints had been compared to the Sonja Day
5 crime scene. Although they have not been directly compared,
6 we did confirm that both Mr. Spruiell and Mr. Jones are in
7 the SAFIS system, which is the State AFIS system, and that
8 unidentified print from that case was uploaded to that
9 system, and it has not had any hits.

10 There was also a question about the victim's blood
11 alcohol content and other drugs in his system at the
12 autopsy. The ethanol was 200 milligrams --

13 JUDGE WAGONER: That's pretty drunk.

14 MS. GUICE SMITH: -- per --

15 COMMISSIONER BRITT: Deciliter.

16 MS. GUICE SMITH: -- deciliter.

17 Other volatiles: No. Cocaine: Negative. That
18 is on page 35 of your brief, if you want to refer back to
19 that.

20 I'm also going to call just quickly Ms. Tanner
21 back to the stand.

22 BETH TANNER,
23 having been re-called as a witness for the Commission and
24 having been previously duly sworn by Judge Wagoner,
25 testified as follows:

1 EXAMINATION BY MS. GUICE SMITH:

2 Q. There were questions earlier this morning about
3 the testimony of Edward Hudson being in Central Prison with
4 Leroy Spruiell.

5 A. Yes.

6 Q. Have you been able to find out any additional
7 information about that for the commissioners?

8 A. Yes. We asked for Mr. Hudson's movement records
9 from December 2015 to the present, and Mr. Spruiell's
10 movement records for the same time period. Mr. Spruiell was
11 shown at C.P. on August 19th, 2017, and October 26th, 2017.
12 Mr. Hudson is not ever shown during that time period as
13 being at C.P.

14 However, I confirmed with D.P.S. general counsel's
15 office that it is possible if he had a one-day visit, they
16 would actually not record that on the movement record
17 because he's not staying in an overnight bed.

18 In looking back at his interview with our staff --
19 I'm sorry, we focused on those dates because the interview
20 where he said he saw Mr. Spruiell a few months before she
21 went to see him. But he -- they wouldn't have done that.

22 What he reported is that he actually had an
23 eyeglass appointment. It's not clear from the interview if
24 he was picking up or -- or being prescribed them at the
25 time. The only way that we would be able to know about the

1 eyeglass appointment would be to get his medical records. I
2 think that would be contained in the consultation records.

3 THE WITNESS: So, Judge, we would probably need
4 another court order for that because our order right now
5 only covers his movement in prison.

6 JUDGE WAGONER: Does anybody think they need that?
7 For an eye appointment, I don't think -- in my opinion, he
8 would not spend the night, but I'll be glad to --

9 COMMISSIONER BOSWELL: No.

10 JUDGE WAGONER: Anybody want it?

11 THE WITNESS: He would not.

12 JUDGE WAGONER: Okay. Just keep on. We're not
13 going to get that.

14 A. As to the overlap for that 11 minutes at Hyde
15 Correctional, HDU was the unit that they overlapped for 11
16 minutes. That is Hatteras Dorm. There are four pods in
17 Hatteras Dorm. So "H" is Hatteras, the "D" is D pod, and
18 the U means upper. So that is a normal dorm setting. Okay?

19 JUDGE WAGONER: Okay. Thank you.

20 THE WITNESS: Thank you

21 (The witness left the stand.)

22 MS. GUICE SMITH: The Commission would re-call
23 Meghan Clement.

24 JUDGE WAGONER: Welcome back. All right. If you
25 would please place your left hand on the Bible, ma'am, and

1 raise your right hand and be sworn.

2 MEGHAN CLEMENT,

3 having been re-called as a witness for the Commission, was
4 sworn by Judge Wagoner and testified as follows:

5 EXAMINATION BY MS. GUICE SMITH:

6 Q. Good afternoon.

7 A. Good afternoon.

8 Q. I am handing you what is a Bode Cellmark Forensics
9 supplemental report dated October 2nd, 2018, and a report or
10 letter, rather, from you dated October 2nd, 2018. Do you
11 recognize both of those?

12 A. Yes, I do.

13 Q. Have you had an opportunity to review those?

14 A. Yes, I have.

15 Q. Okay. Can you please tell the commissioners what
16 testing was done in the supplemental report issued by Bode
17 Forensics on October 2nd, 2018?

18 A. Yes. The tire iron was submitted to Bode Cellmark
19 Forensics, and the lower portion of that tire iron was
20 swabbed and tested.

21 Q. Can you tell the commissioners the results of that
22 testing?

23 A. Yes. The results of that testing revealed a
24 mixture of DNA from at least three individuals. Bode
25 Cellmark Forensics reported that due to the possibility of

1 allelic dropout, which is simply minor genetic components
2 not being visible, they would not draw any conclusions as to
3 that mixture profile.

4 Q. And were you able to actually do comparisons to
5 that profile?

6 A. I was, yes.

7 Q. Can you tell the commissioner about --
8 commissioners about what you did?

9 A. Yes. Having been the director of operations at
10 Bode Cellmark and also the laboratory director before I
11 retired, they have very conservative interpretation
12 guidelines, and if there's any indication that there may be
13 dropout, they simply will not draw any conclusions until
14 they bring on a different type of software to do the
15 analysis.

16 However, when I looked at the profile, it was very
17 clear that there were a number of peaks that were obvious
18 and could be compared to the reference samples. The first
19 obvious conclusion was that the victim, William Frank Swain,
20 could not be excluded as a contributor to the DNA from that
21 lower portion. That was very clear, and then I went further
22 to -- once I determined that he could not be excluded, I
23 looked at all of the characteristics or alleles that were
24 foreign to the victim and compared it to the other
25 individuals, and I was able to exclude all of the sources of

1 the reference samples from that mixture.

2 The other thing I noted was that I compared the
3 profile that was obtained from the bottom portion of the
4 tire iron to the results that the State Crime Laboratory had
5 obtained from the top portion, and those profiles are very
6 similar. The mixtures are fairly consistent. Bode Cellmark
7 Forensics obtained -- they looked at 27 different areas, and
8 they obtained results at 20. That's why they reported it as
9 a partial profile. The State Crime Laboratory looked at 16
10 and got results at all 16.

11 Between the 20 that Bode got and the 16 that the
12 State Lab got, there were 18 -- excuse me, eight that
13 overlapped between both of them. And the same foreign
14 characteristics were found in both that couldn't have come
15 from the -- from the victim in this case. So the profiles
16 were very consistent. Bode Cellmark did find a couple of
17 extra small, minor characteristics, but that isn't
18 surprising because the kits today are much more sensitive
19 than the ones used in 2007.

20 Q. And Ms. Clement, do you know whether there was --
21 Bode saw any blood on that portion of the tire iron that
22 they swabbed?

23 A. They specifically looked for blood, and they did
24 not see any obvious blood. They did state that it was
25 fairly rusty. And the component of -- of blood, the red

1 cells themselves will cause an oxidative reaction, so it is
2 possible that blood could have been present and that's what
3 caused the rusting. But there was nothing obvious to the
4 naked eye. They did not see any -- any blood when they
5 collected the sample and swabbed that whole bottom portion.

6 Q. So just to summarize, the mixture that they're
7 seeing, you've concluded that the victim cannot be excluded
8 as a contributor, correct?

9 A. Correct.

10 Q. And you've also concluded that all of the
11 references -- reference samples that were submitted to you
12 for review are excluded from that mixture.

13 A. That's correct.

14 Q. And that includes Leroy Spruiell?

15 A. Yes.

16 Q. And that includes Wallace Brandon Jones?

17 A. That's correct.

18 Q. That includes Dana Maybin?

19 A. It does.

20 Q. And that includes Dennis Honeycutt?

21 A. Yes.

22 Q. Multiple other individuals as well?

23 A. That's correct.

24 MS. GUICE SMITH: Commissioners, do you have any
25 question for Ms. Clement?

1 JUDGE WAGONER: Yes, sir. Did you have a
2 question, or are you thinking, Mr. Boswell?

3 COMMISSIONER BOSWELL: Scratching my head.

4 COMMISSIONER BARROW: I bought a horse that way
5 one time.

6 JUDGE WAGONER: Question?

7 COMMISSIONER FRYE: I'm good.

8 MS. GUICE SMITH: Okay.

9 COMMISSIONER GRACE: No, ma'am, thank you.

10 COMMISSIONER BRITT: Thank you.

11 JUDGE WAGONER: Nobody? All right. Thank you
12 very much for coming back and doing that.

13 MS. GUICE SMITH: Oh, I'm sorry, there was one
14 question I left outstanding yesterday. Mr. Boswell had asked
15 about Mixon, Sr. and Mixon, Jr. --

16 COMMISSIONER BOSWELL: Oh, yeah, yeah, yeah.

17 MS. GUICE SMITH: -- and the exclusion.

18 BY MS. GUICE SMITH:

19 Q. Can you just go back over for us what that meant?
20 We were comparing Mixon, Jr. Does that mean we were or were
21 not able to exclude Mixon, Sr.?

22 A. Although we compared Mixon, Jr. sample to the
23 unknown profiles, ultimately the only way to exclude an
24 individual is to compare their actual profile. There is one
25 other way. If we had had Mixon, Sr.'s parents, we could

1 have made a direct comparison based on all of the
2 characteristics in the genetic pool that he could have
3 inherited.

4 So in that sense, no, we cannot exclude Mixon, Sr.
5 What I had stated earlier is that oftentimes when we're
6 looking at an unknown profile, and if we have a reference
7 that has a lot of similarities but may only differ in one or
8 two, it may clue us that the true source may be a relative.
9 We didn't see that closeness in these, but ultimately we
10 still cannot 100 percent exclude Mixon, Sr. because we don't
11 have his reference.

12 COMMISSIONER BOSWELL: If I can say it another
13 way, there wasn't anything that suggested Mixon, Sr. was the
14 source, but you can't exclude him.

15 THE WITNESS: That's correct.

16 COMMISSIONER BOSWELL: Okay.

17 THE WITNESS: Very good.

18 MS. GUICE SMITH: I would ask that Ms. Clement be
19 released from her subpoena.

20 JUDGE WAGONER: You may be released. Thank you
21 very much.

22 THE WITNESS: Thank you.

23 (The witness left the stand.)

24 MS. GUICE SMITH: All right. I will re-call
25 Ms. Matoian.

1 Commissioners, we are now going to turn our
2 attention to the individuals who state that they were at Big
3 Ed's Bar on the night of the crime. Big Ed's Bar is where
4 both Mr. Spruiell and Mr. Jones have indicated that they were
5 throughout the night of the crime. With respect to these
6 individuals, Commission staff's testimony is going to be
7 limited to what those individuals told the Commission about
8 Big Ed's Bar and not the remainder of their interview. If
9 they provide other relevant and new information, we've
10 already incorporated that into the other parts of this
11 hearing.

12 CATHERINE MATOIAN,
13 having been re-called as a witness for the Commission and
14 having been previously sworn by Judge Wagoner, testified as
15 follows:

16 EXAMINATION BY MS. GUICE SMITH:

17 Q. Ms. Matoian, did Commission staff interview
18 individuals who were at Big Ed's Bar on the night of the
19 crime?

20 A. We interviewed several individuals who have said
21 that they were at Big Ed's Bar on the night of the crime.
22 Some of them had been interviewed before by law enforcement
23 and post-conviction investigations, and others were
24 interviewed by the Commission for the first time.

25 Q. Can you tell the commission who Marguerite Lynn

1 Rogers Spruiell is?

2 A. She was the bartender at Big Ed's Bar on the night
3 of the murder, and at that time she was going by the name
4 Lynn Rogers.

5 MS. GUICE SMITH: Commissioners, because
6 Ms. Rogers was going by the name Lynn Rogers at the time of
7 the crime, and to avoid any additional confusion with the
8 name Spruiell, we are going to refer to her as Lynn Rogers
9 throughout this hearing.

10 JUDGE WAGONER: That's fine.

11 MS. GUICE SMITH: Commissioners, information
12 related to Lynn Rogers' initial statements for law
13 enforcement is on 75 to 82 in your brief. We provided her
14 statements in full in your brief.

15 Ms. Rogers was also interviewed by Prisoner Legal
16 -- I'm sorry, by the defense private investigators. A
17 summary of those interviews is on 139 to 140 of your brief.
18 Ms. Rogers also testified at trial, and the transcript of
19 her testimony and a summary of that can be found on Page 292
20 through 349 of your brief.

21 Statements that Lynn Rogers made post-conviction
22 but prior to the Commission's investigation are summarized
23 and provided in full on pages 650 to 651 of your brief.

24 You have also already been provided and read over
25 the lunch break the Commission's deposition of Lynn Rogers.

1 That was Handout 46 in your Handout Hearing notebooks.

2 Handout 44, I'm sorry that was -- yes. Handout 44 in your

3 Hearing Handout notebooks is Ms. Rogers' criminal record.

4 If you will take a moment to review that.

5 (Handout Numbers 44 and 46 were identified for
6 the record.)

7 (Pause in proceedings.)

8 BY MS. GUICE SMITH:

9 Q. Ms. Matoian, was Ms. Rogers interviewed by law
10 enforcement?

11 A. She wasn't initially interviewed by law
12 enforcement but was later on in the investigation on May
13 3rd, 1994, after Dana Maybin had mentioned her in her April
14 26th, 1994, interview. And in that May 3rd, 1994, interview
15 Ms. Rogers recalled Spruiell and Jones leaving the bar for
16 one to one and a half hours, and Ms. Maybin staying during
17 that time but being upset. And she also said that when
18 Mr. Spruiell and Mr. Jones returned to the bar, they had
19 changed clothes and Spruiell's hair looked wet.

20 She stated that after Mr. Spruiell and Mr. Jones
21 returned, she heard them conversing at the bar about
22 something they had done to somebody. She stated she
23 overheard them saying something about a black man getting
24 stabbed a lot and, quote, "It sounded as though the black
25 man had been walking down the side of the road, and Spruiell

1 and Robert had walked up to the black man, jumped him, and
2 stabbed him," end quote.

3 Q. During the course of the Commission's
4 investigation, has anyone else mentioned anything about a
5 black man in a road?

6 A. Yes. In Mr. Spruiell's February 9th -- sorry,
7 Leroy Spruiell's February 9th, 2011, interview with the
8 Commission, he told us about a time that he had encountered
9 a black man lying in the road.

10 MS. GUICE SMITH: Commissioners, if you will refer
11 to Handout 45 in your first Hearing Handout notebook, this
12 is an excerpt from the recorded and transcribed interview of
13 Mr. Spruiell -- Leroy Spruiell on February 9th, 2011.

14 (Handout Number 45 was identified for the
15 record.)

16 MS. GUICE SMITH: If you will turn your attention,
17 we have there for you page 67, line 4 through line 16.
18 Please take a moment to review that.

19 JUDGE WAGONER: And what's the tab number again?

20 MS. GUICE SMITH: It's 45.

21 JUDGE WAGONER: Okay, thank you.

22 BY MS. GUICE SMITH:

23 Q. Did Lynn Rogers have any additional contact with
24 law enforcement in this case?

25 A. She did. She called the sheriff's office twice on

1 May 6th, 1994, so three days after that initial interview,
2 and said that all the information she had given to them was
3 hearsay.

4 Q. And was Lynn Rogers interviewed by anyone else
5 prior to the trial?

6 A. She was also interviewed by the defense's private
7 investigator, and during that interview, she said that she
8 saw Mr. Spruill and Mr. Jones leave the bar between 8:30 and
9 9:00 p.m. and didn't notice them again until 30 minutes to
10 an hour later.

11 She stated further that Mr. Spruill and Mr. Jones
12 were wearing different clothes when they returned to the
13 bar, but that she only recalled that information after her
14 boyfriend, Steven Bell, had mentioned it to her. She stated
15 that Mr. Spruill's hair looked wet, but that it always
16 looked that way. She stated that she heard them talking
17 after they returned and overheard a comment. She believed
18 that Jones was doing most of the talking, and she heard him
19 say, quote, "I can't believe that we just stabbed this
20 N-word off this N-word," end -- end quote.

21 Q. Did Lynn Rogers testify at trial?

22 A. She did. She testified consistent with her prior
23 statements with respect to Mr. Spruill and Mr. Jones leaving
24 the bar, coming back in different clothing, and
25 Mr. Spruill's hair looking wet. She was inconsistent in

1 that she said she did not see Ms. Maybin during the time
2 that Mr. Spruiell and Mr. Jones were gone from the bar,
3 whereas during her interview with law enforcement she stated
4 that Maybin was at the bar while Mr. Spruiell and Mr. Jones
5 were gone and that Ms. Maybin was upset.

6 She also testified that Mr. Jones told her he only
7 had five dollars before he left the bar and then was making
8 purchases with crumpled-up money after they returned. And
9 she testified that after Mr. Spruiell and Jones returned to
10 the bar, she heard Mr. Jones say to Mr. Spruiell, quote, "I
11 can't believe we just got away with offing an N-word," end
12 quote.

13 Q. Was Lynn Rogers interviewed by anyone else prior
14 to the Commission's involvement in the case?

15 A. She was. She was interviewed twice by the North
16 Carolina Center on Actual Innocence. One interview was
17 undated, and the other one was conducted on March 13th,
18 2008. The undated interview report indicates that, quote,
19 "She essentially stuck to the story she said at trial, but
20 she did not remember detail," end quote.

21 And the March 13th interview, March 13th, 2008,
22 interview indicates that, quote, "She pretty much repeated
23 her exact testimony at trial."

24 Q. Did the Commission interview Lynn Rogers?

25 A. After leaving several business cards for

1 Ms. Rogers at her home on various occasions without a return
2 call, we decided to depose her, and that occurred on
3 February 9th, 2017.

4 MS. GUICE SMITH: Commissioners, you have already
5 read Handout 46, which is her deposition testimony before
6 the Commission.

7 BY MS. GUICE SMITH:

8 Q. Ms. Matoian, are there any inconsistencies between
9 Lynn Rogers' deposition testimony and her prior statements
10 at trial testimony?

11 A. When asked about the conversation that she
12 overheard between Mr. Spruiell and Mr. Jones, Lynn Rogers
13 said that she recalled them saying that they had gone to
14 someone's place, they had to change their clothes because
15 they were covered in blood, they killed somebody, they stole
16 drugs, they got money, and that Ms. Maybin hadn't done
17 anything but had watched it.

18 Q. Is that consistent with Lynn Rogers' earlier
19 statements regarding what she overheard Mr. Spruiell and/or
20 Mr. Jones say?

21 A. No, it's not.

22 Q. Did the Commission staff attempt to contact Steven
23 Bell?

24 A. We did. We attempted to contact him both at his
25 home and over the phone and were unable to make contact with

1 him.

2 Q. And remind the commissioners who Steven Bell is.

3 A. He was dating Lynn Rogers at the time of the crime
4 and was at the bar on the night of the murder. And in that
5 defense private investigator interview, Ms. Rogers had said
6 she didn't remember that Mr. Spruill and Mr. Jones had
7 changed their clothes until Steven Bell reminded her.

8 MS. GUICE SMITH: Commissioners, do you have any
9 questions for Ms. Matoian about her testimony regarding Lynn
10 Rogers?

11 COMMISSIONER GRACE: I have a question. Was
12 Mr. Bell questioned by or interviewed by anyone? Police?
13 S.B.I.?

14 THE WITNESS: I believe he was -- I know he was
15 interviewed by the defense private investigators. I'll have
16 to check on law enforcement.

17 JUDGE WAGONER: And do we have any idea where
18 Mr. Bell lives now?

19 THE WITNESS: He lives in Washington, North
20 Carolina. We were able to verify with a neighbor that he
21 lived at the house that I left the business card at, and she
22 provided a phone number for his wife. And we also had a
23 phone number for him from his Lexis report. We tried
24 calling both repeatedly and didn't get a response.

25 COMMISSIONER BOSWELL: The first time that I saw

1 that she said she had been threatened by Leroy or Robert was
2 in the deposition. Was there anywhere else in any of the
3 other statements or trial testimony or anything where she
4 said she was -- that you saw that -- where she said she was
5 threatened?

6 THE WITNESS: No, there was not.

7 JUDGE WAGONER: And she's going to be available by
8 video.

9 MS. GUICE SMITH: She will be available by video.
10 It'll be a little bit later this afternoon, but --

11 JUDGE WAGONER: Okay.

12 MS. GUICE SMITH: -- in the next hour or so.

13 JUDGE WAGONER: All right.

14 MS. GUICE SMITH: So we will have her available
15 for you-all to ask questions of her, but I propose we just
16 continue moving forward --

17 JUDGE WAGONER: Okay.

18 MS. GUICE SMITH: -- through the testimony if
19 there are no additional questions about her for Ms. Matoian.

20 BY MS. GUICE SMITH:

21 Q. Ms. Matoian, who is Margie Perry?

22 A. Margie Perry is someone who also said that she was
23 at Big Ed's Bar on the night of the murder. She was 16
24 years old at the time.

25 MS. GUICE SMITH: Commissioners, information

1 related to Margie Perry can be found on pages 83, and 220
2 through 226 of your brief. Handout 47 is the criminal
3 record of Margie Perry. Please take a moment to look at
4 that.

5 (Handout Number 47 was identified for the
6 record.)

7 COMMISSIONER BOSWELL: Those 200 pages, what
8 number were they?

9 MS. GUICE SMITH: 83 and then 220 to 226.

10 (Pause in proceedings.)

11 BY MS. GUICE SMITH:

12 Q. Ms. Matoian, there was a question as to whether or
13 not law enforcement had interviewed Steven Bell.

14 A. Law enforcement did not interview Steven Bell.

15 Q. Turning your attention back to Margie Perry, was
16 Ms. Perry interviewed by law enforcement or others during
17 the initial investigation?

18 A. She was. She was interviewed by law enforcement
19 on May 5th, 1994, and March 7th, 1995. She was interviewed
20 by the defense private investigator on March 3rd, 1995.
21 During that first interview with law enforcement on May 5th,
22 1994, she does not say anything about the night of the
23 murder. She provides information about Mr. Jones leaving
24 Plymouth.

25 During her interview with the defense private

1 investigator that happened in 1995, she stated that on a
2 Friday or Saturday night in 1993, either before or after the
3 victim had been murdered, she was at Big Ed's Bar. She
4 remembered Mr. Jones leaving and returning before 11:00 p.m.
5 He was wearing different pants, and there was a spot of
6 blood on the back, right calf area of the pants. And she
7 did not know if this was the night of the murder.

8 Then on March 7th, 1995, so that's four days after
9 the defense private investigator interview, she's
10 interviewed by the S.B.I., and she indicates that she did
11 remember the night of the murder and also stated there was,
12 quote, "One night in particular," end quote, that she was at
13 Big Ed's Bar and Mr. Jones was there.

14 Mr. Jones left between the hours of 7 p.m. and 11
15 p.m. and had changed clothes when he came back. When he
16 came back, there was a blood spot, a little bigger than a
17 quarter on his back calf. She was not sure of the exact
18 date this happened, quote -- but did say, quote, "It was
19 very near or on the day that Frank Swain was killed," end
20 quote.

21 Q. Did Ms. Perry testify at Mr. Jones's trial?

22 A. She did. She testified that the incident with
23 Mr. Jones changing his clothes was the night of the murder,
24 and she testified that she was not paying attention to what
25 Mr. Spruiell was doing or wearing, but did see them walking

1 in and out of the bar together a few times.

2 Q. Was Ms. Perry interviewed by anyone else prior to
3 the Commission's involvement in the case?

4 A. She was, on February 12th, 2004, and March 24th,
5 2004, by the North Carolina Center on Actual Innocence.

6 Q. And did the Commission interview Margie Perry?

7 A. We did, in person, on June 19th, 2017.

8 Q. And was that interview recorded and transcribed?

9 A. It was.

10 Q. What did Ms. Perry tell the Commission?

11 A. She stated that she had met Mr. Jones through the
12 Champs and knew Mr. Spruill a little bit. She said that she
13 had never spoken to Ms. Maybin but had seen her around, and
14 that she had also dated Mr. Jones for a while.

15 Q. Did she tell you what she recalled about the night
16 of the crime?

17 A. She said that she was living on Folly Road at the
18 time and remembered seeing all the cop cars with their
19 lights flashing on her way home from the bar that night.

20 MS. GUICE SMITH: Commissioners, if you will refer
21 to Handout 48 in your Hearing Handout Notebook Number 1,
22 this is a portion of the transcript of the Commission's
23 interview with Margie Perry beginning on page 6, line 2
24 through line 22. If you'll take a moment to review that.

25 (Handout Number 48 was identified for the

1 record.)

2 (Pause in proceedings.)

3 BY MS. GUICE SMITH:

4 Q. Ms. Matoian, did Ms. Perry tell you anything else?

5 A. She did. She said that she had heard the next day
6 what had happened to the victim, and she also said that law
7 enforcement was on top of it and came to interview her soon
8 after the murder.

9 Q. Is Ms. Perry's memory accurate with respect to
10 when she was interviewed by law enforcement?

11 A. No, it's not. She was not interviewed by law
12 enforcement until May 5th, 1994, which was approximately
13 five months after the crime. And during that interview she
14 did not talk about what happened, did not talk about the
15 night of the murder, or Jones leaving the bar and changing
16 clothes. She only discusses him leaving town.

17 It isn't until her interview with the defense
18 private investigator on March 3rd, 1995, that she first
19 talks about Mr. Jones changing his clothes and coming back
20 to the bar. And in this interview, Ms. Perry didn't specify
21 that this happened on the night of the murder, and her
22 testimony at Mr. Jones's trial is the first time where she
23 states directly that the night that Mr. Jones changed
24 clothes and came back to the bar was the night of the
25 murder.

1 Q. Did you ask Ms. Perry about that progression of
2 her statements?

3 A. I did. Ms. Perry stated that she was not -- she
4 was not sure what day of the week the crime occurred,
5 whether it was a Friday or a Saturday, but that she is sure
6 that the night she saw Mr. Jones coming back to the bar
7 after changing clothes was the night that she saw all of the
8 cop cars on Folly Road.

9 Q. Ms. Matoian, are there any other inconsistencies
10 between Ms. Perry's interview with the Commission and her
11 prior interviews with law enforcement, the defense private
12 investigators, or her trial testimony?

13 A. In her prior interviews and testimony, Ms. Perry
14 had only discussed seeing Mr. Jones leaving the bar and
15 changing clothes, and she testified that she wasn't paying
16 attention to what Mr. Spruill was doing. In her interview
17 with the Commission, she said that she saw both Mr. Spruill
18 and Mr. Jones leave and come back with different clothes.

19 Q. Ms. Perry stated that when Mr. Jones came back to
20 the bar on the night of the crime he had bloodstains on his
21 white jeans on the back of his calf. Has Mr. Jones provided
22 any statements about that?

23 A. Mr. Jones has maintained that the incident where
24 he had a spot of blood on his pants occurred after the
25 murder, and that the blood was from falling through some

1 steps at Ed Champ, Jr.'s apartment. Mr. Jones indicated to
2 P.L.S. that this incident where he fell through those stairs
3 happened in February 1994 after he had gone home to
4 Tennessee in January of 1994 and then returned to the
5 Plymouth area.

6 And in his Commission interview, he said he had
7 fallen through a rusted portion of Big Ed's porch and hurt
8 the front of his leg. He denied going anywhere with blood
9 on his jeans to the Commission and said that he asked Gail
10 Champ to wash the jeans that got blood on them after falling
11 through the steps and that he changed his pants before going
12 to the bar. He said that most of the pants he owned were
13 white.

14 Q. And just as a point of clarification, is Ed Champ,
15 Jr. -- are Ed Champ, Jr. and Big Ed the same person?

16 A. No, they're not. Big Ed is Ed Champ, Sr. Ed
17 Champ, Jr. is his son.

18 Q. Has anyone else in this case discussed seeing a
19 bloodstain on Mr. Jones' calf?

20 A. Gail Champ testified at the trial that Mr. Jones
21 had fallen through her apartment steps and cut his leg in
22 March 1994. Gail Champ was married to Ed Champ, Jr., and
23 her and Ed Champ, Jr. were living in an apartment on her
24 father-in-law's property.

25 The following weekend Mr. Jones was at Big Ed's

1 Bar and was kicked in the leg by Angela Martinez. This
2 caused the scab to fall off and start bleeding. Gail Champ
3 also told the Center that Mr. Jones did not own white pants
4 until he returned from Tennessee in February 1994 and that
5 he fell through the stairs cutting his knee.

6 In her Commission interview, Ms. Champ stated that
7 Mr. Jones was coming down the stairs and fell through a
8 rotten platform to his knee and that she saw him bleeding.
9 She also maintained that Mr. Jones had been kicked in the
10 leg by Angela Martinez at Big Ed's Bar, which knocked the
11 scab loose. Mr. Jones went home to change after getting the
12 blood on his pants.

13 Ms. Champ also told the Commission that she knew
14 that incident happened after the murder because they were
15 living in the apartment then, which had been purchased after
16 the murder.

17 Angela Martinez was interviewed by the Center and
18 said that Mr. Jones had come to Big Ed's Bar on the night of
19 the murder with blood on his pants and was limping. He
20 claimed that he fell down the stairs. She was not sure if
21 he had changed clothes. During her original interviews with
22 law enforcement and defense private investigators,
23 Ms. Martinez did not provide any information about blood on
24 Mr. Jones's clothing.

25 Tommy Barber, who was 11 years old at the time of

1 the murder, signed a statement in 1998 stating that he was
2 present when Mr. Jones fell through the stairs and that that
3 incident happened in February 1994. In his Commission
4 interview, Mr. Barber remembered this happening but could
5 not be sure of when it happened.

6 And in Mr. Spruiell -- Leroy Spruiell's Commission
7 interview, he said that this incident happened a week before
8 the murder, and he recalled that Jones had skinned his whole
9 shin, and it was seeping through his clothing. He thinks --
10 Leroy Spruiell thinks that Margie Perry is thinking of a
11 different night.

12 Q. Ms. Matoian, who is Tony Calloway?

13 A. Tony Calloway is another person who was named as
14 being at Big Ed's Bar on the night of the murder.

15 MS. GUICE SMITH: Commissioners, information
16 related to Tony Calloway is on 227 of your brief. Handout
17 49 in Hearing Handout Notebook 1 is a summary of Tony
18 Calloway's criminal record.

19 (Handout Number 49 was identified for the
20 record.)

21 COMMISSIONER BOSWELL: Say the -- say the name,
22 220 what?

23 MS. GUICE SMITH: 229 -- 227.

24 COMMISSIONER FRYE: 227.

25 (Pause in proceedings.)

1 BY MS. GUICE SMITH:

2 Q. Ms. Matoian, was Mr. Calloway interviewed by law
3 enforcement during the initial investigation?

4 A. No, he was not.

5 Q. Was he interviewed by anyone else during the
6 initial investigation?

7 A. He was interviewed by defense attorneys, although
8 we don't know exactly which ones, on December 27th, 1994,
9 and later by the defense private investigator on August
10 13th, 1995. In both interviews, he stated that he arrived
11 at the bar between 9 and 9:30. He said that he remembered
12 seeing Mr. Spruiell, Mr. Jones, and Ms. Maybin at the bar.
13 He recalled Mr. Spruiell and Mr. Jones dancing together at
14 one point. He doesn't know if they left at any point
15 because he was in the pool room, which was in a separate
16 room from the bar and the dance floor.

17 Q. Did Mr. Calloway testify at Mr. Jones's trial?

18 A. No. The Clerk file indicates that he was
19 subpoenaed by the defense, but he did not testify.

20 Q. Was Mr. Calloway interviewed by anyone else prior
21 to the Commission's involvement in the case?

22 A. He was interviewed by the Commission in person on
23 March 23rd, 2017. His wife, Angie Calloway, was also
24 present during this interview.

25 Q. I think my question was whether he was interviewed

1 by anyone else prior to the Commission.

2 A. I'm sorry. He was not.

3 Q. He was not, okay. But he was interviewed by the
4 Commission on March 23rd, 2017.

5 A. Yes.

6 Q. Was that interview recorded and transcribed?

7 A. It was.

8 Q. Did Mr. Calloway provide any information related
9 to seeing Mr. Spruiell and Mr. Jones on the night of the
10 crime?

11 A. He did.

12 MS. GUICE SMITH: Commissioners, if you will refer
13 to Handouts 50 and 51 in your Hearing Handout notebooks,
14 these are portions of the transcripts of the Commission's
15 interview with Tony Calloway. Handout 50 begins on page 12,
16 line 8, and goes through page 13, line 3. Then Handout 51
17 begins on page 15, line 3, and goes through line 22. If you
18 will take a moment to review those portions.

19 (Handout Numbers 50 and 51 were identified for
20 the record.)

21 JUDGE WAGONER: I have one question. Is this
22 Angie that's married to Calloway, that's not the same person
23 that got kicked by --

24 COMMISSIONER FRYE: No, that's Angela Martinez.

25 JUDGE WAGONER: -- that allegedly kicked -- yeah.

1 THE WITNESS: That's a different person.

2 Angela --

3 JUDGE WAGONER: A different Angela.

4 THE WITNESS: -- Martinez is different, yes.

5 JUDGE WAGONER: Okay. Thank you.

6 (Pause in proceedings.)

7 BY MS. GUICE SMITH:

8 Q. Ms. Matoian, in this interview portion of the
9 transcript that the commissioners have just read,
10 Mr. Calloway indicates that he saw Mr. Jones leave the bar
11 and change clothes. Had he previously ever told anyone that
12 in prior interviews?

13 A. No, he had not.

14 Q. You indicated that Angie Calloway was also present
15 for that interview. Can you tell the commissioners who
16 Ms. Calloway is?

17 A. She's married to Tony Calloway. There are
18 handwritten notes that indicate she was interviewed by the
19 defense, but there's no date on those notes, and she says in
20 those notes that she went to the bar with Tony and they
21 arrived between 9 and 9:30. She remembered seeing
22 Mr. Spruiell and Mr. Jones going to the pool table and
23 dancing. She didn't recall seeing them anymore that night
24 but stated that she didn't pay it any mind. She believes
25 that Ed and Gail Champ were also at the bar that night, and

1 she recalled seeing Smarty Spruill as well. She was not
2 sure what time they left.

3 Q. During your interview with Ms. Calloway, did you
4 ask her about the night of the crime?

5 A. I did. She didn't recall speaking to anyone but
6 did recall that it was the night that Curtis Furlough's
7 child had been born. And she said she was at the bar that
8 night but didn't remember seeing them. I then provided her
9 with the notes of her interview to read, and after reading
10 them she stated that she didn't remember talking to anyone,
11 and she didn't recognize the information that was in the
12 notes being provided to her.

13 MS. GUICE SMITH: Commissioners, do you-all have
14 any questions for Ms. Matoian about Margie Perry, Tony
15 Calloway, Angie Calloway, or the blood on the back of
16 Mr. Jones's jeans?

17 COMMISSIONER FRYE: Did -- one thing. Leroy
18 Spruill. When he said the blood got there, he said he fell
19 down the steps, not fell through the steps, correct?

20 THE WITNESS: Let me go back and make sure.
21 (Reviewing documents.)

22 COMMISSIONER FRYE: If I remember reading that
23 correctly.

24 THE WITNESS: You're correct.

25 JUDGE WAGONER: Yes, sir?

1 COMMISSIONER BRITT: Is it true everyone is
2 consistent when they say that Mr. Jones hurt his knee and
3 that the blood was on the back of his pants leg?

4 THE WITNESS: Margie Perry has been consistent in
5 that it was on the back of Mr. Jones's leg.

6 COMMISSIONER BRITT: The blood?

7 THE WITNESS: Yes.

8 COMMISSIONER BRITT: Not the actual injury.

9 THE WITNESS: Yes. And Gail Champ indicated that
10 -- hold on, let me just make sure. (Reviewing document.)

11 Gail Champ has indicated that she thought
12 Mr. Jones had cut his knee when he fell through the steps.
13 Angie Martinez, or Angela Martinez, did not specify where he
14 was hurt. Mr. Jones said that he had hurt the front of his
15 leg falling through the rusted out portion of the steps, and
16 Tommy Barber's statement does not mention an area that he
17 thought had gotten injured.

18 JUDGE WAGONER: Who mentioned the scab?

19 THE WITNESS: That's Gail Champ.

20 JUDGE WAGONER: The scab that had fallen off.

21 THE WITNESS: Yes.

22 COMMISSIONER GRACE: But help me. Wasn't the
23 blood --

24 COMMISSIONER BRITT: Back of the pants.

25 COMMISSIONER GRACE: -- on the back of the pants

1 after he had gone and changed clothes?

2 THE WITNESS: That's what Ms. Perry had stated,
3 yes, that the blood was on the back of the pants.

4 COMMISSIONER GRACE: Well, the most important
5 thing I'm trying to get to is was it after he had changed --
6 allegedly had changed clothes? So he changed into some --
7 some pants that had blood on it?

8 THE WITNESS: Ms. Perry did indicate during her
9 trial testimony that when he came back, that was when the
10 blood spot was on his pants.

11 COMMISSIONER GRACE: That's what I'd do, go change
12 and put on some bloody clothes.

13 JUDGE WAGONER: That's right, with blood.

14 COMMISSIONER GRACE: Uh-huh.

15 COMMISSIONER BOSWELL: Handout 50, Tony Calloway
16 says, "I didn't know if it was the night before or the night
17 after, so according to this, it was -- they called me and I
18 said I was pretty sure it was there -- I was there."

19 Can you -- I don't know -- you -- you took this.
20 What was he talking about there in that first paragraph, who
21 "called me and I said I was pretty sure I was there"?

22 THE WITNESS: (Reviewing documents.) On the
23 previous page, Mr. Calloway had indicated that he remembered
24 talking to somebody but didn't know where and said -- excuse
25 me. Let me read and make sure I'm getting it correct.

1 (Pause in proceedings.)

2 THE WITNESS: I had asked Mr. Calloway on the
3 previous page -- I had handed him a copy of the notes I had
4 from the private investigator interview and said that it
5 looked like he had spoken to a private investigator, because
6 he didn't initially recall that.

7 I asked him to read it and see if it jogged his
8 memory. And so when -- he's saying -- he was saying "So
9 according to this" after I had let him read that interview
10 with the private investigator that indicated he was there on
11 the night of the murder.

12 COMMISSIONER BOSWELL: When he says, "I -- I
13 didn't know if it was the night before or the night after,"
14 what he's saying is what he remembers seeing about the
15 change of clothes, he wasn't sure if it was the night before
16 or the night after the murder, but he does remember them
17 changing clothes.

18 Is that -- am I interpreting that correctly?

19 THE WITNESS: In that -- so he says that they
20 changed clothes after he says that statement up there. I
21 think he was -- initially, because he did not remember being
22 interviewed and I let him read that, he's indicating here he
23 didn't know if it was the night before or the night after.
24 Those notes indicate that he thought he was there the night
25 of the murder.

1 COMMISSIONER BOSWELL: And at the very end on page
2 -- the second page, he says -- did he think it was the same
3 night you were talking about in there -- he says, "It must
4 be, yeah." So when you're asking the question "was it the
5 same night," you mean the night of the murder.

6 THE WITNESS: Correct.

7 COMMISSIONER BOSWELL: Okay. Thank you.

8 MS. GUICE SMITH: Other questions?

9 (No response.)

10 FURTHER EXAMINATION BY MS. GUICE SMITH:

11 Q. Ms. Matoian, remind the commissioners again who
12 Tommy Barber is.

13 A. Tommy Barber was 11 years old at the time of the
14 crime, and he is related to the Champs and the Furloughs.
15 So he would be part of one of those gypsy families --

16 JUDGE WAGONER: Gypsy.

17 A. -- that have been discussed.

18 MS. GUICE SMITH: Was -- Commissioners, Handout 52
19 in your Handout Notebook 1, is the criminal record of Tommy
20 Barber.

21 (Handout Number 52 was identified for the
22 record.)

23 BY MS. GUICE SMITH:

24 Q. Was Mr. Barber interviewed by law enforcement
25 during the initial investigation?

1 A. He was. He was interviewed by law enforcement
2 after law enforcement had started looking for Mr. Jones.
3 Gail Champ had called the sheriff's office and said that
4 Tommy Barber had a knife that he had gotten from Kevin
5 Furlough, that Kevin Furlough had said belonged to Jones.

6 Mr. Barber told law enforcement that he found the
7 knife in Kevin Furlough's barn, and that Kevin told him that
8 it belonged to Mr. Jones and that Mr. Jones left it in
9 Furlough's truck in January or February of 1994. Tommy also
10 stated that he took the knife home and kept it in his drawer
11 and that he used it to cut wire.

12 Q. Ms. Matoian, did law enforcement collect that
13 knife and submit it for forensic analysis?

14 A. They did. In 1994 the knife was examined for
15 latent prints, and no latent prints were obtained.

16 Q. Was Mr. Barber interviewed by anyone else prior to
17 the Commission's involvement in the case?

18 A. It's unclear whether or not he was actually
19 interviewed. We don't have a report from that, but we do
20 have that undated, signed statement regarding the stairs and
21 Mr. Jones. And that statement is marked that it was
22 received on December 8th, 1998, but we don't know exactly
23 when it was signed.

24 MS. GUICE SMITH: Commissioners, that statement
25 was provided on pages 488 to 489 of your brief. Ms. Matoian

1 has already testified about Mr. Barber's statement regarding
2 Mr. Jones's injury to his leg.

3 BY MS. GUICE SMITH:

4 Q. Did the Commission interview Tommy Barber?

5 A. We did, in person, on December 12th, 2017.

6 Q. And was that interview recorded and transcribed?

7 A. It was.

8 Q. Did Mr. Barber provide any information relating --
9 related to seeing Mr. Spruiell or Mr. Jones on the night of
10 the crime?

11 A. Yes. Mr. Barber indicated that he was actually at
12 Big Ed's Bar on the night of the murder, and that he
13 remembered Mr. Spruiell and Mr. Jones leaving the bar and
14 coming back, quote, "clean," end quote, and that he wasn't
15 sure if they were showering after work.

16 He remembered being at the bar that night and that
17 they would allow him to shoot pool while he was at the bar.
18 He stated he did not remember anything else happening at the
19 bar that night. He stated he recalled that night because
20 his sister, who was married to Curtis Furlough, was having a
21 baby, and then he said that he went to the hospital with Ed
22 Champ, Jr. He confirmed that the reason he recalled the
23 night he saw Mr. Spruiell and Mr. Jones leave and come back
24 in different clothes was because it was the night that his
25 sister had her baby.

1 Q. And can you remind the commissioners when Virginia
2 and Curtis Furlough's baby was born?

3 A. Their baby was born on December 17th, 1993, and
4 the crime occurred the following night, December 18th, 1993.

5 Q. Did the Commission do anything else to follow up
6 regarding the information that was provided by Tommy Barber?

7 A. We did. We interviewed Gail Champ and Ed Champ,
8 Jr. In the Commission's interview with Gail Champ -- or,
9 I'm sorry. In Gail Champ's interview with the defense
10 private investigator during the initial investigation, she
11 had said that she went with Tommy Barber to the bar on the
12 night of the murder. And in our interview with Gail Champ,
13 she stated she couldn't remember if she brought him to the
14 bar that night or if he was there that night, but stated
15 that it seemed like he was there just like every weekend.

16 Ed Champ, Jr. had not mentioned bringing Tommy
17 Barber to the bar in his previous interviews, and in his
18 Commission interview he said that Tommy Barber wasn't there
19 and that he didn't think Mr. Barber had ever been in Big
20 Ed's Bar.

21 MS. GUICE SMITH: Commissioners, do you have any
22 questions for Ms. Matoian as it relates to her testimony
23 about Tommy Barber?

24 JUDGE WAGONER: Well, maybe we have the same one.
25 You go on.

1 COMMISSIONER BRITT: Go ahead.

2 JUDGE WAGONER: He was 11 years old?

3 THE WITNESS: He was.

4 JUDGE WAGONER: That's what I thought. Okay.

5 COMMISSIONER BRITT: Was there any follow-up with
6 Mr. Furlough based on what Mr. Barber said about receiving
7 the knife from him?

8 THE WITNESS: With Kevin Furlough?

9 COMMISSIONER BRITT: Yes.

10 THE WITNESS: We'll check on that and see.

11 COMMISSIONER BOSWELL: What time was the Furlough
12 baby born? Do we know?

13 JUDGE WAGONER: We had it yesterday.

14 THE WITNESS: I don't know if we know the time
15 that the baby was born. Other people have indicated it was
16 the night of December 17th, 1993. The hospital videos that
17 had showed Curtis Furlough were from December 18th, 1993.
18 So I don't think we know the exact time the baby was born.

19 JUDGE WAGONER: But there were gaps -- there was a
20 video, but it was like for one hour and then like four hours
21 went by and --

22 THE WITNESS: I'm -- let me correct myself.
23 December -- the videos of Curtis Furlough at the hospital
24 show him on December 18th, 1993, and then on December 19th,
25 '93 -- 1993, and he's wearing the same clothes in both

1 sections of the time-stamped videos.

2 COMMISSIONER BOSWELL: But the baby was born on
3 the 17th.

4 THE WITNESS: Yes.

5 COMMISSIONER BOSWELL: And it seems like several
6 people had said they remember Jones and Spruiell changing
7 clothes because --

8 COMMISSIONER GRACE: It's the night the baby was
9 born.

10 COMMISSIONER BOSWELL: -- because that's the night
11 the baby was born.

12 THE WITNESS: That's correct.

13 COMMISSIONER BOSWELL: Okay. And all of this time
14 I was thinking that that was the 18th, but it was the 17th.

15 JUDGE WAGONER: But that's the 17th.

16 COMMISSIONER BOSWELL: And I'm sorry that this is
17 just dawning on me, but do we have any -- and I'm not trying
18 to put work on you guys, but do we know how many -- who and
19 how many people connected seeing the change of clothes to
20 the night the baby was born?

21 THE WITNESS: I can't say off the top of my head,
22 but we can certainly look back at that and try and parse
23 that out.

24 COMMISSIONER BOSWELL: All right. But it was the
25 11-year-old, and was it also the guy we were just talking

1 about?

2 THE WITNESS: Tony Calloway?

3 COMMISSIONER BOSWELL: Tony Calloway? A couple of
4 females said that as well.

5 JUDGE WAGONER: His wife, Angela.

6 COMMISSIONER BOSWELL: His wife, Angie. Did Angie
7 say that that was --

8 THE WITNESS: (Reviewing documents.) I'm sorry,
9 let me get back to them.

10 JUDGE WAGONER: We only have one page of his -- of
11 Mr. Calloway's --

12 COMMISSIONER BOSWELL: Right.

13 JUDGE WAGONER: -- testimony, so it's hard to --

14 THE WITNESS: Ms. Calloway indicated that she did
15 recall that -- I'm sorry. When I asked her about speaking
16 with defense attorneys, she didn't remember that, but she
17 did remember that -- the night of the murder as being the
18 same night the Furloughs' baby was born.

19 COMMISSIONER BOSWELL: Okay.

20 JUDGE WAGONER: And we're sure this baby was born
21 on --?

22 THE WITNESS: December 17th.

23 JUDGE WAGONER: Okay.

24 COMMISSIONER GRACE: Do you have his record yet,
25 the baby's record?

1 (Laughter.)

2 THE WITNESS: I believe it was a girl. I believe
3 it was a girl.

4 MS. GUICE SMITH: I'm going to keep moving
5 forward. There were a couple of questions in there that we
6 will readdress later.

7 FURTHER EXAMINATION BY MS. GUICE SMITH:

8 Q. Who is Smarty Spruiell?

9 A. Smarty Spruiell was mentioned by -- his first name
10 is Kelvin. He goes by Smarty. Smarty Spruiell was mentioned
11 by Dana Maybin --

12 COMMISSIONER GRACE: That's an oxymoron --

13 A. -- during the initial --

14 COMMISSIONER GRACE: -- Smarty and Spruiell.

15 A. -- mentioned by Dana Maybin as being someone she
16 talked to at the bar on the night of the crime.

17 MS. GUICE SMITH: Commissioners, information
18 related to Smarty Spruiell can be found on page 83 of your
19 brief. He does not have a criminal record.

20 JUDGE WAGONER: Is Smarty the same person as
21 Smiley?

22 MS. GUICE SMITH: Smarty.

23 COMMISSIONER GRACE: He's adopted.

24 COMMISSIONER BRITT: That's why they call him
25 Smarty.

1 THE WITNESS: I believe you're thinking about
2 Ms. Maybin's deposition. Is that where you're getting the
3 Smiley?

4 JUDGE WAGONER: Yeah. Somebody called Smiley,
5 yeah.

6 THE WITNESS: Ms. Maybin, in her deposition with
7 the Commission, I believe was referring to him as Smiley.
8 But based on her description, I believe she was --

9 JUDGE WAGONER: Was talking about Smarty.

10 THE WITNESS: -- was talking about Smarty.

11 JUDGE WAGONER: What's his -- what's his first
12 name?

13 THE WITNESS: His real or his first name is
14 Kelvin.

15 JUDGE WAGONER: And Dopey?

16 COMMISSIONER FRYE: There's also --

17 THE WITNESS: K-e-l-v-i-n.

18 COMMISSIONER FRYE: -- a part in -- in our brief
19 or something like that where they're talking about Sheriff
20 Ross in part of that, and they called him Smiley.

21 JUDGE WAGONER: Really.

22 COMMISSIONER FRYE: Uh-huh.

23 JUDGE WAGONER: I missed that.

24 COMMISSIONER BOSWELL: What page is Smarty Spruiell
25 on?

1 MS. GUICE SMITH: 83.

2 COMMISSIONER BOSWELL: 83.

3 COMMISSIONER GRACE: Yeah, he was adopted.

4 BY MS. GUICE SMITH:

5 Q. Was Smarty Spruiell interviewed by --

6 (Laughter.)

7 BY MS. GUICE SMITH:

8 Q. -- law enforcement during the initial
9 investigation?

10 A. He was interviewed by law enforcement on May 4th,
11 1994. He told them that he had arrived at Big Ed's Bar at
12 about 8:30 p.m. and that Mr. Spruiell, Mr. Jones, and
13 Ms. Maybin had gotten there at about 8:40 p.m. He also
14 stated that after the bar, he rode with Ed Champ,
15 Mr. Spruiell, Mr. Jones, and Ms. Maybin to Leroy Spruiell's
16 house, and they made eggs and herring roe, which I believe
17 is fish eggs.

18 He told law enforcement that Wyatt Spruiell had
19 gone to Leroy Spruiell's approximately four to five weeks
20 prior to Smarty Spruiell's interview on May 4th, and at that
21 visit Leroy Spruiell -- I'm sorry. He told law enforcement
22 that he had gone to Leroy Spruiell's house, and at that visit
23 Leroy Spruiell told Smarty that law enforcement was looking
24 at him and Mr. Jones for a killing. Leroy Spruiell reminded
25 Smarty that on the night of the murder that Smarty was at

1 Leroy's house and that they had eaten the eggs and the
2 herring roe.

3 Q. Was Smarty Spruiell interviewed by anyone else
4 during the initial investigation?

5 A. He was interviewed by the defense P.I. on March
6 3rd, 1995, and in that interview he stated that he
7 remembered Mr. Spruiell being at the bar that night but did
8 not know if Mr. Jones or Ms. Maybin were there. He
9 remembered seeing Ed Champ give Leroy Spruiell a ride home.
10 He stated that he did not remember if he bought beer from
11 Ms. Maybin at the bar and said that he would recognize
12 Ms. Maybin if he saw her but that he did not really hang
13 around with that group of people.

14 Q. Did Smarty Spruiell testify at trial?

15 A. No. There's a doctor's note in the court file
16 that indicates that he should be excused from testifying
17 because he had recently had brain surgery. Smarty Spruiell
18 has -- was suffering from seizures.

19 JUDGE WAGONER: Has what?

20 COMMISSIONER FRYE: He has seizures, right?

21 THE WITNESS: Correct.

22 COMMISSIONER FRYE: And that's why Ed was giving
23 him a ride home or would give him a ride home a lot because
24 he had seizures.

25 THE WITNESS: According to Big Ed, yes.

1 COMMISSIONER FRYE: Yes.

2 BY MS. GUICE SMITH:

3 Q. Was Smarty Spruiell interviewed by anyone else
4 prior to the Commission's involvement in the case?

5 A. He was interviewed by the North Carolina Center on
6 Actual Innocence on February 19th, 2004. During that
7 interview, Smarty Spruiell could not remember when he saw
8 Mr. Leroy Spruiell at the bar. He further could not recall
9 if any of them had left or changed clothes. He stated that
10 he went to Big Ed's Bar every weekend and would usually get
11 there around 8:00 p.m., and he then told the Center that he
12 had seen Mr. Spruiell, Mr. Jones, and Ms. Maybin there at the
13 bar but is not sure when. He did not -- they didn't leave
14 when he was there, and he also stated he remembered buying
15 beers for Ms. Maybin that night.

16 He thinks that -- he said he thought that the
17 three of them must have come in after they had been to the
18 victim's and that he, meaning Smarty Spruiell, had rode with
19 Ed Champ to Leroy's house afterwards where he stayed until 2
20 or 3:00 a.m. And he remembered eating eggs and hog brains
21 that evening.

22 Q. Did the Commission interview Smarty Spruiell?

23 A. We did, on February 21st, 2018.

24 Q. Is that interview recorded and transcribed?

25 A. It is.

1 Q. What did Smarty Spruiell tell you about the night
2 of the murder?

3 A. Smarty Spruiell said he remembered being at the bar
4 when Mr. Spruiell, Mr. Jones, and Ms. Maybin arrived. And
5 when asked if he was speaking to Ms. Maybin at the bar that
6 night, he said that he might have spoken to her because he
7 speaks to a lot of people but that he didn't know
8 Ms. Maybin. He then said that he did not know if
9 Mr. Spruiell, Mr. Jones, or Ms. Maybin had left the bar that
10 night. He stated that he did not see Lynn Rogers and
11 Mr. Jones get in an argument that night, and he then said
12 quote, "I just don't remember anything."

13 He stated that he remembered Ed Champ, Sr. giving
14 him and Mr. Spruiell a ride to Leroy Spruiell's house. He
15 does not remember if anyone else was in the car, and then
16 said that he stayed at Leroy Spruiell's house for a few
17 minutes and then went home, and he doesn't remember who else
18 was there.

19 Q. Did you read Smarty Spruiell his statement that he
20 gave to law enforcement?

21 A. I did. I asked him if -- and what I spoke about a
22 few minutes ago where he had indicated in that interview
23 that Leroy was reminding him of the night of the murder. I
24 asked him if Leroy Spruiell had asked him to lie, and he said
25 no. He said that Mr. Spruiell, Mr. Jones, and Ms. Maybin had

1 never talked to him about the murder and that he didn't know
2 anything about it until Janice Spruiell came to speak to him.

3 MS. GUICE SMITH: Commissioners, do you have any
4 questions for Ms. Matoian about her testimony about Smarty
5 Spruiell?

6 JUDGE WAGONER: Do we know what, if anything,
7 Janice Spruiell told him about the murder?

8 THE WITNESS: We don't know. They -- the law
9 enforcement interviews were not recorded or transcribed. We
10 just have the reports, so we cannot tell from that report
11 what, if anything, was said to him.

12 BY MS. GUICE SMITH:

13 Q. Who is Stacy Allen?

14 A. Stacy Allen was also a person who said she was at
15 Big Ed's Bar on the night of the murder and said that she
16 had dated Spruiell for a period of time around the time of
17 the murder.

18 MS. GUICE SMITH: Commissioners, information --

19 COMMISSIONER BARROW: Spruiell, not Jones?

20 THE WITNESS: Leroy Spruiell, that's correct.

21 MS. GUICE SMITH: -- information about Stacy Allen
22 can be found on pages 139, 396, and 652 to 656 of your
23 brief. Stacy Allen does not have a criminal record.

24 BY MS. GUICE SMITH:

25 Q. Was Stacy Allen interviewed by law enforcement

1 during the original investigation?

2 A. No, she was not.

3 Q. Was Ms. Allen interviewed by anyone else during
4 the original investigation?

5 A. She was interviewed by the defense private
6 investigator on August 15th, 1995. In that interview, she
7 stated that on the night of the murder she was at Big Ed's
8 Bar, and she said that she had gone to Mr. Spruiell's house
9 after they left the bar and that she was being driven by
10 Dana Maybin in Stacy Allen's mother's car. Her mother was
11 Betsy Tarkington. She recalled Mr. Spruiell, Mr. Jones, and
12 Smarty Spruiell making bacon and eggs at Leroy Spruiell's
13 house.

14 Q. Did Stacy Allen testify at trial?

15 A. Yes, she did. She testified that she was at the
16 bar on the night of the murder. She also testified that she
17 did not know how Ms. Maybin, Mr. Jones, or Mr. Spruiell, or
18 Ed Champ, Sr. had left the bar, and she testified that she
19 believed that her mom had picked her up and dropped her off
20 from the bar in Plymouth.

21 Q. Was Stacy Allen interviewed by anyone else prior
22 to the Commission's involvement in the case?

23 A. She was interviewed by the North Carolina Center
24 on Actual Innocence, but that interview's undated. And in
25 that interview she said, again, that she was at the bar on

1 the night of the crime and that she walked home with Leroy
2 Spruiell after leaving the bar. She stated that she recalled
3 Mr. Jones, Ms. Maybin, and Smarty Spruiell also being at
4 Leroy Spruiell's house after.

5 She stated that prior -- prior to trial,
6 investigators Janice Spruiell and Willie Williams had called
7 her and asked her if she was covering for Spruiell. And she
8 stated that she thought they were trying to say to her that
9 she was not sure of the night of the murder.

10 Q. And is the phone call between Stacy Allen and the
11 investigators documented in the law enforcement file for
12 this case as it was provided to the Commission?

13 A. It was not.

14 Q. Did the Commission interview Stacy Allen?

15 A. We did, in person, on September 6th, 2018.

16 Q. And is that interview recorded and transcribed?

17 A. It is.

18 Q. What did Ms. Allen tell you about the night of the
19 crime?

20 A. Ms. Allen stated that she knew that Mr. Spruiell
21 was going to be at the bar that night, and she wanted to
22 find out why he had broken up with her a few days before.
23 She stated that when Mr. Spruiell arrived at the bar,
24 Ms. Maybin was already there. She stated that she did see
25 Mr. Jones at the bar and saw Mr. Spruiell and Mr. Jones

1 dancing together but did not otherwise pay Mr. Jones any
2 attention because she was focused on Mr. Spruiell.

3 She said that neither Mr. Spruiell, Mr. Jones, nor
4 Ms. Maybin left the bar for more than two to three minutes,
5 and she didn't recall their appearance changing that night.
6 She stated that Mr. Spruiell used a lot of mousse in his
7 hair, so it always looked wet. And she also recalled seeing
8 Ed and Lottie Champ -- that would be Ed Champ, Sr. and
9 Lottie Champ -- and some people with a little dog at the bar
10 that night.

11 Q. Is there anything in the files that you reviewed
12 that would indicate who was at the bar with a little dog on
13 the night of the crime?

14 A. Yes. Billy and Jean Skittletharp [phonetic] were
15 interviewed by the defense private investigator, and Jean
16 Skittletharp [phonetic] also testified at the trial that
17 they were at the bar around 10:15 on the night of the murder
18 with their dog.

19 Q. What else did Stacy Allen tell you about the night
20 of the crime?

21 A. She said that she remembered her mother backing
22 her car into a ditch when she was leaving the bar and
23 Mr. Spruiell helping to push her -- push the car out. She
24 said that Mr. Spruiell was very intoxicated and that she had
25 walked Mr. Spruiell home from the bar and that she stayed the

1 night with him. She said that no one else was with them
2 when they were walking home.

3 When I asked her about the inconsistencies between
4 her statements and testimony, she stated that she was
5 absolutely sure that she had gone to Mr. Spruiell's house
6 after the bar. She also said that no one else was at the
7 house other than her and Spruiell until they were already
8 asleep and did not recall seeing Smarty Spruiell at Leroy's
9 house on this night.

10 MS. GUICE SMITH: Commissioners, do you have any
11 questions for Ms. Matoian about her testimony regarding
12 Stacy Allen?

13 COMMISSIONER BOSWELL: The Mr. Spruiell is Leroy
14 Spruiell you're just referring to?

15 THE WITNESS: Yes.

16 COMMISSIONER BOSWELL: Okay.

17 COMMISSIONER GRACE: And this is the house that
18 they went to and had eggs and fish roe and --

19 COMMISSIONER BRITT: Brains.

20 THE WITNESS: Correct.

21 COMMISSIONER GRACE: -- and all of the other --

22 JUDGE WAGONER: And salmon and eggs.

23 COMMISSIONER FRYE: Well, they had bacon and eggs.

24 COMMISSIONER GRACE: Had bacon and eggs.

25 THE WITNESS: Correct.

1 COMMISSIONER GRACE: That angel -- that angel from
2 Sodom and Gomorrah would have had a hard time finding one
3 honest person in this crowd.

4 ALT. COMMISSIONER NEWTON: This is the woman who
5 Leroy Spruiell had dumped and was at the bar trying to talk
6 to him.

7 THE WITNESS: Correct.

8 FURTHER EXAMINATION BY MS. GUICE SMITH:

9 Q. Ms. Matoian, who was Cottie Oliver?

10 A. Cottie Oliver was someone named in a letter
11 written by Dana Maybin as a person being at the bar on the
12 night of the crime.

13 MS. GUICE SMITH: Commissioners, if you will refer
14 to Handout 53 in Handout Notebook 1, that is the criminal
15 record of Cottie Oliver.

16 (Handout Number 53 was identified for the
17 record.)

18 BY MS. GUICE SMITH:

19 Q. Was Ms. Oliver interviewed by law enforcement
20 during the initial investigation?

21 A. Ms. Oliver was interviewed on April 28th, 1994 --
22 or I'm sorry. On April 28th, 1994, she provided law
23 enforcement with some clothes that she said belonged to Dana
24 Maybin. She was interviewed that day and again on June 9th,
25 1994. In that first interview she provides information to

1 law enforcement about Dana Maybin. In the second interview,
2 she provides information to law enforcement about Edward
3 Beaver Fields, which we testified about earlier, or who we
4 testified about earlier. She did not provide any
5 information about the crime in either of those interviews.

6 Q. Was Ms. Oliver interviewed by anyone else during
7 the initial investigation?

8 A. She was interviewed by the defense private
9 investigator on August 2nd, 1995, and in that -- in that
10 interview she said that Ms. Maybin had never said anything
11 to her about the murder and that she did not know who the
12 victim was.

13 Q. Did she testify at trial?

14 A. No.

15 Q. Was she interviewed by anyone else prior to the
16 Commission's involvement in the case?

17 A. No, she was not.

18 Q. Did the Commission interview Ms. Oliver?

19 A. We interviewed her by phone on February 27th,
20 2018.

21 Q. And was that interview recorded and transcribed?

22 A. It was.

23 Q. What did Ms. Oliver tell you about the night of
24 the crime?

25 A. Ms. Oliver stated that she did not recall if she

1 was at Big Ed's Bar on the night of the crime but stated
2 that it was right behind her house. She then began talking
3 about a night where she was in a car with Mr. Spruiell,
4 Mr. Jones, Ms. Maybin, and another girl. She stated that
5 they all went somewhere, and everyone got out of the car
6 except for her.

7 At one point, she indicated that this had happened
8 on the night of the crime, but then said later in the
9 interview that she was not sure if it was that same night.
10 She stated that the place they went to was near her
11 sister-in-law Thelma Davenport's house.

12 Q. Had Ms. Oliver previously told law enforcement or
13 the defense private investigator about this event?

14 A. Not based on the records that were provided to the
15 Commission.

16 MS. GUICE SMITH: Commissioners, Handout 54 in
17 your Hearing Handout notebooks is the complete transcript of
18 the Commission's interview with Cottie Oliver. That is one
19 of the two that I had you-all read over lunch.

20 Just for time purposes, we'll keep moving here,
21 but if anyone didn't finish reading it, I would just request
22 that you read it at some point this afternoon.

23 (Handout Number 54 was identified for the
24 record.)

25 BY MS. GUICE SMITH:

1 Q. Was the Commission able to determine where Thelma
2 Davenport lived?

3 A. The Commission attempted to contact Ms. Davenport
4 and learned that she was deceased. The record search for
5 her listed her having an address of 31 Folly Road in
6 Plymouth, North Carolina.

7 Q. And did that address match the description
8 provided by Cottie Oliver?

9 A. Yes. Cottie Oliver stated that Ms. Davenport
10 lived on the corner at the road that goes to Roper.

11 MS. GUICE SMITH: Commissioners, if you will refer
12 to Handout 55 in your Hearing Handout notebooks, this is a
13 map depicting 31 Folly Road, Plymouth, North Carolina. Take
14 a moment to review the map. I'm also going to place it on
15 the screen to assist with Ms. Matoian's testimony.

16 (Handout Number 55 was identified for the
17 record.)

18 BY MS. GUICE SMITH:

19 Q. Ms. Matoian, can you please explain to the
20 commissioners what this map depicts?

21 A. This black line right here that goes from the
22 curve up is Folly Road. 31 Folly Road right here is the
23 address that we have listed for Thelma Davenport. We have
24 marked off Helena Chemical right there. Helena Chemical was
25 right next to where the victim lived. And then this -- it's

1 a little bit difficult to see, but this white line right
2 here is Highway 32, and that goes to Roper.

3 Q. Did your search turn up any other addresses for
4 Ms. Davenport?

5 A. It did. There was another address for her listed
6 as being Rural Route 2 in Roper, and a P.O. box in Roper.

7 Q. And were you able to determine where Rural Route 2
8 in Roper is?

9 A. Commission staff contacted the Roper Post Office,
10 and a postal worker informed them that the road names had
11 changed and there was no way to know what road corresponded
12 with what was once Rural Route 2.

13 MS. GUICE SMITH: Commissioners, do you have any
14 questions for Ms. Matoian about this?

15 JUDGE WAGONER: Do you have a question?

16 COMMISSIONER BRITT: No, no, no, no.

17 JUDGE WAGONER: You're just talking to yourself?

18 COMMISSIONER BRITT: We're getting ready to go to
19 the bar, so I'm getting excited.

20 (Laughter.)

21 (Discussion off record.)

22 BY MS. GUICE SMITH:

23 Q. Who was Rob Samson?

24 A. Rob Samson was named in a letter from Dana Maybin,
25 as someone who was also at the bar on the night of the

1 murder.

2 MS. GUICE SMITH: Commissioners, if you will refer
3 to Handout 56 in your Handout Notebook 1, this is a summary
4 of Rob Samson, Jr.'s criminal record. Please take a minute
5 to review it.

6 (Handout Number 56 was identified for the
7 record.)

8 BY MS. GUICE SMITH:

9 Q. Was Mr. Samson interviewed by anyone during the
10 initial investigation?

11 A. No, he was not.

12 Q. Was he interviewed by anyone prior to the
13 Commission's involvement in the case?

14 A. No.

15 Q. Did the Commission interview Mr. Samson?

16 A. We did, in person, on March 23rd, 2017.

17 Q. Is that interview recorded and transcribed?

18 A. It is.

19 Q. And what did he tell you?

20 A. Mr. Sampson said that although he had gone to Big
21 Ed's Bar before and had seen Mr. Spruiell, Mr. Jones, and
22 Ms. Maybin there, he was not there on the night of the
23 murder.

24 Q. Who is Terri Bullock?

25 A. The Commission learned about Terri Bullock in a

1 letter we received in the North Carolina Center on Actual
2 Innocence file, and it was a letter from Mr. Jones's sister,
3 and said that Ms. Bullock was someone who was at Big Ed's
4 Bar on the night of the murder.

5 MS. GUICE SMITH: Commissioners, if you will refer
6 to Handout 57 in Hearing Handout book one, that is a
7 criminal record of Terri Bullock.

8 (Handout Number 57 was identified for the
9 record.)

10 BY MS. GUICE SMITH:

11 Q. Was Ms. Bullock interviewed by anyone during the
12 initial investigation?

13 A. No.

14 Q. Was she interviewed by anyone else prior to the
15 Commission's involvement in the case?

16 A. No.

17 Q. Did the Commission interview Ms. Bullock?

18 A. We did, by phone, on May 1st, 2017.

19 Q. And was that interview recorded and transcribed?

20 A. It was.

21 Q. What did she tell you?

22 A. She stated that she knew Mr. Spruiell and had also
23 seen Mr. Jones and Ms. Maybin around but did not know them.
24 When I asked her if she ever went to Big Ed's Bar,
25 Ms. Bullock stated, quote, "Yes, and I was there the night

1 it happened," end quote. I clarified with her that she
2 meant the night of the murder.

3 I then asked her if she remembered that night, and
4 she said, quote, "Not really," end quote. She then stated
5 that she saw Mr. Spruiell there with Stacy Allen that night,
6 and then said, quote, "But as far as the other ones, I don't
7 know nothing about them," end quote. She said that she got
8 to the bar around 7:00 and that Mr. Spruiell and Stacy Allen
9 were already there.

10 She remembered Mr. Spruiell going outside a couple
11 of times and coming back in, and said that when he was
12 outside he wasn't gone for long. She said that by this she
13 meant less than five minutes. When asked if Mr. Spruiell had
14 changed his clothing, she stated, quote, "Not that I saw,"
15 end quote. She said that she left at closing time and
16 Mr. Spruiell was still at the bar when she left.

17 MS. GUICE SMITH: Commissioners, do you have
18 questions for Ms. Matoian either about Rob Sampson, Jr. or
19 Terri Bullock?

20 COMMISSIONER BOSWELL: How did they come to the
21 Commission's attention?

22 THE WITNESS: It was in a letter we saw in another
23 file. It was written by Jones's sister, and it gave her
24 name as someone who should be spoken to. In looking, we saw
25 that she hadn't been spoken to before, so we got in contact

1 with her.

2 COMMISSIONER BOSWELL: Thank you.

3 BY MS. GUICE SMITH:

4 Q. Who is Ed Champ, Sr.?

5 A. Ed Champ, Sr. is the owner of Big Ed's Bar, and
6 according to him, he was at his bar on the night of the
7 murder.

8 MS. GUICE SMITH: Commissioners, all of Ed Champ,
9 Sr.'s statements and his trial testimony are included
10 throughout your brief. I haven't given the page numbers
11 because it's multiple. Handout 58 in Hearing Handout
12 Notebook 1 is the criminal record of Ed Champ, Sr.

13 (Handout Number 58 was identified for the
14 record.)

15 BY MS. GUICE SMITH:

16 Q. Was Mr. Champ interviewed by law enforcement
17 during the initial investigation?

18 A. He was interviewed on December 26th, 1993. He
19 told law enforcement that Mr. Spruiell was at the bar and
20 gave a description of the people he was with that is
21 consistent with Mr. Jones and Ms. Maybin and said that those
22 two were at the bar as well, and then said that he took them
23 to Mr. Spruiell's house around 1 or 1:30 a.m. on the night of
24 the murder.

25 He was interviewed again on May 9th, 1994, and

1 during that interview he said that Mr. Spruiell, Mr. Jones,
2 and Ms. Maybin came to the bar together. He stated that he
3 took Mr. Spruiell home, but that Mr. Jones and Ms. Maybin
4 walked. He stated that Mr. Spruiell and Mr. Jones came in
5 and out of the bar that night.

6 Q. And was that all of his interviews during the
7 initial investigation, or were there others?

8 A. He was interviewed by the defense attorneys on
9 December 27th, 1994, and in that first interview with the
10 defense, he stated that Mr. Spruiell, Mr. Jones, and
11 Ms. Maybin were at the bar and that they were there the
12 entire time except for ten-minute breaks because it would
13 get hot inside.

14 He stated that he remembered that night because
15 Mr. Spruiell and Mr. Jones were dancing together, and he
16 didn't want people to think that the bar was a gay bar. He
17 stated that he took Mr. Spruiell home around 11:30 p.m. and
18 that Mr. Jones and Ms. Maybin walked.

19 He was interviewed by the defense private
20 investigators on March 2nd, 1995, and he stated that
21 Mr. Spruiell, Mr. Jones, and Ms. Maybin had come to the bar
22 together, and that they were there the entire time. He said
23 they would leave and come back but were never gone more than
24 15 minutes, and he didn't see them change clothes. He
25 stated that he took Mr. Spruiell home around 1:30 a.m. and

1 that Mr. Jones and Ms. Maybin had walked.

2 He was interviewed by the defense P.I.s again on
3 August 30th, 1995, and he said that Mr. Spruiell, Mr. Jones,
4 and Ms. Maybin were at the bar when he opened up, and that
5 they were there the entire time except for when the band was
6 taking breaks.

7 Q. Did Mr. Champ, Sr. testify at trial?

8 A. He did. He testified that Mr. Spruiell, Mr. Jones,
9 and Ms. Maybin showed up together at the bar that night, and
10 he saw Mr. Spruiell and Mr. Jones dancing together. He said
11 he saw them leave the bar for ten to 15 minutes at a time
12 but no longer than 15 minutes, and he testified that he took
13 Leroy Spruiell and Smarty Spruiell home at 1:30 a.m., and that
14 they saw Mr. Jones and Ms. Maybin walking down the road.

15 Q. Was Mr. Champ interviewed by anyone else prior to
16 the Commission's involvement in the case?

17 A. He was interviewed by the North Carolina Center on
18 Actual Innocence on March 5th, 2008, and March 13th, 2008,
19 and said that he spoke with both men throughout the night
20 and didn't remember them changing clothes.

21 Q. And did the Commission interview Mr. Champ?

22 A. We did, on January 10th, 2018.

23 Q. Was that interview recorded and transcribed?

24 A. It was.

25 Q. What did Mr. Champ tell the Commission about the

1 night of the crime?

2 A. Mr. Champ stated that Mr. Jones was at the bar
3 with him early on helping to clean and that Mr. Spruiell and
4 Ms. Maybin came later after they opened. He remembered them
5 going outside to take a drink of liquor and then coming back
6 in and said that they would be gone for about five minutes
7 at most.

8 He stated that Mr. Spruiell, Mr. Jones, and
9 Ms. Maybin walked home and that he had offered them a ride,
10 but they had declined. I clarified with him that he did not
11 give Mr. Spruiell a ride, and he said that was correct.

12 MS. GUICE SMITH: Commissioners, do you have any
13 questions for Ms. Matoian about Ed Champ, Sr.?

14 COMMISSIONER BOSWELL: During his trial testimony,
15 did -- did he testify that they did not change clothes?

16 THE WITNESS: I believe he did not, but --

17 COMMISSIONER BOSWELL: If you don't remember off
18 the top of your head, we can check it later.

19 THE WITNESS: We can clarify, yeah.

20 COMMISSIONER BOSWELL: Yeah.

21 COMMISSIONER GRACE: I have a question.

22 JUDGE WAGONER: She's next.

23 COMMISSIONER GRACE: Oh, I'm sorry.

24 JUDGE WAGONER: Okay, yes.

25 COMMISSIONER THOMPSON: I'm not sure if I remember

1 this correctly, but did it state that he did not -- that Ed
2 Champ, Sr. did not drink while he would be at the bar
3 because it was his bar and he wanted to make sure that he
4 was not inebriated? Did I read that correctly or
5 incorrectly, or do I remember that?

6 THE WITNESS: I believe you're correct.

7 COMMISSIONER THOMPSON: That he did not drink when
8 he was opening the bar, so he would not be under the
9 influence of alcohol.

10 THE WITNESS: According to him --

11 COMMISSIONER THOMPSON: Okay.

12 THE WITNESS: -- and his usual practice.

13 COMMISSIONER THOMPSON: Or his (inaudible) I
14 think.

15 THE WITNESS: That --

16 COURT REPORTER: I'm sorry. I couldn't hear you.

17 COMMISSIONER THOMPSON: (No response.)

18 COURT REPORTER: I couldn't hear you.

19 COMMISSIONER THOMPSON: Any of it?

20 COURT REPORTER: No, just the last part.

21 COMMISSIONER THOMPSON: Oh. Or his wife.

22 COURT REPORTER: Thank you.

23 COMMISSIONER THOMPSON: Yeah.

24 THE WITNESS: I would have to check on Lottie
25 Champ.

1 JUDGE WAGONER: Mr. Grace?

2 COMMISSIONER GRACE: Did -- did you find anywhere
3 in any of this that Mr. Jones actually worked at the bar?
4 And I think we had one statement from a young lady that was
5 the bartender that Mr. Jones was showing her the ropes
6 because he had worked there. Was he an employee there?

7 THE WITNESS: Yes, that's correct. He was, and I
8 would have to double-check. I believe there may be an
9 interview that indicated that Mr. Jones had done something
10 at the bar on the day before the murder, but I just need to
11 double-check and find that.

12 JUDGE WAGONER: And let's see. Did you find the
13 answer to his question?

14 MS. TANNER: I'm working on it.

15 MS. GUICE SMITH: We're still looking that up.

16 JUDGE WAGONER: Okay.

17 COMMISSIONER GRACE: And those guys really danced
18 together?

19 JUDGE WAGONER: Yeah.

20 THE WITNESS: Several witnesses reported seeing
21 Mr. Spruiell and Mr. Jones dancing together that night.

22 JUDGE WAGONER: On top of the pool table sometime,
23 too, I think.

24 THE WITNESS: I believe a few people do say on top
25 of the pool table.

1 COMMISSIONER GRACE: I mean, did they confirm it?

2 THE WITNESS: Yes, they both indicated that they
3 were dancing together.

4 COMMISSIONER BRITT: It bothered Big Ed.

5 COMMISSIONER GRACE: I can see why. That's about
6 as strange a thing as I've heard.

7 MS. GUICE SMITH: Any other questions about that?
8 We'll continue to look for this answer.

9 (No response.)

10 FURTHER EXAMINATION BY MS. GUICE SMITH:

11 Q. Who is Ed Champ, Jr.?

12 A. Ed Champ, Jr. is the son of Ed Champ, Sr., also
13 known as Little Ed or Butch. According to him, he was also
14 at the bar on the night of the murder.

15 MS. GUICE SMITH: Commissioners, all of Ed -- I
16 don't know if that's accurate. If you'll refer to Handout
17 59 in your Hearing Handout notebooks, this is a summary of
18 Ed Champ, Jr.'s criminal record. If you'll take a moment to
19 review it.

20 (Handout Number 59 was identified for the
21 record.)

22 JUDGE WAGONER: What is a misdemeanor failure to
23 give rights? The next from the bottom, Ed Champ, Jr.

24 ALT. COMMISSIONER NEWTON: What is that?

25 JUDGE WAGONER: Maybe it's don't give the right-

1 of-way.

2 COMMISSIONER BRITT: Is that --

3 JUDGE WAGONER: I'm just curious.

4 COMMISSIONER BRITT: Is that Franklin County?

5 COMMISSIONER GRACE: It could be anything.

6 JUDGE WAGONER: That's true. I don't understand
7 what this one charge is, failure to give rights? Does
8 anybody know what that is?

9 COMMISSIONER THOMPSON: What? Not me.

10 MS. GUICE SMITH: The question is does anyone know
11 what failure to give rights, a misdemeanor, is?

12 JUDGE WAGONER: I've never -- I don't think it's
13 -- there's no such thing.

14 COMMISSIONER GRACE: I've never heard of it.

15 JUDGE WAGONER: Do you think somebody transcribed
16 it wrong? Maybe it's failure --

17 MS. GUICE SMITH: We will double-check and see --

18 JUDGE WAGONER: Not that it's that important, but
19 still, I just --

20 MS. GUICE SMITH: -- see if there's any additional
21 information in --

22 JUDGE WAGONER: Maybe it's failure to give --

23 MS. GUICE SMITH: -- in CJLEADS --

24 JUDGE WAGONER: -- right-of-way or something --

25 MS. GUICE SMITH: -- or Cyprus --

1 JUDGE WAGONER: -- yield right-of-way.

2 MS. GUICE SMITH: -- or D.C.I.N.

3 ALT. COMMISSIONER NEWTON: That's what I was
4 thinking.

5 BY MS. GUICE SMITH:

6 Q. Was Ed Champ, Jr. interviewed by law enforcement
7 during the initial investigation?

8 A. He was interviewed on May 3rd, 1994, about a phone
9 call that he had received from Mr. Jones after Mr. Jones had
10 left town. He didn't say anything about being at the bar
11 during that interview.

12 Q. Was Ed Champ, Jr. interviewed by anyone else
13 during the initial investigation?

14 A. He was interviewed by the defense private
15 investigators on March 1st, 1995, and in that interview he
16 said he remembered dancing with Mr. Spruiell and Mr. Jones
17 purposefully to aggravate Ed Champ, Sr., because he knew
18 that Ed Champ, Sr. didn't want them dancing together because
19 he didn't want people to think he was running a gay bar.

20 Q. Did Ed Champ, Jr. testify at trial?

21 A. No, the Court file indicates that there was a
22 doctor's note excusing him from testifying due to his
23 anxiety.

24 Q. Was he interviewed by anyone else prior to the
25 Commission's involvement in this case?

1 A. No.

2 Q. Did the Commission interview Ed Champ, Jr.?

3 A. We did, in person, on January 10th, 2018, and that
4 occurred simultaneously with the interview with Ed Champ,
5 Sr.

6 Q. Was that interview recorded and transcribed?

7 A. It was.

8 Q. What did Ed Champ, Jr. tell the Commission about
9 the night of the crime?

10 A. He said that he remembered being at the bar the
11 night of the crime, and that Mr. Spruiell and Mr. Jones had
12 pulled him onto the dance floor. He stated that he was
13 trying to get away from them and playing around with them,
14 and he thought that he was either there by himself or with
15 his ex-wife.

16 MS. GUICE SMITH: Commissioners, do you have
17 questions of Ms. Matoian about Ed Champ, Jr.?

18 COMMISSIONER BOSWELL: Did he testify?

19 THE WITNESS: He did not.

20 COMMISSIONER BOSWELL: He did not.

21 THE WITNESS: No.

22 COMMISSIONER BRITT: He had a doctor's note.

23 COMMISSIONER BOSWELL: Oh, okay, you just said
24 that. Okay, I'm sorry.

25 JUDGE WAGONER: Could we take a five-minute break?

1 MS. GUICE SMITH: Now would actually be the
2 perfect time for about a --

3 JUDGE WAGONER: Good.

4 MS. GUICE SMITH: -- ten-minute recess. We're
5 going to get Ms. Rogers up on the screen.

6 JUDGE WAGONER: Okay.

7 MS. GUICE SMITH: She is at the courthouse in
8 Washington County to be on the screen. It closes at 5:00,
9 so we'll take ten minutes, and then that will give you-all
10 time --

11 JUDGE WAGONER: Should we call her Mrs. Spruiell
12 when we talk to her? Who knows. I don't -- I don't care.
13 I just -- what do you think?

14 COMMISSIONER GRACE: I don't think I'm going to
15 have any questions.

16 JUDGE WAGONER: All right. Ten minutes.

17 (Off the record at 3:58 p.m.)

18 (A brief recess was taken.)

19 (Back on the record at 4:14 p.m.)

20 JUDGE WAGONER: All right. If we could get the
21 witness, please, sir?

22 N. C. I. I. C. INVESTIGATOR: Yes, ma'am. Hold on.

23 (Pause in proceedings.)

24 JUDGE WAGONER: Can you hear me, ma'am?

25 MS. SPRUIELL: Yes, ma'am.

1 JUDGE WAGONER: My name -- my name's Anna Mills
2 Wagoner. I'm a Superior Court Judge, and I'm the chair of
3 this Commission. So before we start, if you will please
4 place your left hand on the Bible. Do you have a Bible?

5 MS. SPRUIELL: Yes, ma'am.

6 JUDGE WAGONER: Raise your right hand, and be
7 sworn to tell the truth.

8 MARGUERITE LYNN SPRUIELL,
9 having been called as a witness for the Commission and
10 appearing via video conference, was sworn by Judge Wagoner
11 and testified as follows:

12 JUDGE WAGONER: All right. You can put your hand
13 down. Do you-all want to start, Ms. Smith?

14 MS. GUICE SMITH: Hi, Ms. Rogers Spruiell. I don't
15 know what you're currently going by, so if you could please
16 state your full name for the Commission, I would appreciate
17 it.

18 THE WITNESS: It is Marguerite Lynn Spruiell.

19 MS. GUICE SMITH: Okay. And today you're here
20 because we're hearing the case of Leroy Spruiell and Wallace
21 Brandon Jones.

22 My name is Lindsey Smith. I'm the Director of the
23 North Carolina Innocence Inquiry Commission, and today the
24 commissioners that are seated around the table -- there's
25 nine of them -- they are going to ask you some questions, as

1 it relates to your knowledge about Mr. Spruiell and
2 Mr. Jones' case, okay?

3 THE WITNESS: Yes, ma'am.

4 MS. GUICE SMITH: Thank you. Commissioners?

5 JUDGE WAGONER: Yes, sir. Mr. Boswell?

6 EXAMINATION BY COMMISSIONER BOSWELL:

7 Q. Hi, I -- I'm John Boswell, and in a -- the
8 deposition that you gave not too long ago, you indicated
9 that you had been threatened at some point by either
10 Mr. Jones or Mr. Spruiell. Could you tell us more about
11 that? When did that happen, and how did it come about?

12 A. Well, the -- what happened was they came to me and
13 threatened me. It was the Champs, it was Leroy Spruiell, and
14 it was Brandon Jones, and they all came to me and said if I
15 testified, that they would kill me.

16 Q. Do you remember when this happened? Did it
17 happen, obviously, before -- before the trial?

18 A. Yes, it was before the trial.

19 Q. Can you tell us any more of the details around
20 that like did they all come together? Was it multiple
21 times? Where it happened? Anything like that?

22 A. Well, I had -- I was working at Ed Champ's bar, so
23 they approached me there, and then away from there as well.

24 JUDGE WAGONER: Ma'am, when you say "they," if you
25 will say specifically who "they" is. You said the Champs,

1 but there are a whole bunch of Champs, as well as the -- so
2 when you say "they," who are you talking about?

3 THE WITNESS: Well, I was threatened by Brandon
4 Jones, Leroy Spruiell, Ed Champ, and I don't mean the elderly
5 gentleman. I mean the son.

6 JUDGE WAGONER: His son.

7 THE WITNESS: And some other ones -- yeah. And
8 some others that were there, and I don't know their names.

9 JUDGE WAGONER: Okay.

10 BY COMMISSIONER BOSWELL:

11 Q. You said that this happened at the bar. You --
12 you left the bar shortly after the night of the murder, a
13 month or two later. Is that right?

14 A. Yes, sir.

15 Q. Okay. So it was -- it was while you were there
16 that it happened, and then what other times did it happen?

17 A. I would go to the Red Apple there in Roper, which
18 is a different store now, and they would stop. And when I
19 say "they," Brandon Jones, Leroy, Ed Champ and some others.
20 Again, I don't know their names. I know their faces. And
21 they would tell me I don't need to testify. I need to
22 forget what I heard because it would be pretty much over for
23 me if I went and testified against them.

24 Q. Right. And you did testify against them. Did
25 anything --

1 A. Yes, I did.

2 Q. Did anything -- did they carry out any of their
3 threats? Did anyone ever injury you or damage your property
4 or in any way hurt you?

5 A. No, sir. But I was still, you know, still -- I
6 felt threatened.

7 Q. Absolutely. Did -- did the threats and -- and
8 stuff like that end? I mean, it's been 20-something years
9 ago. Did all that end after the trial?

10 A. Yes, pretty much.

11 Q. Did you ever tell anybody in law enforcement that
12 you had -- that you were being threatened?

13 A. Yes.

14 Q. Who did you tell?

15 A. I believe it was Mr. Williams or Officer Williams.
16 He might have been a deputy, I'm not sure, and Miss Janice.
17 And I believe her last name was Spruiell as well. And there
18 were some S.B.I. agents and some other agents that came to
19 my family's home, and I also told them as well. And for me
20 to know the names, I do not.

21 Q. No, that's -- I understand. So we had -- we had
22 read your trial transcript, and I don't -- I didn't remember
23 seeing you say anything about that, being threatened, at the
24 trial. Do you remember why that wasn't mentioned at the
25 trial?

1 A. Sir, I believe I did tell the attorney that was
2 cross-examining me, or -- or maybe he was an attorney on the
3 side that was against them. I do believe telling him that I
4 did tell him I was being threatened.

5 Q. I -- I may have just missed it in the trial
6 transcript. You were interviewed about five months after
7 the night of the murder. Do you know how you remember the
8 night of the murder and that that conversation happened that
9 night? Do you know why you connected those two in your
10 mind?

11 A. Yes, sir. Because they came -- Leroy Spruiell,
12 Dana, and Brandon all came into the bar. They were wearing
13 different clothes when they came back. They had no money.
14 When I mean "they," the three of them had no money. And
15 when them individuals came back to the bar, they had changed
16 their clothes and they had money, and the money was all
17 balled up.

18 Q. When you were at the bar that night, because I
19 think the testimony was that you -- the bar didn't close
20 till like 1:00 or something. Had anybody come into the bar
21 after the murder and told the people in the bar that a
22 murder had happened? Did you guys know about it that night,
23 or was it later when you heard about it?

24 A. I want to say it was that night, but it could have
25 been a different night, sir.

1 Q. No, I understand.

2 A. It has been years.

3 Q. I understand. It's been 20-something years ago,
4 and I'm asking you questions. And if you don't know, that's
5 fine; just say you don't know. But I was just curious if --
6 because it was -- the bar was open for a few hours after the
7 murder was discovered -- I guess maybe two or three hours
8 after the murder was discovered, and I'm just wondering if
9 word had gotten back to the bar while people were still
10 there that -- that the victim had been murdered, you know,
11 just down the road.

12 A. I'm not a hundred percent sure, sir.

13 Q. Those were all my questions. Thank you very much.

14 A. You're welcome, sir.

15 EXAMINATION BY JUDGE WAGONER:

16 Q. Ma'am, sort of following up on his question in
17 that the interview was about five months -- the interview
18 you had with law enforcement was approximately five months
19 after this murder occurred, and I believe you were asked
20 during your deposition how did you know that the date of the
21 events that you described in the report and your testimony
22 here today, how do you know that that happened the night of
23 the murder.

24 And your response is, "Because they told me."

25 And then --

1 A. Yes, ma'am.

2 Q. -- the question is, "Who told you," and you
3 basically say "they" is law enforcement. "They let me
4 know." So could you tell me what it was that law
5 enforcement told you?

6 A. Law enforcement told me that I was a witness to a
7 crime and that the law enforcement came to my house as well
8 and told me this, too. And I -- I wanted to know why I was
9 such a witness, and they were -- the law enforcement
10 explained to me that when Brandon and Leroy and Dana came
11 in, they did let me know that I overheard them talking about
12 what they had done. That's why I'm a witness in this case.

13 Q. Did you hear them talk about it?

14 A. Yes, ma'am.

15 Q. Or did your former boyfriend tell you?

16 A. (No response.)

17 Q. Who -- who -- who was your boyfriend when this
18 happened?

19 A. Steven Bell.

20 Q. Yeah. And what did Steven Bell tell you? He --
21 he was there at the bar that night, wasn't he?

22 A. Yes, ma'am.

23 Q. Okay. What did he tell you about this, what
24 happened at the bar, with regard to the defendants?

25 A. I don't remember that conversation.

1 Q. Okay. Did law enforcement tell you that they
2 thought that Mr. -- whatever the defendants' names are --

3 COMMISSIONER GRACE: Jones and Spruiell.

4 JUDGE WAGONER: Thank you.

5 BY JUDGE WAGONER:

6 Q. -- that -- names of three defendants that they
7 thought was involved -- they thought were involved in this
8 case?

9 A. Yes, ma'am.

10 Q. Before law enforcement told you that, had you just
11 read about it in the newspaper? Or heard people talk?

12 A. Well, I actually heard the defendants talking.
13 The ones that came into the bar, they were the ones that
14 spoke about what they'd done to Mr. Frank Swain. So that --
15 that right there made me scared, too.

16 Q. Okay. And when they threatened you, this was
17 before -- that -- those threats were before the trial,
18 correct?

19 A. Yes, ma'am, and I told law enforcement.

20 Q. Okay. And I assume that they threatened you --
21 were these people in jail awaiting trial at that time?

22 A. No. They threatened me when they were not in
23 jail.

24 Q. Okay. Okay.

25 FURTHER EXAMINATION BY COMMISSIONER BOSWELL:

1 Q. Let me follow up on that a minute. Do you -- from
2 our notes it appears the first time you told law enforcement
3 about overhearing the conversation was in May of '94. Did
4 you ever call law enforcement and tell them about what you
5 overheard at the bar before -- before May?

6 A. I don't think so, sir.

7 Q. How would anybody have known what you overheard
8 before you told law enforcement? Had you told anybody else
9 what you overheard?

10 A. I'm sure I told Steven.

11 Q. Do you think you told anybody else?

12 A. That, I don't -- I don't know, sir. He might have
13 spoke -- he might have spoke to another family member. I'm
14 not sure. I just told him.

15 Q. And so do you think -- and I'm not trying to put
16 words in your mouth; I'm just trying to understand. If you
17 told Steven and he told other people, that would be how Ed
18 Champ, Jr. and other people, and -- and Brandon Jones and
19 Leroy Spruiell would have known what you were going to say?
20 Is that how that would have come about?

21 A. It could have been, sir.

22 Q. And is that why law enforcement would come to you
23 and say that you're a witness to a crime?

24 A. Yes. That -- again, because of what I overheard,
25 that's why I felt like I was a witness.

1 Q. But when they --

2 A. But word of mouth -- word of mouth could have got
3 around.

4 Q. Uh-huh.

5 A. So.

6 Q. Okay.

7 JUDGE WAGONER: Questions?

8 EXAMINATION BY COMMISSIONER FRYE:

9 Q. You worked with Brandon Jones at the bar, correct?

10 A. I didn't work with him, no. He just would -- he
11 worked for Ed Champ, and I worked for Ed Champ, Sr., so.

12 Q. But at -- he worked at the bar?

13 A. No. He worked with the -- he worked with Ed
14 Champ, Jr. They did all kinds of work, out of town, out of
15 state.

16 Q. So he never -- he never worked as a bartender.

17 A. No, not while I was there. If he did, it might
18 have been way before me.

19 Q. Okay. What was your relationship like with him?
20 Did you two get along well?

21 A. I didn't have a relationship with him, sir. I
22 just went in and did my job. I didn't have a problem with
23 him.

24 JUDGE WAGONER: What "him"? Are you talking about
25 Brandon or are you talking about --

1 COMMISSIONER FRYE: Brandon.

2 JUDGE WAGONER: Talking about Brandon. Is that
3 right?

4 COMMISSIONER FRYE: Yes.

5 THE WITNESS: Yes.

6 A. I -- I -- I didn't have anything against Brandon.
7 I mean, he never bothered me. I never bothered him.

8 JUDGE WAGONER: Mr. Grace?

9 COMMISSIONER GRACE: No.

10 EXAMINATION BY COMMISSIONER BRITT:

11 Q. I just -- Ms. Spruiell, I have a couple of
12 questions. My name's Johnson Britt. I'm one of the
13 commissioners.

14 When did you make a connection between what you
15 overheard at the bar and them talking and Frank Swain being
16 the person that they were talking about?

17 A. When -- I didn't know Mr. Frank Swain. So when
18 they -- when law enforcement told me there was a murder, I
19 didn't know anything about it --

20 Q. Okay.

21 A. -- as far as, you know, putting two and two
22 together or whatever. I just know what Brandon and Leroy
23 and Dana said amongst themselves when I overheard it.

24 Q. Okay.

25 A. So I didn't even know who this person was that was

1 killed.

2 Q. All right. And so will -- when you -- let me --

3 If this is fair to ask, when you initially heard
4 it, you didn't know if anyone had been killed, is that fair
5 to say, for a fact?

6 A. For a fact, I did not know, but when you hear
7 something -- when anybody hears something like that, there
8 is questions, or it could be questionable.

9 Q. Sure. And when you say that law enforcement told
10 you that you were a witness to a murder, who was that?
11 Because we had the sheriff's office involved in this case,
12 and we had the S.B.I. involved in this case.

13 A. And, again, there was S.B.I. at my house and
14 Janice Spruiell and Mr. Williams, I believe is his name.
15 That's the -- that's the ones I remember from them years
16 ago.

17 Q. Okay. And how many times did they come talk to
18 you?

19 A. S.B.I. and -- I want to say one time at my house.

20 Q. Did they ever ask you to come to the sheriff's
21 office and talk with them?

22 A. They might have.

23 Q. And the threats started before or after you talked
24 to law enforcement?

25 A. After.

1 Q. After.

2 A. I want to say, uh-huh.

3 Q. Do you have any idea how Ed, Jr. or Leroy or
4 Brandon would have known that you had talked to the police?

5 A. Other than word of mouth.

6 Q. Okay. Now, they didn't get --

7 A. I'm not sure.

8 Q. They didn't get arrested for almost a year after
9 this. Is that right?

10 A. I'm not sure, sir.

11 Q. Okay. All right, thank you, ma'am.

12 A. Yes, sir.

13 JUDGE WAGONER: Yes, ma'am.

14 EXAMINATION BY ALT. COMMISSIONER NEWTON:

15 Q. Good afternoon, ma'am. Thank you for being here.
16 My name is Deb Newton. I am an alternate commissioner, and
17 I'd like to ask you a question as well.

18 You mentioned Ms. Janet -- Janice Spruiell. How
19 long did you work at that bar?

20 A. Maybe a year or two maybe.

21 Q. Okay. And do you -- do you recall Janice Spruiell
22 back then?

23 A. Yes, ma'am, I recall her back then.

24 Q. Okay. Did you know her before she interviewed you
25 with the other officers about this death?

1 A. I knew her as far as visual out in the public
2 there in Plymouth.

3 Q. Okay. So did you know her coming into the bar,
4 seeing her at the grocery store? Did you generally know her
5 other than being a law enforcement officer?

6 A. I can't say.

7 Q. Okay. Is there anything that you can tell us
8 about Ms. Spruiell that might help that you know about her?

9 A. All I know is she was in law enforcement, and
10 that's pretty much it.

11 Q. Okay. Thank you, ma'am.

12 A. Yes, ma'am.

13 JUDGE WAGONER: Yes, ma'am.

14 EXAMINATION BY COMMISSIONER THOMPSON:

15 Q. Hello. My name is Jennifer Thompson. I'm a
16 Commissioner, and I just have two quick questions.

17 In your May 1994 statement you said that Dana
18 Maybin did not leave the bar with Leroy Spruiell and Brandon
19 Jones, that she was angry that they made her stay behind in
20 the bar when they left for the hour or hour and a half. Is
21 that still your memory?

22 A. I remember saying it then.

23 Q. Uh-huh.

24 A. I'm not a hundred percent sure now. I remember
25 saying that statement, yes, ma'am.

1 Q. So --

2 A. As far as actually remembering if she left or not,
3 no, ma'am.

4 Q. Okay. All right. Because you also testified to
5 that, too, that she --

6 A. Okay.

7 Q. -- stayed in the bar.

8 A. Well, if I testified that, that was my statement.

9 Q. Okay, thank you.

10 A. Yes, ma'am.

11 Q. All right, thanks.

12 JUDGE WAGONER: Yes, sir.

13 FURTHER EXAMINATION BY COMMISSIONER BOSWELL:

14 Q. Let me ask you one other question. Do you know
15 who Bobby Spruiell is?

16 A. Yes, I do.

17 Q. Who is that?

18 A. He is a guy that actually worked around the
19 Champs, too. He did roofing and all kinds of things, so.

20 Q. There's a note in the officers' notes that say:

21 "I talked with Lynn Rogers again, and she said
22 that she had talked with Bobby Spruiell, and what
23 Bobby had told her was hearsay."

24 What -- explain what -- what conversation you had
25 with Bobby Spruiell. And can you explain about that, that

1 note? Do you remember?

2 A. The only thing I would say as far as hearsay is he
3 came out and said that they did it. He could have made that
4 statement. That's all I can remember if -- if that was the
5 statement that was made.

6 Q. But this statement, did it have anything to do
7 with what you overheard Jones and Spruiell saying at the bar?

8 A. That's what I'm saying is if Bobby made a
9 statement that they didn't do it, that could have been what
10 he was telling me. I'm not sure.

11 Q. Okay. All right. Thank you.

12 FURTHER EXAMINATION BY COMMISSIONER FRYE:

13 Q. One last --

14 A. Yes, sir.

15 Q. -- one last question from me.

16 A. Yes, sir.

17 Q. You are a Spruiell now. Are you -- is the person
18 you're married to related to Leroy Spruiell or any of them?

19 A. Not that I'm aware of, no, sir.

20 Q. Okay.

21 JUDGE WAGONER: Or Janice Spruiell?

22 THE WITNESS: If they are, I don't know anything
23 about it.

24 BY COMMISSIONER FRYE:

25 Q. Or Janice? How -- how -- okay. Never mind. I

1 don't want to get into it.

2 A. I don't know anything about Janice Spruiell
3 neither. I just --

4 FURTHER EXAMINATION BY JUDGE WAGONER:

5 Q. I have some questions. If you can recall, ma'am,
6 I think when our investigator from the Innocence Commission
7 was asking you questions and you were talking about Dana
8 Maybin, and you said that you heard what they came back and
9 said in the bar. "I just don't know no other details. When
10 I was told it was Dana," and you then asked, "Is Dana her
11 name? Right?"

12 And you were told, "Yes, Dana Maybin is her name."

13 And then you said, "She's the one that put the
14 icing on the cake. I just verified what I knew."

15 What did you mean when you said that Dana put the
16 icing on the cake?

17 A. I was informed by either -- it was the attorney or
18 someone in the courtroom that Dana stated that they
19 committed the murder, and they just took my -- I guess my
20 deposition or my information and said that mine and her
21 information was similar. That's all I was told.

22 Q. You were told by an attorney in the courtroom or
23 an attorney before the trial that these two people had
24 committed the murder?

25 A. No, I'm saying the statements that we provided in

1 the courtroom --

2 Q. Yeah.

3 A. -- I was informed that my statement and Dana's was
4 similar -- similar.

5 Q. Yeah. But before you said --

6 A. That's all -- that's all I remember.

7 Q. Okay. Before you said that, I thought you said
8 somebody, an attorney or somebody had told you in the
9 courtroom or some other place that these two men had
10 committed murder.

11 A. Well, and I'm trying to think. Again, it's been
12 so many years.

13 Q. Yeah. I understand.

14 A. That if an attorney spoke to me and said Dana told
15 her testimony, and they just verified it with mine. That's
16 what I remember. But if it was an attorney, defense, I'm
17 not sure. It was someone in that courtroom that made that
18 statement to me. And it could have been law enforcement.

19 Q. Okay. Perhaps I misunderstood you. Okay.

20 JUDGE WAGONER: Anything further? All right.

21 Thank you very much. Oh, I'm sorry.

22 EXAMINATION BY MS. GUICE SMITH:

23 Q. I have a couple of follow-up for you.

24 I believe that you testified a few moments ago,
25 Ms. Spruiell, that the threats that were made to you were

1 made after you first talked to law enforcement. Is that
2 accurate?

3 A. If I can recall, it was made -- they were made --

4 Q. They were made?

5 A. Time frame -- the time frame could have been while
6 I was working at Ed's Bar and while this took place, and it
7 could have been when law enforcement spoke to me.

8 Q. Okay.

9 A. I don't want to sit here and tell you something
10 I'm not a hundred percent sure on.

11 Q. Okay. Thank you.

12 A. Yes, ma'am.

13 COMMISSIONER GRACE: I have a couple of questions.

14 JUDGE WAGONER: Yes, sir.

15 EXAMINATION BY COMMISSIONER GRACE:

16 Q. Ma'am, my name is Mike Grace. I'm one of the
17 Commission members, and I have a couple of questions.

18 Why did it take you five months to tell the police
19 what you had heard that night?

20 A. Sir, they came to me. I just told what they --
21 they came to me and asked me questions. I didn't know what
22 to do, sir.

23 Q. Well, you -- you heard that night -- according to
24 your statement, you heard that night two men confessing to
25 killing what they said was the N-word. Is that correct?

1 A. Yes, sir.

2 Q. And sometime that night or the next day or later
3 on the next week, you read about a black man being killed in
4 the community, right?

5 A. Yes, sir.

6 Q. Why didn't you go to the police then and -- and --
7 and tell them what you'd heard?

8 A. Because I told Miss Janice and Mr. Williams. When
9 they approached me, I told them what they asked me.

10 Q. I understand that, but my question is why didn't
11 you tell them the next day or the next week when you found
12 out a black man had been killed in the community? Why did
13 you wait until five months?

14 A. Sir, all I can say is I was scared.

15 Q. Who were you afraid of --

16 A. (Unintelligible; speaking simultaneously.)

17 Q. I'm sorry, go ahead.

18 A. I said I was scared. I mean, I was early 20s.
19 Somebody got killed right down the road from the bar. I
20 don't know anything about it other than what was confronted
21 to me. They came to me. They came in. They spoke. I
22 didn't know what to do.

23 I know that I shouldn't have waited. As you said,
24 I waited five months. I have no answer for that other than
25 I didn't know what to do as far as going and confronting

1 someone. The cops came to me.

2 FURTHER EXAMINATION BY JUDGE WAGONER:

3 Q. And did the cops come to you and tell you what you
4 should have known or you just --

5 A. The cops came and told me the gentleman was
6 murdered and the suspects were Brandon Jones and Leroy
7 Spruiell, and they said Dana was in it, too.

8 Q. Okay. And what else did they tell you then?

9 A. He was stabbed. His money was stolen. I believe
10 there were drugs involved.

11 Q. Did they tell you that Mr. Spruiell and Mr. Jones
12 had been at Big Ed's that night with you, the night --

13 A. They --

14 Q. -- of the murder?

15 A. -- they asked. Well, they -- they asked were they
16 at the bar and I said yes. They were there prior to the
17 murder and after.

18 Q. Okay.

19 FURTHER EXAMINATION BY COMMISSIONER GRACE:

20 Q. Ma'am, long before the police came to you, the
21 community was talking about this murder and how it was
22 committed, wasn't it?

23 A. Sir, I left Ed's Bar. I really didn't -- I didn't
24 -- I don't live in Plymouth.

25 Q. Well, you live --

1 A. But I just --

2 Q. I'm sorry, go ahead.

3 A. I just really didn't come back around these parts.
4 I mean, I -- I live not too far from here, but I just didn't
5 affiliate myself with the Champs or any of them. I just --
6 when they were threatening me, I just stayed away.

7 Q. But you stayed -- you worked -- you continued
8 working in the bar for another couple of months after that
9 night, didn't you?

10 A. I'm not sure. I thought I left not too long after
11 that.

12 Q. Well, I thought you --

13 A. But --

14 Q. -- told us earlier that you stayed a couple of
15 months after -- after that.

16 A. Did I say -- did I say I did?

17 Q. Yes, ma'am, you did.

18 A. I did? Okay. Well.

19 Q. Well, everybody was talking about it in the bar
20 when you came to work for the next several days, weren't
21 they? The next several weeks?

22 A. Yes, it was talk of the murder, yes, sir.

23 Q. And you didn't tell anybody but your boyfriend, Ed
24 [sic], and you're not -- are you sure that you told him?

25 A. Yeah, I told Steven what he was --

1 JUDGE WAGONER: Steven.

2 COMMISSIONER GRACE: Steven.

3 A. -- what was told to me, yes, sir.

4 BY COMMISSIONER GRACE:

5 Q. And you didn't tell anybody but Steven what you
6 had overheard, that you had overheard the killers talking
7 about it that night.

8 A. I know I spoke to him. I -- I'm sure I spoke to
9 my dad and my mom.

10 Q. And did they advise you to go to the police?

11 A. They advised me to tell the truth and everything
12 that I heard, so -- and that's what I did. I just -- I was
13 scared. I mean, I don't know no other way to put it.

14 Q. Thank you.

15 A. Yes, sir.

16 JUDGE WAGONER: Yes, ma'am.

17 FURTHER EXAMINATION BY MS. GUICE SMITH:

18 Q. Ms. Spruiell, if you testified at trial that Robert
19 showed you the ropes at the bar when you began working
20 there, would you have any reason to disagree with that now?

21 A. That if he showed me the ropes, he could have told
22 me where beer was and --

23 Things like that, yes, ma'am.

24 Q. Okay.

25 A. But I don't remember a hundred percent.

1 Q. Thank you.

2 A. Uh-huh.

3 JUDGE WAGONER: Any other questions?

4 (No response.)

5 JUDGE WAGONER: All right. Thank you very --
6 thank you very much, ma'am.

7 COMMISSIONER BOSWELL: Thank you.

8 THE WITNESS: Yes, sir.

9 JUDGE WAGONER: Thank you. You have a nice
10 evening.

11 THE WITNESS: You too, now.

12 JUDGE WAGONER: Thank you.

13 THE WITNESS: Thank you.

14 JUDGE WAGONER: Thank you.

15 (The video conference connection ended.)

16 COMMISSIONER BOSWELL: What did you ask, that she
17 was wearing a security guard uniform?

18 COMMISSIONER GRACE: She was. The -- the shirt
19 was.

20 COMMISSIONER BOSWELL: I didn't notice that.

21 JUDGE WAGONER: I did.

22 MS. GUICE SMITH: Ms. Rogers is the bailiff -- is
23 a bailiff at Washington County courthouse.

24 JUDGE WAGONER: She's a bailiff now?

25 COMMISSIONER BRITT: She's what?

1 JUDGE WAGONER: With the sheriff's department?

2 MS. GUICE SMITH: Yes, ma'am.

3 ALT. COMMISSIONER NEWTON: It's a really small
4 place.

5 COMMISSIONER GRACE: (Addressing the court
6 reporter.) Don't you look at me. I'm not going to say a
7 word. I have nothing to say.

8 (Laughter.)

9 COMMISSIONER BOSWELL: Can we ask some questions
10 about the facts surrounding her that you guys might know?

11 MS. GUICE SMITH: Yes. I will put Ms. Matoian up
12 in one moment.

13 COMMISSIONER BOSWELL: Okay.

14 MS. GUICE SMITH: If I can just real quick answer
15 a question that was asked related to Ed Champ, Jr. and
16 his --

17 JUDGE WAGONER: Record?

18 MS. GUICE SMITH: -- conviction for failure to
19 give rights, a misdemeanor. That is N.C. General Statute
20 14-401.13:

21 "Failure to Give Right to Cancel an
22 Off-Premises Sales. It shall be a Class III
23 misdemeanor for any sellers, sellers as defined
24 hereinafter in connection with an off-premises
25 sale as defined hereinafter to willfully to" --

1 And it's:

2 "fail to furnish a buyer with a fully
3 completed receipt or copy of any contract
4 pertaining to such sale at the time of the
5 execution."

6 JUDGE WAGONER: It's a Class 3 misdemeanor.

7 MS. GUICE SMITH: Yes, ma'am.

8 COMMISSIONER BRITT: The sale of what?

9 COMMISSIONER GRACE: I think it's automobiles.

10 JUDGE WAGONER: It's either that or beer.

11 COMMISSIONER BARROW: No, no. I think it's --
12 it's off-premises sales to cover stuff like home -- home
13 improvements.

14 ALT. COMMISSIONER NEWTON: I think that's right.

15 COMMISSIONER BARROW: 'Cause you -- you've got --

16 ALT. COMMISSIONER NEWTON: I bet so. They do odd
17 jobs and stuff.

18 COMMISSIONER BRITT: Oh.

19 COMMISSIONER BARROW: Because you -- you've got --
20 you -- you have to tell them, you know, you've got a right
21 to rescind for three days.

22 MS. GUICE SMITH: It's a very lengthy statute, but
23 it talks about sales contracts.

24 COMMISSIONER BRITT: That goes hand in hand with
25 him --

1 COMMISSIONER BARROW: Or --

2 COMMISSIONER BRITT: -- doing paving work.

3 COMMISSIONER BARROW: -- or encyclopedias.

4 JUDGE WAGONER: You're right.

5 MS. GUICE SMITH: Commissioners, I have one
6 clarification. Ms. Rogers Spruill is not a bailiff. She is
7 a private security officer at the door of the courthouse.

8 Okay. All right. Ms. Matoian, if you will please
9 step back up to the witness stand and answer any questions
10 that the commissioners have related to Lynn Rogers.

11 CATHERINE MATOIAN,
12 having been re-called as a witness for the Commission and
13 having been previously sworn by Judge Wagoner, testified as
14 follows:

15 EXAMINATION BY COMMISSIONER BOSWELL:

16 Q. Ms. Matoian, is there any record that -- that the
17 Commission has that Ms. Rogers spoke to law enforcement or
18 in any way told anybody about what she said she overheard
19 prior to May of two -- two thousand -- I mean, '94?

20 A. There's no record of that in anything that the
21 Commission has reviewed for this case.

22 Q. And is there any record in the trial transcript or
23 anywhere else that she said she was threatened by the
24 defendants or the Champs or anybody?

25 A. No, not that I've reviewed.

1 ALT. COMMISSIONER NEWTON: May I ask a quick
2 question now? It may be a little out of order, but it has
3 to do with a witness that has come up today.

4 THE WITNESS: Okay.

5 EXAMINATION BY ALT. COMMISSIONER NEWTON:

6 Q. Has anyone on the Commission interviewed or
7 attempted to discover the person who wrote the Folly Road
8 letter?

9 A. The Commission has not been able to discover who
10 wrote the Folly Road letter. I did look at that letter in
11 comparison with Mr. Spruill and Mr. Jones's handwriting and
12 didn't see any similarities, although I'm not a fingerprint
13 expert, to -- or a handwriting expert, to be clear. But we
14 have not been able to determine who wrote those letters.

15 Q. Based on Wyatt Spruill's testimony today, didn't
16 P.J., the mother of Maurice Wilkins -- didn't Wyatt Spruill
17 say that Matthew, mother of Sonja -- I'm sorry, Sonja Day is
18 who I was thinking of, his sister, say that Matthew told --
19 after Sonja Day was murdered, Matthew told -- who was nine
20 at the time of the trip from New York -- Matthew told his
21 grandmother, her mother, about all of that.

22 Is it possible that she -- or have you-all
23 inquired or has anybody talked to Matthew about -- or the
24 grandmother, which would be Sonja Day's mother, whether she
25 authored that Folly Road letter? She seems to indicate she

1 knows who did the killing. I'm just asking.

2 A. After Wyatt Spruiell's testimony, we went back and
3 looked at -- Matthew Day was interviewed by the North
4 Carolina Center on Actual Innocence. I also went back to
5 the Sonja Day S.B.I. file and looked at his interviews and
6 his grandmother, so Sonja Day's mother's interviews that
7 they gave. They both indicated that she had gone to New
8 York shortly -- and returned shortly before her murder and
9 that she was scared, but none of them indicated any
10 specifics as to what that fear was and did not mention any
11 connection between Mr. Swain's murder and the Sonja Day
12 murder.

13 And in his interview with the Center, Matthew Day
14 said quote:

15 "In New York, downstairs in a courtyard in
16 Brooklyn, she talked to some guy about 5 or 6 p.m.
17 He gave her 500 or 600 dollars to go home. She
18 went into an apartment and told Matthew to leave
19 if she wasn't back in 15 minutes, and the man
20 would take him to the airport. He waited longer,
21 and eventually she came out and they left. They
22 flew into the military airport. Sonja's best
23 friend" --

24 The parentheses from the person writing the report
25 -- report said "Who was this, Jean?" end parentheses.

1 -- "couldn't pick them up, so they called his
2 grandmother to pick them up. She was pissed. His
3 mom was real paranoid, wouldn't tell him what was
4 wrong. Sonja's boyfriend Wayne took \$7,000 to go
5 home. 'Everywhere I turned,' she said, 'I think
6 there's someone waiting for me.' He went to stay
7 with his grandmother after that."

8 So in that interview as well, he does not indicate
9 that his mother's fear in New York had anything to do with
10 the Frank Swain murder.

11 Q. And so just a last question, did anybody interview
12 his grandmother?

13 A. No, we did not.

14 Q. I'm sorry, specifically in relation to the Folly
15 Road letter.

16 A. We did not interview his grandmother at all.

17 EXAMINATION BY COMMISSIONER BRITT:

18 Q. The Folly Road letter was received by Chief Floyd?

19 A. No. The Folly Road letter was written to Sheriff
20 Jim Whitehurst, who was the sheriff at the time the letter
21 was written. A duplicate of it was also sent and addressed
22 to a man named David Hewitt. He was a pastor who had met
23 Jones while he was in jail awaiting trial, doing ministry
24 work, and became a supporter of Mr. Jones. And the letter
25 was sent to him as well. We attempted to interview

1 Mr. Hewitt, and he is deceased.

2 ALT. COMMISSIONER NEWTON: May I follow-up one?
3 Does Sonja Day -- or did Sonja Day or her mother or Matthew
4 live on Folly Road?

5 THE WITNESS: I know I have been to Jean
6 Spruiell's, Sonja Day's mother's house. I can't remember
7 where it is right now. We can check on that for you.

8 COMMISSIONER BRITT: Was Ms. Day ever interviewed
9 by the S.B.I. with regard to her and Frank?

10 THE WITNESS: She was. If you'll give me just one
11 moment. (Reviewing documents.) Do you mind if I grab
12 something real quick?

13 JUDGE WAGONER: That's fine.

14 (Pause in proceedings.)

15 THE WITNESS: And I'll correct myself. She was
16 interviewed by the sheriff's office. There's no report for
17 her in the S.B.I. file. And --

18 JUDGE WAGONER: The sheriff's office. Was it
19 Ms. Sharon [sic] or --

20 THE WITNESS: This is the phone call that Janice
21 Spruiell made to the --

22 JUDGE WAGONER: Janice.

23 THE WITNESS: -- prison. In that interview, Sonja
24 Day had provided information that was consistent with what
25 we testified about in regards to Buffy Knowles, Russell

1 Buffy Knowles, although she refers to him as Buffy and she
2 referred to him as an ex-cop, which Mr. Knowles denied being
3 in the Commission's interview.

4 She indicated speaking with Mr. Swain on Friday
5 the 17th about the Christmas package. And, let's see. And
6 she indicated that she had made the call from prison that
7 night, and that Wyatt Spruiell had told her that he could not
8 get Frank up to get him on the phone.

9 COMMISSIONER BRITT: But no follow-up interview?

10 THE WITNESS: No, sir.

11 COMMISSIONER BRITT: Nothing like, "Do you have
12 any idea who would want to kill him?"

13 THE WITNESS: No, sir.

14 COMMISSIONER BOSWELL: Did -- did you just say
15 that that happened on the 17th?

16 THE WITNESS: No. I'm sorry, she had indicated
17 she spoke to the victim directly on the 17th about the
18 Christmas package, and then on the 18th she called and spoke
19 to her brother, who had told her he couldn't get the victim
20 on the phone.

21 COMMISSIONER BOSWELL: Okay.

22 ALT. COMMISSIONER NEWTON: Where do you get the --
23 your criminal records you very quickly produce for us? Do
24 you look it up on the State's system?

25 THE WITNESS: We do criminal record searches

1 through a nationwide search on D.C.I.N., and we also have
2 access to CJLEADS, which would have North Carolina crimes.

3 ALT. COMMISSIONER NEWTON: And the addresses?

4 THE WITNESS: Correct. And we also have access to
5 Lexis to look at addresses as well.

6 ALT. COMMISSIONER NEWTON: Okay.

7 COMMISSIONER BOSWELL: And I'd like to mention
8 that CJLEADS is hosted at SAS Institute.

9 (Laughter.)

10 COMMISSIONER GRACE: A little plug.

11 COMMISSIONER BOSWELL: Hosted at SAS Institute
12 where I work. We keep all the databases.

13 COMMISSIONER BRITT: It's a good program.

14 MS. GUICE SMITH: Any other questions for
15 Ms. Matoian about this?

16 (No response.)

17 MS. GUICE SMITH: Okay. We are going to turn our
18 attention to Dana. Oh, actually I have something for you.

19 Maurice Wilkins' cut on his hand. There was some
20 testimony from Wyatt Spruill about that cut being on his
21 arm. This is a photo of Maurice Wilkins' hand, and the cut
22 on his index finger at the base of that finger.

23 Mr. Wilkins' arm was in a sling at the trial, but that was
24 well over a year after the crime, and that injury is not
25 related to the cut on his hand at the time of the crime.

1 JUDGE WAGONER: But this is what he sewed up with
2 the fishing line himself?

3 MS. GUICE SMITH: That is correct.

4 ALT. COMMISSIONER NEWTON: Are those stitches that
5 we're looking at?

6 MS. GUICE SMITH: He sewed his own hand up with
7 fishing line, so.

8 ALT. COMMISSIONER NEWTON: But -- but those are --
9 those are those stitches, that's -- so that's what he was
10 talking about?

11 THE WITNESS: This photo is not dated, so we don't
12 know when it was taken, but it was labeled as being Maurice
13 Wilkins. And there's another picture of him with his face
14 wearing the same shirt that you can see in that, in the top
15 of the picture.

16 COMMISSIONER BOSWELL: Where did this picture come
17 from?

18 THE WITNESS: From the sheriff's office file.

19 MS. GUICE SMITH: And Ms. Matoian, the first time
20 that Maurice Wilkins was interviewed, was that on December
21 23rd, 1993?

22 THE WITNESS: It was.

23 MS. GUICE SMITH: Now we'll turn our attention to
24 Dana Maybin. Ms. Maybin was a co-defendant in this case.
25 We will talk about her, as well as some other witnesses that

1 are related to her. The first thing we're gonna do is play,
2 at the commissioners' request, the 39-minute recording of
3 the interview between Attorney Maynard Harrell and Dana
4 Maybin.

5 I will recommend that we do that and then take a
6 break after that for a few minutes before we move on. Is
7 that --

8 JUDGE WAGONER: Is that all right with y'all?

9 COMMISSIONER BRITT: Do we have a picture of her?

10 MS. GUICE SMITH: Of Dana Maybin?

11 COMMISSIONER BRITT: Yeah. Like at the time?

12 THE WITNESS: I will have to double-check and see
13 if we have one at the time. I know we have a semi-recent
14 D.M.V. photo of her.

15 MS. GUICE SMITH: We'll double-check the file
16 while this is playing. All right. Here is technology.

17 COMMISSIONER BOSWELL: Good luck.

18 (The audio-videotaped interview of Dana Maybin
19 was played from 4:59 p.m. to 5:39 p.m.)

20 MS. GUICE SMITH: I would recommend we take a
21 brief recess for an evening snack. I know we talked about
22 going to about 6:30 this evening. I believe that it will
23 take us about another hour to get through Ms. Matoian's
24 testimony regarding Dana Maybin.

25 JUDGE WAGONER: Does anybody need a break now, or

1 do we just want to keep going?

2 COMMISSIONER GRACE: If we -- if you could give
3 us --

4 THE WITNESS: Two minutes.

5 COMMISSIONER GRACE: -- 30 seconds.

6 JUDGE WAGONER: Two minutes.

7 (Off the record at 5:40 p.m.)

8 (A brief recess was taken.)

9 (Back on the record at 5:49 p.m.)

10 MS. GUICE SMITH: I will re-call Catherine
11 Matoian.

12 CATHERINE MATOIAN,
13 having been re-called as a witness for the Commission and
14 having been previously sworn by Judge Wagoner, testified as
15 follows:

16 EXAMINATION BY MS. GUICE SMITH:

17 Q. Ms. Matoian, there were some questions asked
18 earlier today regarding Kevin Furlough and the knife. Can
19 you please let the Commission know what you were able to
20 find?

21 A. Yes. I looked back at Kevin Furlough's interviews
22 and his trial testimony. And in that, he doesn't mention
23 nor does it -- and I -- again, I don't have transcripts of
24 the interviews, so I don't know if he was asked, but there
25 is no mention of the knife that Tommy Barber found that he

1 said he had gotten from Kevin Furlough in either his law
2 enforcement interviews or his trial testimony.

3 JUDGE WAGONER: There was no mention of that at
4 the trial?

5 THE WITNESS: And in his law enforcement
6 interviews as well.

7 BY MS. GUICE SMITH:

8 Q. Ms. Matoian, another question was asked about Ed
9 Champ -- Ed Champ, Sr.'s trial testimony and whether or not
10 he mentioned anything about Mr. Spruill or Mr. Jones'
11 clothing.

12 A. In his trial testimony, Ed Champ, Sr. indicated
13 that he had no recollection of what Mr. Spruill and
14 Mr. Jones were wearing that night. He did note, though,
15 that Spruill's hair always appeared to be wet.

16 Q. And Ms. Matoian, there's some question about
17 whether or not Mr. Jones was working at Big Ed's Bar. Does
18 Ed Champ, Sr. say anything about Mr. Jones working at the
19 bar?

20 A. In his trial testimony, Ed Champ, Sr. indicated
21 that Mr. Jones had helped him with a few tasks at the bar on
22 the day before the murder. And both Ed Champ, Sr., Wallace
23 Brandon Jones, and Lynn Rogers have indicated that Mr. Jones
24 worked at the bar as well.

25 Q. And, finally, was the Commission able to confirm

1 the date that Curtis Furlough's baby was born?

2 A. We were. We were able to confirm that she was
3 born on December 17th, 1993.

4 Q. And was that done through record searches that the
5 Commission has access to?

6 A. Correct.

7 Q. And what is her name?

8 A. Her name is Victoria Furlough.

9 COMMISSIONER BRITT: Is she in prison?

10 THE WITNESS: She did not have any record in
11 D. P. S.

12 BY MS. GUICE SMITH:

13 Q. Ms. Matoian, one final question. There was a
14 question about whether Sonja Day's mother lived on Folly
15 Road. Does -- did Sonja Day's mother live on Folly Road?

16 A. Our record searches indicate that her mother had a
17 consistent address on Mackeys Road in Plymouth, North
18 Carolina. And I did a Google Map search of that Mackeys
19 Road address to the Helena Chemical that was next to the
20 victim's house on Folly Road, and it's about 3.1 miles away.

21 Q. All right.

22 ALT. COMMISSIONER NEWTON: One question --

23 MS. GUICE SMITH: Okay.

24 ALT. COMMISSIONER NEWTON: -- just real quick.

25 Was the Commission able to confirm the rumoring, for lack of

1 a better term, about Janice Spruiell and BoJack?

2 THE WITNESS: We were not. We've heard
3 conflicting things from several witnesses we -- that we've
4 provided testimony about. Both Janice Spruiell and
5 Mr. Clagon denied any relationship between them. Other
6 people had heard rumors about it, and Greg Hassle said that
7 it was confirmed to him, but we have not been able to
8 confirm that that took place.

9 ALT. COMMISSIONER NEWTON: Is Janice Spruiell still
10 in law enforcement?

11 THE WITNESS: No, she's retired. At the time of
12 the Commission's interview, she indicated that if they were
13 short-staffed on administrative staff, the sheriff's office
14 might still call her in, but is retired from law
15 enforcement.

16 ALT. COMMISSIONER NEWTON: But there was no
17 confirmation of any drug testing or personnel matters
18 related to her adverse to her job?

19 THE WITNESS: The Commission did not look into any
20 records of those that may exist.

21 MS. GUICE SMITH: Any other questions?

22 JUDGE WAGONER: I sort of have three questions.
23 One, I think, is in here somewhere. Was BoJack incarcerated
24 at the time Frank was murdered?

25 THE WITNESS: That's correct. According to that

1 court docket from his federal charges, he was.

2 JUDGE WAGONER: And had he been in very long or do
3 you -- can you recall?

4 THE WITNESS: He was arrested on October 1st,
5 1993, and was not sentenced until Janu- -- or I'm sorry. He
6 was -- he took his plea on January 1st, 1994, and there was
7 an order holding him in detention during the time he was
8 waiting to take his plea.

9 JUDGE WAGONER: Okay. And do you have any idea or
10 any indication if his team or his whatever was still working
11 while he was in prison selling drugs and stuff?

12 THE WITNESS: I'm not aware of that. Greg Hassle
13 had indicated that a -- that a lot of the people who were
14 working with BoJack were arrested at the time that
15 Mr. Clagon was arrested. We do know that Alfred Armstrong
16 sold drugs for Mr. Clagon, and he was actually arrested on
17 an outstanding warrant at the time he was interviewed about
18 this murder.

19 JUDGE WAGONER: And what was -- how far is it from
20 Big Ed's to Frank's house?

21 THE WITNESS: We're actually going to go through
22 that in detail in just a little bit, if you don't mind
23 waiting.

24 JUDGE WAGONER: That's fine. And I'd like to know
25 what the temperature was that night.

1 COMMISSIONER BOSWELL: You had mentioned to a
2 question a couple of days ago that Maurice was -- that
3 BoJack was not Maurice's father. How did you -- how did you
4 confirm that?

5 THE WITNESS: We asked BoJack during his
6 deposition, and he indicated that he was not Maurice
7 Wilkins' father. He said that he did know his mother, P.J.
8 Wilkins, and indicated that -- I can't remember his name off
9 the top of my head, but that Maurice's father was a man with
10 the last name of Wilkins.

11 COMMISSIONER BARROW: There was testimony today, I
12 think from Wyatt Spruiell, that the victim kept a .32 pistol.
13 Was a .32 pistol recovered by the investigators at the time
14 of the murder?

15 THE WITNESS: No, it was not. There was a rifle
16 in the victim's home, but no .32-caliber pistol was found.

17 MS. GUICE SMITH: Other questions?

18 (No response.)

19 MS. GUICE SMITH: Okay.

20 BY MS. GUICE SMITH:

21 Q. Ms. Matoian, can you tell the commissioners who
22 Sherry Honeais?

23 COMMISSIONER BOSWELL: Can I make one
24 clarification? I'm from South Carolina. It's pronounced
25 Honea, like honey with an "a" on the end.

1 MS. GUICE SMITH: Okay.

2 JUDGE WAGONER: How is it pronounced?

3 COMMISSIONER BOSWELL: It is Honea, like
4 "honey-uh."

5 JUDGE WAGONER: Really.

6 COMMISSIONER BOSWELL: Yeah.

7 BY MS. GUICE SMITH:

8 Q. Who is Sherry Honea?

9 A. I've been saying Honea for a long time, so you'll
10 forgive me if I cannot make that switch --

11 COMMISSIONER BOSWELL: It's quite all right.

12 A. -- right away. Sherry Honea was a friend of Dana
13 Maybin's. The two of them were both from South Carolina and
14 came to Plymouth, North Carolina, together. And she told
15 law enforcement that Dana Maybin had told her that she,
16 meaning Dana Maybin, had been present when the victim was
17 murdered.

18 MS. GUICE SMITH: Commissioners, information
19 related to Sherry Honea can be found on pages 55 and 140 of
20 your brief. Handout 60 in Hearing Handout Notebook 1 is a
21 summary of Ms. Honea's criminal record. If you'll take a
22 few minutes to look at it.

23 (Handout Number 60 was identified for the
24 record.)

25 COMMISSIONER COVER: What was the page number

1 again?

2 MS. GUICE SMITH: In the brief, it's 55 and 140.

3 COMMISSIONER COVER: Thank you.

4 COMMISSIONER BARROW: And the record?

5 MS. GUICE SMITH: The record is Handout 60.

6 COMMISSIONER BRITT: Do we know why they moved
7 from South Carolina to Washington County, North Carolina?

8 THE WITNESS: Sherry Honea's father had dated
9 Betsy Tarkington at some point, and that is how she knew of
10 the Plymouth area. And her and Dana Maybin decided to go to
11 Plymouth, and they did live with Betsy for a period of time.
12 And they both were going by assumed names while they lived
13 in Plymouth.

14 COMMISSIONER BRITT: Where in South Carolina were
15 they from?

16 THE WITNESS: Near Westminster.

17 COMMISSIONER BRITT: Where's that?

18 JUDGE WAGONER: Where is that?

19 THE WITNESS: It's close to Clemson.

20 JUDGE WAGONER: Clemson?

21 THE WITNESS: Uh-huh.

22 JUDGE WAGONER: That's a long way away.

23 THE WITNESS: I've been a few times.

24 COMMISSIONER BRITT: Wow.

25 MS. GUICE SMITH: Okay.

1 BY MS. GUICE SMITH:

2 Q. When was Sherry Honea interviewed by law
3 enforcement during the initial investigation?

4 A. She was interviewed on April 24th, 1994, and told
5 them what Maybin had told her about the murder. There's an
6 indication in the file that she was interviewed again on May
7 3rd, 1994, but there are no notes about this interview. She
8 was polygraphed on May 4th, 1994, and she failed the
9 polygraph with a -7 (minus seven) numerical evaluation.

10 The questions she was asked were, "Did you stab
11 Frank Swain?" to which she answered no.

12 "Were you present when Frank Swain was killed?" to
13 which she answered no.

14 And "Have you told me the complete truth regarding
15 how you know about that man's death?" to which she answered
16 yes.

17 COMMISSIONER BRITT: Whose polygraph was that?

18 THE WITNESS: The S.B.I. did that.

19 COMMISSIONER BRITT: No, who was the subject of
20 the polygraph? Who took the polygraph?

21 JUDGE WAGONER: Dana.

22 THE WITNESS: I'll have to --

23 COMMISSIONER BRITT: Dana?

24 COMMISSIONER BOSWELL: Sherry Honea.

25 THE WITNESS: Oh, sorry, it's Sherry Honea.

1 COMMISSIONER BRITT: Sherry Honea was the one with
2 the polygraph.

3 THE WITNESS: That -- yes, sorry.

4 MS. GUICE SMITH: Commissioners, if you will refer
5 to Handout 61 in your Hearing Handout notebooks, this is a
6 report of Ms. Honea's April 24th, 1994, interview with law
7 enforcement.

8 (Handout Number 61 was identified for the
9 record.)

10 MS. GUICE SMITH: It was summarized in your brief,
11 but you may wish to review it in its entirety. We can
12 review that now, Judge Wagoner, or that can be something
13 that you-all review later. It's about six -- five -- a
14 little more than five pages. Just read them now.

15 JUDGE WAGONER: Go on and do it, I guess. What
16 tab?

17 THE WITNESS: 61.

18 COMMISSIONER GRACE: 61.

19 JUDGE WAGONER: Thank you.

20 (Pause in proceedings.)

21 BY MS. GUICE SMITH:

22 Q. Ms. Matoian, before we go further, Judge Wagoner
23 had asked if we could find the temperature on the date of
24 the crime. What have we found about that?

25 A. In searching for the weather history from that

1 day, the -- the closest available weather station to
2 Plymouth was the Air Force Base in Kingston. It indicates
3 that the high temp for that day was 57.9 degrees Fahrenheit.
4 The low temperature was 32 degrees Fahrenheit.

5 And then as was put on page 243 of your brief, we
6 also looked up when the sun set on that day, and the sun set
7 at 4:56 p.m.

8 JUDGE WAGONER: Okay. Thank you.

9 BY MS. GUICE SMITH:

10 Q. Was Sherry Honea interviewed by anyone else during
11 the initial investigation?

12 A. On March 1st, 1995, defense private investigators
13 went to speak with her. She was mostly unwilling to be
14 interviewed, but did maintain that Maybin had told her that
15 Spruill and Jones had committed the murder while Ms. Maybin
16 was present.

17 Q. And did Sherry Honea testify at trial?

18 A. No, she didn't.

19 Q. Was Sherry Honea interviewed by anyone else prior
20 to the Commission's involvement in the case?

21 A. No, she wasn't.

22 Q. And did the Commission interview Ms. Honea?

23 A. We did, in person, on March 28th, 2017.

24 Q. Was that interview recorded and transcribed?

25 A. It was.

1 MS. GUICE SMITH: Commissioners, you have Handout
2 62 in your Hearing Handout notebooks. It's a small portion
3 of the transcript of Ms. Honea's March 28th, 2017, interview
4 with the Commission. It starts on page 4, line 7, and goes
5 through page 16, line 15.

6 (Handout Number 62 was identified for the
7 record.)

8 (Pause in proceedings.)

9 JUDGE WAGONER: Okay.

10 BY MS. GUICE SMITH:

11 Q. Ms. Matoian, Sherry Honea stated in her interview
12 with Commission staff that she was bartending at Big Ed's
13 Bar on the night of the crime. Is there any indication from
14 any of the materials you've reviewed or other individuals
15 you have interviewed that Ms. Honea was bartending at Big
16 Ed's Bar on the night of the crime?

17 A. No. Ed Champ, Sr. stated that Lynn Rogers was the
18 bartender at the bar that night. No one else says that
19 Sherry Honea was tending bar that night or mentioned seeing
20 Sherry Honea at the bar that night. Anyone who does mention
21 the bartender names Lynn Rogers as that bartender, and that
22 was the first time that Ms. Honea had stated that she was at
23 the bar on the night of the crime.

24 Q. Ms. Honea also stated that she told Robert Spruiell
25 about what Dana Maybin told her. Did the Commission

1 interview Robert Spruiell?

2 A. No. We determined that he's deceased.

3 Q. Did the Commission do anything else with respect
4 to Ms. Honea?

5 A. We obtained a voluntary DNA sample from her on the
6 same day that she was interviewed.

7 Q. And did the Commission have Ms. Honea's DNA
8 compared to the unknown profiles from the crime scene?

9 A. We did, and she's excluded from all the comparable
10 profiles.

11 Q. Did the Commission have Ms. Honea's latent prints
12 compared to the unidentified identifiable latent prints from
13 the crime scene?

14 A. We did, and she was eliminated from all of those.

15 MS. GUICE SMITH: Commissioners, do you have
16 questions from Ms. Matoian about Ms. Honea?

17 COMMISSIONER BOSWELL: On the timeline in her
18 statement with the police, she gets there on April 24th. Is
19 that before any of the other interviews that are recorded as
20 far as Dana Maybin or any of the other people that -- that
21 were interviewed? Is this the first interview from law
22 enforcement we have record of?

23 THE WITNESS: Yes. Ms. Honea's interviewed by law
24 enforcement on April 24th, 1994. They then start looking
25 for Mr. Spruiell and Mr. Jones the same day, and then Dana

1 Maybin is interviewed for the first time the next day in
2 South Carolina.

3 COMMISSIONER BOSWELL: The 25th?

4 THE WITNESS: Yes.

5 COMMISSIONER BOSWELL: And it was after that that
6 -- that Lynn was also -- it was like a week or so after that
7 that she was interviewed.

8 THE WITNESS: Yes. She's first interviewed on May
9 3rd, 1994.

10 COMMISSIONER BOSWELL: Okay.

11 BY MS. GUICE SMITH:

12 Q. Ms. Matoian, were Mr. Spruiell or Mr. Jones
13 interviewed prior to that 4/24 date?

14 A. I apologize. Leroy Spruiell was interviewed
15 several times prior to Ms. Honea's statement.

16 Q. But in those interviews he didn't provide any
17 information similar to what Ms. Honea --

18 A. No.

19 Q. -- stated.

20 A. No.

21 MS. GUICE SMITH: Commissioners, Ms. Honea is --
22 currently lives in South Carolina, so we were unable to
23 subpoena her to be here. She has told us she would be
24 willing to call here with a phone, so if commissioners want
25 to hear from her tomorrow, if you can let me know, I will --

1 we will try to reach out to her if she is willing to speak
2 at that time.

3 JUDGE WAGONER: Anybody want to hear her?

4 COMMISSIONER GRACE: No, ma'am.

5 MS. GUICE SMITH: Okay.

6 JUDGE WAGONER: Anybody?

7 (No response.)

8 JUDGE WAGONER: Nope.

9 MS. GUICE SMITH: Okay. Great.

10 COMMISSIONER FRYE: Let me ask this.

11 MS. GUICE SMITH: Yes.

12 COMMISSIONER FRYE: Based on her interview with
13 you, is there any new or exciting evidence that she is going
14 to bring forth to shed light on something that's not here
15 already?

16 THE WITNESS: I don't know that I can provide an
17 opinion on that. She -- her statement had changed in the
18 Commission's interview from her initial law enforcement
19 interview where she said that Dana Maybin had told her about
20 the details about the murder around Christmas, which would
21 have been about a week after the murder.

22 In our interview, she said it was that same night.
23 She did still say that Dana Maybin had told her that she was
24 present during the murder and that Mr. Spruiell and Mr. Jones
25 had committed it.

1 JUDGE WAGONER: So probably it'd be a correct
2 assumption that her story would probably not be the same if
3 we talked to her tomorrow.

4 THE WITNESS: I don't know if --

5 JUDGE WAGONER: Since it's changed --

6 THE WITNESS: -- I can answer --

7 JUDGE WAGONER: -- already changed twice, so.

8 THE WITNESS: I don't know that I can answer that.

9 JUDGE WAGONER: Yeah.

10 MS. GUICE SMITH: Would you like me to keep going?

11 JUDGE WAGONER: Huh?

12 MS. GUICE SMITH: Would you like us to keep going?

13 JUDGE WAGONER: Keep going. Ten minutes.

14 BY MS. GUICE SMITH:

15 Q. Ms. Matoian, who is Nichole Mills?

16 A. Nichole Mills was in jail with Dana Maybin prior
17 to Ms. Maybin's plea, and she and Ms. Maybin discussed the
18 plea. At that time, Mills was being represented by Jim
19 Vosburgh on unrelated charges, and she was frequently in
20 touch with the defense attorneys for Mr. Spruill and
21 Mr. Jones about what Dana Maybin was telling her while they
22 were in jail.

23 MS. GUICE SMITH: Commissioners, information
24 related to Nichole Mills can be found on pages 141 and 162
25 of your brief. If you will refer to Handout 63 in your

1 Hearing Handout notebooks, Notebook 1, this is the summary
2 of Nichole Mills' criminal record. If you'll take a moment
3 to review that.

4 (Handout Number 63 was identified for the
5 record.)

6 JUDGE WAGONER: Let me just be sure. Are y'all
7 okay to go on with Ms. Mills right now?

8 (No audible response.)

9 (Pause in proceedings.)

10 JUDGE WAGONER: Okay.

11 MS. GUICE SMITH: I didn't know if anybody was
12 looking at that record.

13 JUDGE WAGONER: Has everybody had a chance to look
14 at her record? I think we can move on.

15 MS. GUICE SMITH: Okay.

16 BY MS. GUICE SMITH:

17 Q. Was Nichole Mills interviewed by law enforcement
18 during the initial investigation?

19 A. She was interviewed on January 24th, 1995, after
20 defense attorneys had contacted the District Attorney's
21 Office and told them that they should go interview her.

22 Q. Was she interviewed by anyone else during the
23 initial investigation?

24 A. She was in frequent contact with the defense
25 attorneys leading up to Mr. Jones's trial.

1 Q. Did she testify at Mr. Jones's trial?

2 A. No, she did not.

3 Q. Was she interviewed by anyone else prior to the
4 Commission's involvement in the case?

5 A. She was interviewed by Prisoner Legal Services on
6 May 5th, 1999, related to the conflict of interest issue
7 that was brought up at Mr. Jones's Motion for Appropriate
8 Relief.

9 Q. Did the Commission interview Ms. Mills?

10 A. We did, in person, on April 24th, 2017.

11 Q. And was it recorded and transcribed?

12 A. It was.

13 Q. And what did she tell the Commission about Dana
14 Maybin?

15 A. She said that she vaguely remembered Dana Maybin.
16 She remembered talking to law enforcement about a murder and
17 said that she did remember that, but that was all she
18 remembered. She attributed this to her drug use in prior
19 years. And she then began talking about her memory of Dana
20 Maybin.

21 MS. GUICE SMITH: Commissioners, Handout 64 in
22 your Hearing Handout notebooks is a portion of the
23 transcript of Nichole Mills' April 24th, 2017, interview
24 with the Commission.

25 (Handout Number 64 was identified for the

1 record.)

2 MS. GUI CE SMITH: It begins on --

3 (Commissioner Cover began coughing and left
4 the room.)

5 COMMISSIONER GRACE: Will we have to be at ease
6 for a few minutes?

7 JUDGE WAGONER: Huh?

8 COMMISSIONER GRACE: Will we have to be at ease
9 for a few minutes?

10 JUDGE WAGONER: Yes.

11 MS. GUI CE SMITH: We will have to be at ease for a
12 few minutes, but you-all can read that -- that handout,
13 though. 64.

14 (Pause in proceedings.)

15 COMMISSIONER BOSWELL: Handout 64, is Ms. Mills
16 talking about Ms. Maybin?

17 THE WITNESS: She is.

18 COMMISSIONER BOSWELL: Okay.

19 (Pause in proceedings.)

20 (Commissioner Cover returned.)

21 COMMISSIONER COVER: I'm sorry.

22 JUDGE WAGONER: Are you okay?

23 COMMISSIONER COVER: I'm okay.

24 JUDGE WAGONER: All righty, we will proceed.

25 MS. GUI CE SMITH: Yes, ma'am.

1 For the record, Commissioners, Handout 64 in the
2 Hearing Handout notebooks, Notebook 1, is a portion of the
3 transcript of Nichole Mills' April 24th, 2017, interview
4 with the commission. It begins on page 6, line 5, and goes
5 through page 8, line 15. I think you're all reviewing it
6 now. And if you have any questions for Ms. Matoian about
7 Ms. Mills, you may ask them now.

8 COMMISSIONER COVER: I have a question.

9 JUDGE WAGONER: Yes, ma'am.

10 COMMISSIONER COVER: This is just a matter of
11 ignorance. What are uttering forged instruments?

12 COMMISSIONER FRYE: Signing somebody else's name.

13 JUDGE WAGONER: Yeah.

14 COMMISSIONER GRACE: Uttering means to -- to --

15 COMMISSIONER FRYE: To pass it.

16 JUDGE WAGONER: Pass it.

17 COMMISSIONER FRYE: Forgery is writing the name.

18 Uttering is when you pass it.

19 JUDGE WAGONER: Like a check. I steal your check.
20 I write your name.

21 COMMISSIONER COVER: Okay.

22 JUDGE WAGONER: I give it to him. Okay.

23 (Pause in proceedings.)

24 COMMISSIONER BOSWELL: Can I ask a question while
25 people are reading? Do we have the audio of her -- of Dana

1 Maybi n' s deposi ti on?

2 THE WITNESS: The one that I took?

3 COMMISSIONER BOSWELL: Uh-huh.

4 THE WITNESS: We have audi o and vi sua l .

5 COMMISSIONER BOSWELL: We have audi o and vi deo of
6 it?

7 THE WITNESS: Uh-huh.

8 JUDGE WAGONER: How long is it?

9 THE WITNESS: It is about three and a half hours
10 long, I think.

11 COMMISSIONER BOSWELL: Do we have the ability to
12 -- if we wanted to look at just a portion of it, could we do
13 that?

14 MS. GUI CE SMITH: Yes.

15 THE WITNESS: I believe we can make that happen.

16 COMMISSIONER BOSWELL: Is that a -- is that a hard
17 thing to accomplish?

18 MS. GUI CE SMITH: No. If you tell us what portion
19 that you would like to see, we can do that, or if you're
20 just wanting --

21 COMMISSIONER BOSWELL: I don't know. We'll have
22 -- well --

23 JUDGE WAGONER: I think some of us probably would
24 like to see some of the -- some of the stuff she says and
25 how she says it, but --

1 COMMISSIONER BOSWELL: Right. That was sort of
2 the point. I mean, we -- we heard how she -- what -- what
3 she sounded like on -- on the audio that we listened to a
4 few minutes ago. It's hard to compare that to a written
5 page.

6 JUDGE WAGONER: Yep.

7 COMMISSIONER BOSWELL: I would be interested to
8 see what we think of her veracity.

9 MS. GUICE SMITH: If you want -- I mean, we can
10 certainly play it all, but if you want to narrow it to
11 particular portions, we have someone on staff who I think
12 can help us put that over the -- either on video -- we can
13 do the video since we've got the video.

14 COMMISSIONER BOSWELL: It would be easier. It
15 would be better.

16 MS. GUICE SMITH: And just cue it up in portions.

17 JUDGE WAGONER: I just think -- I don't know that
18 we want to see the three and a half hours, but she -- she
19 seems to be the strongest part of this case for the State,
20 whoever -- it's hard to gauge her veracity just by what we
21 can read and the few words we heard out there.

22 MS. GUICE SMITH: Okay.

23 ALT. COMMISSIONER NEWTON: May I ask a question,
24 please?

25 MS. GUICE SMITH: Yes.

1 ALT. COMMISSIONER NEWTON: Was it you, when you
2 were talking to her --

3 COMMISSIONER BARROW: "Her" being?

4 ALT. COMMISSIONER NEWTON: Oh, I'm sorry, I did
5 it, too, didn't I? Dana Maybin. She made the statement in
6 these materials, I believe in an interview, that her telling
7 two different stories was exactly the point. She wanted to
8 be an incompetent witness.

9 THE WITNESS: She did state that several times
10 during my deposition of her.

11 ALT. COMMISSIONER NEWTON: So it could have been
12 intentional on her part, however she learned that with her
13 record. She -- she may have been trying to just get out of
14 testifying altogether by telling two different stories.

15 THE WITNESS: Again, she indicated several times
16 in the deposition that she was trying to make herself an
17 incompetent witness.

18 JUDGE WAGONER: Let me ask a question because we
19 do have her deposition in here, yeah, in one of our books.
20 Does anybody want to -- if y'all have the whole thing, once
21 we tell you maybe what parts we want to see, that -- will
22 that take you long to put it together?

23 MS. GUICE SMITH: We can do it -- I -- if we had
24 overnight, I know we could get it done.

25 JUDGE WAGONER: Right.

1 MS. GUICE SMITH: If you're telling us in the
2 morning, I can certainly have a staff member devoted to
3 doing that. I'm not sure how long it will take him, but --

4 JUDGE WAGONER: Well, maybe if we're listening to
5 the other people --

6 (Ms. Matoian and Ms. Guice Smith conferred
7 while the judge spoke.)

8 JUDGE WAGONER: -- Mr. -- the claimants -- I don't
9 think it matters if it's out of order.

10 COMMISSIONER BARROW: I wonder if -- if that would
11 be something that -- I hate to put the extra burden on
12 Ms. Matoian. But, you know, usually when you take a
13 deposition, you know what's the good stuff and you know what
14 is the opposite. That if they could kind of choose for
15 us --

16 MS. GUICE SMITH: I'm going to --

17 COMMISSIONER BARROW: -- when she seemed to fall
18 apart and when she seemed to buck up and support --

19 MS. GUICE SMITH: We cannot do that. As a neutral
20 staff, we absolutely cannot make that determination.

21 COMMISSIONER BOSWELL: Right.

22 MS. GUICE SMITH: So I will not --

23 COMMISSIONER BARROW: Even if you --

24 MS. GUICE SMITH: -- be able to do that.

25 COMMISSIONER BARROW: -- give both sides?

1 MS. GUICE SMITH: That is not something we would
2 be able to do.

3 COMMISSIONER BARROW: So we'll have to tell you
4 what pages and what lines you want.

5 MS. GUICE SMITH: Yes. My understanding, the
6 staff member that -- we can -- we can try to cue it up. I
7 think it will be less efficient if you -- if we were to just
8 try to cue it up versus having the staff member who has some
9 technology background actually pull those pieces and get
10 them ready for us. I want to be efficient with your time.

11 JUDGE WAGONER: Sure.

12 MS. GUICE SMITH: He has a special program on his
13 computer at home. It is not something we have here in State
14 access.

15 JUDGE WAGONER: What if we tell him --

16 MS. GUICE SMITH: But if you --

17 JUDGE WAGONER: -- tomorrow morning when we get
18 here?

19 MS. GUICE SMITH: I will tell him to bring his
20 personal computer to work on that in the morning.

21 JUDGE WAGONER: Okay.

22 COMMISSIONER GRACE: Tell me exactly what -- what
23 he has the capability of doing.

24 MS. GUICE SMITH: He can pull it -- pull
25 particular portions so we can start and stop just the

1 portions that you're wanting as opposed to me trying to fast
2 forward to --

3 COMMISSIONER BOSWELL: Right.

4 MS. GUICE SMITH: -- where we need to find. So
5 he'll be able to --

6 JUDGE WAGONER: He's a whiz kid.

7 COMMISSIONER GRACE: Yeah, but there's always a
8 danger in -- in a piece of a deposition, a piece of a
9 statement.

10 MS. GUICE SMITH: We can play the whole thing. I
11 have no --

12 COMMISSIONER GRACE: Well, I'm not advocating --

13 MS. GUICE SMITH: -- problem playing the whole
14 thing.

15 COMMISSIONER GRACE: -- that either. I'm not
16 saying that.

17 JUDGE WAGONER: We can -- we can --

18 COMMISSIONER BOSWELL: Hold on Mike, now.

19 COMMISSIONER GRACE: I'm not. I'm not advocating
20 that.

21 MS. GUICE SMITH: We can send the whole thing home
22 with each of you tonight, and you can choose how much --

23 JUDGE WAGONER: Well, we have it --

24 MS. GUICE SMITH: -- or how little of it --

25 JUDGE WAGONER: -- in our book. Yeah. We have

1 the written deposition.

2 MS. GUICE SMITH: Well, I mean, the -- if you want
3 the video, I can send that home with you tonight.

4 JUDGE WAGONER: I think we have to watch it all
5 together. I believe that's against the rules as well. We
6 can't look at it separately. Well, no, we're not doing
7 that.

8 COMMISSIONER GRACE: I've read it.

9 JUDGE WAGONER: I guess we could look at it
10 tonight and come up with 30 minutes' worth, perhaps, or 45
11 minutes' worth. And it might be tomorrow morning we only
12 need to hear ten minutes. We'll see. But if we can maybe
13 start -- tomorrow we've got to finish. Do we have more from
14 her?

15 MS. GUICE SMITH: Yes. We have a good bit more
16 from Ms. Matoian about one other witness related to Dana
17 Maybin, and then Dana Maybin's statements herself. And then
18 after that we have the two co-defendants, Mr. Spruiell and
19 Mr. Jones, and there's some other individuals we'll talk
20 about related to them.

21 Our work related to the two co-defendants is
22 fairly small compared to some of the other stuff we've done
23 today. My intent is to get them on the witness stand, allow
24 you-all to ask most of the questions of them, as opposed to
25 me. I'll have just a few basic questions, but not like I

1 did with Mr. Wyatt Spruiell today. I'll allow you-all to ask
2 most of the questions of them. So how long that goes will
3 just be dependent on how many questions you-all have, which
4 I imagine you'll have a significant amount of questions.

5 JUDGE WAGONER: Okay. It's 25 to 7. I'm sort of
6 ready to call it a day, but --

7 COMMISSIONER GRACE: Why -- would you be -- can
8 you give us -- give us some guidance. How are we in
9 scheduling? Do you anticipate that if we break now, we can
10 get it done tomorrow? Do we need to go a little longer? Do
11 we need to come earlier?

12 MS. GUICE SMITH: Honestly, when I planned this
13 hearing out, I thought we would be done by lunchtime
14 tomorrow. I no longer believe that's the case. I believe
15 we will be pushing it to get done and to deliberations by
16 5:00 tomorrow. And that's just --

17 COMMISSIONER GRACE: No, that's what we need to
18 hear.

19 MS. GUICE SMITH: There's just a lot of questions
20 that need to be asked and answered. This case is a very
21 large case. It involves two co-defendants. We've got 20
22 boxes behind us of information that we've gone through and
23 that we've tried to put out for you-all in four days. So --
24 and your questions are good questions, and we want you to
25 continue asking them. But the reality is I think we've got

1 a completely full day tomorrow, and I -- I don't know that
2 we'll be done by 5:00 tomorrow.

3 JUDGE WAGONER: The sheriff has graciously
4 indicated he can at least probably stay a little bit Friday
5 morning if push comes to shove.

6 COMMISSIONER FRYE: If push comes to shove. Or we
7 can --

8 JUDGE WAGONER: I think push is coming to shove.

9 COMMISSIONER FRYE: -- depending on how -- how
10 late we can stay tomorrow night.

11 MS. GUICE SMITH: The staff is flexible. We are
12 here until you-all are ready to break for any night, and we
13 are available on Friday if it needs to go into Friday.

14 COMMISSIONER GRACE: May I suggest, Madam
15 Chairman, we plan to -- to break tomorrow evening at some
16 point, 5, 5:30, and come back --

17 JUDGE WAGONER: I think that's smarter.

18 COMMISSIONER GRACE: -- and work another period of
19 time?

20 JUDGE WAGONER: I would not want my fate to be
21 resting with people who are dying to get on the interstate
22 tomorrow night at 7:00.

23 COMMISSIONER BOSWELL: Well, can we push on
24 tonight some more and get some things done, or -- ?

25 JUDGE WAGONER: Okay. Jennifer has been -- I

1 think we've got to stop here. We're sort of --

2 COMMISSIONER BOSWELL: Okay.

3 JUDGE WAGONER: Some other people had plans
4 tonight, and they've already missed part of them. And we're
5 all going to go by the same rules, so we'll just stop now.
6 We can start tomorrow at 9. I do not -- I personally do not
7 think that we will get through with everything tomorrow. I
8 see no way. But whether we stay here 30 more minutes
9 tonight or an hour tomorrow night, it ain't gonna happen, I
10 don't think.

11 COMMISSIONER BOSWELL: I'm going to run into a
12 problem at 3:30 on Friday.

13 JUDGE WAGONER: We won't be here. If we're here
14 at 3:30, I think we'll have all have killed each other. So
15 don't worry about that.

16 COMMISSIONER BOSWELL: Okay.

17 JUDGE WAGONER: I mean, I'm supposed to -- well,
18 anyway.

19 COMMISSIONER GRACE: I've got some things in
20 Forsyth I'd love not to have to do Friday.

21 (Laughter.)

22 JUDGE WAGONER: I'll write you an excuse.

23 COMMISSIONER GRACE: That's all I need is a chance
24 to --

25 JUDGE WAGONER: All right.

1 COMMISSIONER GRACE: -- have an excuse.

2 JUDGE WAGONER: So, yes?

3 MS. GUICE SMITH: Can we go off the record?

4 JUDGE WAGONER: Sure.

5 COURT REPORTER: While you discuss scheduling?

6 JUDGE WAGONER: Yes.

7 (Pause in proceedings.)

8 MS. GUICE SMITH: I think we're done.

9 COMMISSIONER GRACE: Madam Chairman?

10 JUDGE WAGONER: We're done.

11 (An overnight recess was taken at 6:40 p.m.)

12

13 (CONTINUED IN VOLUME IV, PAGE 859.)

14

15

16

17

18

19

20

21

22

23

24

25

NORTH CAROLINA GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA	)	COUNTY OF WASHINGTON
)	
v.	)	94 CRS 1984
	)	94 CRS 1566
LEROY SPRUIELL,)	
)	
Defendant.)	
_____)	

STATE OF NORTH CAROLINA	)	COUNTY OF WASHINGTON
)	
v.	)	94 CRS 1973
	)	94 CRS 1565
WALLACE BRANDON JONES,)	
)	
Defendant.)	
_____)	

HEARING BEFORE THE
NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

VOLUME IV OF V

(Pages 859 - 1144)

Thursday, October 4, 2018

Wanda B. Constantino, CVR-CM-M
AOC-Approved Per Diem Reporter
1102 Driftwood Drive
Siler City, North Carolina 27344
919.548.4914
wanda@mywordservices.com

APPEARANCES

Commi ssi oners Present and Servi ng:

The Honorable Anna Mi l l s Wagoner, Chair

Ni gl e "Tex" Barrow, Esq. , Commi ssi oner

John Boswel l , Esq. , (Al ternate servi ng as Commi ssi oner)

Johnson Bri tt, Esq. , Commi ssi oner

Ms. Cami l l a Cover (Al ternate servi ng as Commi ssi oner)

Sheri ff Kevi n Frye, Commi ssi oner

Mi chael Grace, Esq. , Commi ssi oner

Ms. Jenni fer Thompson (Al ternate servi ng as
Commi ssi oner)

Al so Present:

Deborrah L. Newton, Esq. (Commi ssi oner servi ng
as Al ternate; present unti l 2:29 p.m.)

Li ndsey Gui ce Smi th, Esq.

North Caroli na Innocence Inqui ry Commi ssi on

Admi ni strati ve Offi ce of the Courts

Post Offi ce Box 2448

Ral ei gh, North Caroli na 27602

TABLE OF CONTENTS

	<u>PAGE</u>
Colloquy	864
<u>COMMISSION'S WITNESSES (Cont'd.)</u>	
Catherine Matoian (re-called)	
Direct exam. by Ms. Guice Smith	864, 874 896, 928
Examination by Commissioners	867, 890 910, 946
Examination by Alt. Comm. Newton	886
Brian Ziegler	
Examination by Ms. Guice Smith	949
Catherine Matoian (re-called)	
Examination by Alt. Commissioner Newton	956
Examination by Ms. Guice Smith	957
Colloquy	958
Clips of Dana Maybin's videotaped deposition were played	959
Colloquy	959
<u>COMMISSION'S WITNESSES (Cont'd.)</u>	
Wallace Brandon Jones	
Examination by Ms. Guice Smith	962
Examination by Commissioner Grace	973
Examination by Commissioner Thompson	974, 1029
Examination by Commissioner Boswell	976, 1025
Examination by Commissioner Frye	978, 1023 1030, 1036
Examination by Judge Wagoner	982, 1031 1034, 1036
Examination by Commissioner Britt	986, 1034
Examination by Alt. Comm. Newton	1007
Examination by Commissioner Barrow	1018

TABLE OF CONTENTS (Cont'd.)PAGECOMMISSION'S WITNESSES (Cont'd.)

Colloquy	1038
----------	------

Catherine Matoian (re-called)	
-------------------------------	--

Examination by Ms. Guice Smith	1040
--------------------------------	------

Leroy Spruiell	
----------------	--

Examination by Ms. Guice Smith	1050, 1123
--------------------------------	------------

Examination by Commissioner Frye	1063, 1110
----------------------------------	------------

Examination by Judge Wagoner	1068, 1109
------------------------------	------------

	1113, 1125
--	------------

Examination by Commissioner Cover	1072
-----------------------------------	------

Examination by Commissioner Grace	1072, 1099
-----------------------------------	------------

Examination by Alt. Comm. Thompson	1073
------------------------------------	------

Examination by Commissioner Boswell	1076, 1108
-------------------------------------	------------

	1121, 1125
--	------------

Examination by Commissioner Britt	1081, 1100
-----------------------------------	------------

Examination by Commissioner Barrow	1114
------------------------------------	------

Commissioners and Guice Smith	1127
-------------------------------	------

Colloquy	1129
----------	------

COMMISSION'S WITNESSES (Cont'd.)

Catherine Matoian (re-called)	
-------------------------------	--

Examination by Commissioners	1131
------------------------------	------

HANDOUTS

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE IDENTIFIED</u>
65	Jackie Craddock Criminal Record	865
66	Dana Maybin Criminal Record	871
67	Dana Maybin Statement Chart	871
68	Wallace Jones Criminal Record	939

TABLE OF CONTENTS (Cont' d.)HANDOUTS (Cont' d.)

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE IDENTIFIED</u>
72	Jones W. C. S. O. Polygraph Notes	970
73	Leroy Sprui II Criminal Record	1044
77	Leroy Sprui II - 1994 S. B. I. Interview	1055
100	Statements Regarding Birth of Victoria Furlough	960
101	N. C. State Bureau of Investigation Polygraph Report of Wallace Brandon Jones	1039
103	Letter to the North Carolina Innocence Inquiry Commission from "The Swain Family"	1130
104	Transcript of Plea of Leroy Sprui II	1143

1 PROCEEDINGS OF THURSDAY, OCTOBER 4, 2018:

2 (Proceedings resumed at 9:10 a.m.)

3 JUDGE WAGONER: Okay. Good morning, everyone.

4 Thank y'all for being here and for your attention. And we
5 will now proceed with?

6 MS. GUICE SMITH: The Commission will re-call
7 Catherine Matoian.

8 JUDGE WAGONER: Okay. And Ms. Matoian, since it's
9 a new day, would you be sworn again, please, ma'am?

10 CATHERINE MATOIAN

11 having been re-called as a witness for the Commission, was
12 sworn by Judge Wagoner and testified as follows:

13 JUDGE WAGONER: You may be seated.

14 EXAMINATION BY MS. GUICE SMITH:

15 Q. Good morning.

16 A. Good morning.

17 Q. Who is Jackie Craddock?

18 A. Jackie Craddock was also in jail with Dana Maybin
19 prior to her plea. She was being represented by
20 Mr. Spruiell's attorney, Seth Edwards, on unrelated charges.
21 She's mentioned in Nichole Mills' S.B.I. interview and in
22 Mills' handwritten statement as hear -- as being someone who
23 also heard the things that Ms. Maybin was saying.

24 MS. GUICE SMITH: Commissioners, if you will refer
25 to Handout 65 in your Hearing Handout Notebook, this is a

1 summary of Jackie Craddock's criminal record.

2 (Handout Number 65 was identified for the
3 record.)

4 BY MS. GUICE SMITH:

5 Q. Ms. Matoian, was Jackie Craddock interviewed by
6 anyone during the initial investigation?

7 A. No, she wasn't.

8 Q. Was she interviewed by anyone prior to the
9 Commission's involvement in the case?

10 A. She was. She was interviewed by the North
11 Carolina Center on Actual Innocence on September 30th, 2009,
12 and she told the Center that she was in prison with
13 Ms. Maybin and Ms. Mills, and that Ms. Maybin had told her
14 and Nichole Mills that her boyfriend killed a man and then
15 threatened to kill her, meaning Ms. Maybin, if she didn't go
16 along with framing Mr. Spruiell and Mr. Jones. Ms. Craddock
17 stated that the boyfriend was a mean SOB, but she could not
18 remember his name. She said that he was jealous about
19 Ms. Maybin's prior relationship with Mr. Jones and her
20 growing relationship with Mr. Spruiell.

21 Ms. Craddock also stated that she told her
22 attorney Seth Edwards about this at the time, but doesn't --
23 didn't know if Jim Vosburgh knew about her.

24 Q. And did the Commission interview Ms. Craddock?

25 A. We did, in person, on April 4th, 2017.

1 Q. And was that interview recorded and transcribed?

2 A. It was.

3 Q. What did she tell the Commission?

4 A. When asked if she remembered Dana Maybin, she did
5 not initially remember her. When I began to describe
6 Ms. Maybin, Ms. Craddock then independently remembered
7 Ms. Maybin's connection to Leroy Spruiell.

8 Ms. Craddock said that Mr. Spruiell and Mr. Jones
9 did not commit the crime and that it was the boyfriend of
10 Ms. Maybin. She said that Ms. Maybin had told her and
11 Nichole Mills that her boyfriend had done it.

12 And Ms. Craddock also stated that Maybin had
13 stayed in the car. Her boyfriend had gone inside to get
14 drugs, and when the victim would not sell him drugs on
15 credit, he beat the victim up and stabbed him about seven
16 times. After that, he had Ms. Maybin go inside the victim's
17 house with him to make it look like there had been two
18 people in there.

19 When asked if she -- if Ms. Maybin had mentioned
20 Leroy Spruiell by name, Ms. Craddock stated that Ms. Maybin
21 had mentioned both Mr. Spruiell and Mr. Jones and said that
22 they did not do it and that they were at the bar the whole
23 time.

24 Ms. Craddock stated that Ms. Maybin and her
25 boyfriend had been at the bar prior to going to the victim's

1 home and had seen Mr. Spruiell and Mr. Jones there. She
2 stated that the boyfriend got mad because Leroy, quote, "and
3 them," quote, "wouldn't give him no money to buy drugs."
4 She --

5 JUDGE WAGONER: I'm sorry, which boyfriend?

6 THE WITNESS: The boyfriend that Jackie Craddock
7 said Ms. Maybin had actually killed the victim.

8 JUDGE WAGONER: Okay.

9 COMMISSIONER BRITT: Did she name him?

10 THE WITNESS: She did not know what his name was.
11 She confirmed that Ms. Maybin told her that Ms. Maybin's
12 boyfriend had told Ms. Maybin to say that Mr. Spruiell and
13 Mr. Jones had committed the crime.

14 MS. GUICE SMITH: Commissioners, do you have any
15 other questions for Ms. Matoian?

16 JUDGE WAGONER: The date of this interview that
17 you had with her was when?

18 THE WITNESS: I interviewed her on April 4th,
19 2017.

20 COMMISSIONER GRACE: And the other -- the previous
21 interview?

22 THE WITNESS: That was on September 30th, 2009.

23 JUDGE WAGONER: I'm just curious, the 2009
24 interview --

25 COMMISSIONER BRITT: That was by the Center.

1 JUDGE WAGONER: By the Center.

2 THE WITNESS: Yes.

3 JUDGE WAGONER: What did she say Ms. Maybin had
4 told her then?

5 THE WITNESS: In that 2009 interview, she had
6 indicated that she was in prison with Ms. Maybin and
7 Ms. Mills, and she said that Ms. Maybin had told both of
8 them, meaning Jackie Craddock and Nichole Mills, that her
9 boyfriend had killed a man and threatened to kill Ms. Maybin
10 if she didn't -- didn't go along with framing Mr. Spruiell
11 and Mr. Jones for that murder.

12 And she couldn't remember his name in that
13 interview either but did indicate that this boyfriend was
14 jealous of Ms. Maybin's prior relationship with Jones and
15 her growing relationship with Mr. Spruiell.

16 JUDGE WAGONER: So it's basically the same story,
17 sort of --

18 THE WITNESS: She was --

19 JUDGE WAGONER: -- in '09 as it was in '17.

20 THE WITNESS: She was consistent in that she said
21 Ms. Maybin had a boyfriend who had actually committed the
22 murder, and that -- and who had forced her to frame
23 Mr. Spruiell and Mr. Jones.

24 COMMISSIONER GRACE: Where -- where was she from?

25 THE WITNESS: She was from, I believe, the

1 Beaufort County area. She does -- she did indicate during
2 my interview that she knew Mr. Spruiell's family.

3 COMMISSIONER GRACE: She --

4 COMMISSIONER BRITT: Were you --

5 COMMISSIONER GRACE: Go ahead.

6 THE WITNESS: I'm sorry. Leroy Spruiell's family.

7 COMMISSIONER BRITT: Were you ever able to
8 identify this boyfriend?

9 THE WITNESS: No. We did know that Ms. Maybin had
10 dated a few other people during the time that she was in
11 Plymouth. We did go to a man named Edward Fields and
12 collect a DNA sample from him, as he had dated Dana Maybin
13 and there had been some mention of him in some interviews.

14 JUDGE WAGONER: Do you have other questions?

15 COMMISSIONER GRACE: Any information connecting
16 Dana Maybin and this Ms. Craddock before they were in prison
17 together?

18 THE WITNESS: No. She had indicated that she met
19 her while they were in jail.

20 COMMISSIONER GRACE: Jail or prison?

21 THE WITNESS: She said prison in her interview
22 with the North Carolina Center on Actual Innocence.
23 However, because she mentioned Ms. Mills, Ms. Mills and
24 Ms. Maybin were only in the Beaufort County Jail together,
25 and that's where Jackie Craddock was at the time.

1 ALT. COMMISSIONER NEWTON: Was Fields' standard
2 compared against the tire iron and the other unknown DNA?

3 THE WITNESS: It was, and he was excluded.

4 JUDGE WAGONER: Were all of -- all of Dana
5 Maybin's boyfriends, or whatever you call them, that we're
6 aware of, were they all tested, the DNA?

7 THE WITNESS: The only one we got a standard for
8 was Edward Fields as he was the one who was mentioned most
9 frequently.

10 JUDGE WAGONER: Is he the one whose name is
11 Beaver?

12 THE WITNESS: Beaver, that's correct.

13 JUDGE WAGONER: Okay.

14 MS. GUICE SMITH: Commissioners, you have been
15 provided a large amount of information about Dana Maybin in
16 your brief. Because you have already been provided and read
17 all of those statements, Ms. Matoian's testimony will touch
18 on those, but we're not going to walk through in detail
19 every single one. Our intent here is just to summarize
20 Ms. Maybin's various statements for the reported record.

21 You can, of course, refer at any time to your
22 brief for the details of each statement. You can ask
23 Ms. Matoian any questions you have about the information
24 that you've already read when we get -- get through this
25 series of questions or at any time as we're going through

1 them.

2 COMMISSIONER BOSWELL: Is there a summary of all
3 the various statements that -- I know there is somewhere.
4 Where is that in the brief?

5 MS. GUICE SMITH: Yes. It's actually also going
6 to be Handout 67.

7 COMMISSIONER BOSWELL: Okay.

8 MS. GUICE SMITH: So Handout 66 of your Hearing
9 Handout Notebooks is going to be Dana Maybin's statement --
10 I'm sorry, Dana Maybin's criminal record. Handout 67 is
11 going to be the Dana Maybin time line of statements. That's
12 going to include also the letters and journal entries that
13 we have.

14 COMMISSIONER BOSWELL: Great.

15 (Handout Numbers 66 and 67 were identified for
16 the record.)

17 MS. GUICE SMITH: The only difference between this
18 handout and what was in your brief is that we've actually
19 added page numbers for either where that document was
20 discussed in the brief or was actually provided in your
21 brief so you'll be able to see as we go through which pages
22 will correspond to what we're talking about here. And the
23 way that I intend to walk Ms. Matoian through this is to go
24 kind of through this document chronologically. So you
25 should just be able to follow along.

1 COMMISSIONER BOSWELL: Thank you.

2 COMMISSIONER BRITT: Before we do that, can
3 Ms. Matoian go back and describe Ms. Craddock's conversation
4 with Ms. Maybin about the manner in which the victim was
5 killed?

6 THE WITNESS: Yes. Ms. Craddock said that
7 Ms. Maybin told her that she had stayed in the car, that the
8 boyfriend had gone inside to get drugs, and when the victim
9 would not sell him drugs on credit that he beat the victim
10 up and stabbed him about seven times. And then after that
11 he had Ms. Maybin go inside with him to make the house look
12 like there were two people in there.

13 COMMISSIONER BRITT: And let me just ask this
14 question. It kind of goes into where we are with
15 Ms. Maybin. At any -- in any other statement accredited to
16 Ms. Maybin, did the individual say that the victim had been
17 beaten -- beaten up and stabbed?

18 THE WITNESS: (Addressing staff.) Can I get a
19 copy of the chart? The chart.

20 (Conferring with staff.)

21 THE WITNESS: Give me just one moment.

22 COMMISSIONER BRITT: Sure.

23 THE WITNESS: (Reviewing documents.) In
24 Ms. Maybin's statements to Nichole Mills about the crime,
25 she indicated that she was not involved at all and that she

1 had made the whole thing up about Mr. Spruiell and Jones. So
2 she did not -- Ms. Craddock's statement is not consistent
3 with what Ms. Mills is saying that Ms. Maybin was telling
4 them in jail. And in Ms. Maybin's statements and in her
5 trial testimony, she does not ever describe seeing the
6 victim being beaten.

7 COMMISSIONER BRITT: And the last question
8 regarding Ms. Craddock: You said that Ms. Craddock knew
9 Leroy Spruiell or -- or his family?

10 THE WITNESS: (Reviewing documents.) I'm just
11 checking her interview for what she said specifically.

12 (Pause in proceedings.)

13 THE WITNESS: Ms. Craddock said, quote:

14 "And I know Leroy all my life, and Leroy might
15 be a -- get messed up on drugs at times when he
16 was younger days and get drunk, and he might get
17 in a fight with you, but Leroy is a good-hearted
18 person and I -- "

19 And then I said, "Okay." And then Ms. Craddock
20 continued:

21 "And I don't know that much about Brandon
22 Jones. I might know him if I see him, but name-
23 wise it didn't ring a bell."

24 COMMISSIONER BRITT: Thank you.

25 JUDGE WAGONER: Further questions at this point?

1 (No response.)

2 JUDGE WAGONER: Okay. You may continue, please.

3 CONTINUATION OF EXAMINATION BY MS. GUICE SMITH:

4 Q. Ms. Matoian, if you can walk through Ms. Maybin's
5 statements. Let's begin with the initial statement to law
6 enforcement. What did Ms. Maybin tell law enforcement prior
7 to her arrest?

8 A. Ms. Maybin was first interviewed by law
9 enforcement on April 25th, 1994, after Sherry Honea's April
10 24th, 1994, interview in which Sherry Honea told law
11 enforcement that Dana Maybin had told her she was present
12 when the crime was committed.

13 And during this first interview with law
14 enforcement, Dana Maybin had stated that she was at Big Ed's
15 Bar and that Mr. Spruill, Mr. Jones, and Curtis Furlough had
16 left Big Ed's Bar in Mr. Furlough's truck. When they
17 returned, Mr. Jones had a knife, and Mr. Spruill had changed
18 his clothes. She also stated that Mr. Jones had mentioned
19 killing the crack man.

20 During that interview, Ms. Maybin agreed to record
21 conversations with respect to the crime with other people,
22 and then on April 28th, 1994, she went to the sheriff's
23 office in her county in South Carolina and attempted a
24 recorded phone call to Curtis Furlough. However, no one
25 answered the phone.

1 On May 3rd, 1994, Ms. Maybin faxed a letter from
2 the Oconee County Sheriff's Office to the Washington County
3 Sheriff's Office where she said she lied in her interview
4 and that she was at the bar with Mr. Spruill and Mr. Jones
5 the entire night of the murder.

6 Ms. Maybin was interviewed by law enforcement
7 again on June 25th, 1994, where she was interviewed twice
8 and given two polygraph exams in between the two interviews.
9 In her first interview that day, she again implicated
10 Mr. Spruill, Mr. Jones, and Curtis Furlough. She then
11 agreed to take the polygraph.

12 According to the polygraph report, during the
13 first exam she denied any involvement in the crime but said
14 she suspected Mr. Spruill and Mr. Jones of committing it.
15 The examiner told Ms. Maybin that she failed the polygraph,
16 and Ms. Maybin then said she would tell the deputies who was
17 involved.

18 She was polygraphed again, and those results were
19 inconclusive. Ms. Maybin was interviewed again after the
20 second polygraph exam and then told law enforcement that she
21 was present when Mr. Spruill and Mr. Jones murdered the
22 victim. She also said that they went back to Spruill's
23 house -- Mr. Spruill's house after the murder, and she
24 stayed there the rest of the night, and Mr. Spruill and
25 Mr. Jones left for a period of time.

1 Q. In this interview, what did Ms. Maybin say
2 specifically regarding what she saw as it relates to the
3 murder of the victim?

4 JUDGE WAGONER: Which -- what date is this now?

5 THE WITNESS: This is June 25th, 1994.

6 A. Ms. Maybin said, quote -- or I'm sorry, the report
7 says, quote:

8 "Said she thought someone may have heard
9 Robert. Said she opened the door, and she saw
10 Frank was about five or six feet from the door
11 laying on the floor. Said Leroy was holding
12 Frank's arm and Robert had one of his arms around
13 the back of Frank's neck and had one hand on the
14 top of Frank's head holding his head backwards.
15 Said she started to leave and Robert looked up and
16 she heard Frank say, 'Help.'

17 "Said when she first saw Robert, Robert had
18 blood on his face, mostly around his nose and
19 mouth. Said after hearing Frank calling for help,
20 walked a couple of steps towards them, and she saw
21 Leroy turn loose of Frank's arms, and held Frank's
22 head, and Robert cut his throat. Stated she heard
23 a gurgling sound, and Frank's body began shaking
24 all around like a chicken when the head has been
25 cut off. Said she didn't see the knife, but

1 Robert may have had the knife behind Frank's
2 back," end quote.

3 BY MS. GUICE SMITH:

4 Q. What did Ms. Maybin tell law enforcement on
5 December 15th, 1994, the day she is transported from South
6 Carolina to North Carolina after being arrested?

7 A. Ms. Maybin again told law enforcement that she had
8 been present when Mr. Spruill and Mr. Jones had killed the
9 victim, but then said that all three had gone back to Big
10 Ed's Bar after the murder.

11 Q. And in this interview, what did Ms. Maybin say
12 specifically regarding what she saw as it relates to the
13 murder of the victim?

14 A. In this report, it states, quote:

15 "Ms. Maybin stated that she then went to the
16 door of the trailer. Ms. Maybin stated that the
17 door was slightly cracked open like it was not
18 shut all the way. Ms. Maybin stated that she saw
19 Frank Swain by the couch, and he looked like he
20 was hurt. Ms. Maybin stated that Leroy Spruill
21 and Robert Solis looked up at her and looked very
22 surprised at seeing her at the door.

23 "Ms. Maybin stated that Robert Solis said
24 something hateful to her, and she remembers him
25 saying the word 'bitch.' Ms. Maybin stated that

1 she knows Robert Solis was telling her to leave,
2 and at that very same time Frank Swain said quote,
3 'Help me,' end quote, and held out his hand to
4 her."

5 Q. Can you tell the commissioners about Dana Maybin's
6 journal entries and letters?

7 JUDGE WAGONER: May I ask a question? This
8 previous statement that you were just telling us about, that
9 was given when she was being transported from South
10 Carolina?

11 THE WITNESS: That's correct.

12 JUDGE WAGONER: And is that when Janice Spruiell
13 and Mr. Williams, were they transporting -- who -- who was
14 transporting her?

15 THE WITNESS: The S.B.I. report indicates that it
16 was special agent Donnie Varnell and Deputy Janice Spruiell.
17 Janice Spruiell and Willie Williams had gone down for the
18 June 25th, 1994, interview, and her April 24th interview was
19 Special Agent Donnie Varnell and another special agent with
20 the last name Parrish.

21 JUDGE WAGONER: This interview in the automobile
22 was not tape-recorded. It was just somebody taking notes?

23 THE WITNESS: The Commission has never received
24 any recordings of any interviews or --

25 Other than the Maynard Harrell one that you guys

1 I listened to yesterday, the Commission has no law enforcement
2 interview audio.

3 JUDGE WAGONER: So do we know if law enforcement
4 was questioning her or these were just voluntary statements
5 that just came out?

6 THE WITNESS: Okay. The report just says:

7 "Interviewed Thursday, December 15th, 1994, at
8 10:20 a.m. en route to Plymouth, North Carolina
9 from Walhalla, South Carolina by S.A. Varnell and
10 Deputy Janice Spruiell of the Washington County
11 Sheriff's Office."

12 JUDGE WAGONER: Okay. Thank you.

13 COMMISSIONER BRITT: And she had been -- had she
14 been taken into custody?

15 THE WITNESS: She had been arrested in South
16 Carolina on December 10th, 1994, and they picked her up on
17 this day to take her back to North Carolina.

18 BY MS. GUICE SMITH:

19 Q. And can you tell the commissioners about
20 Ms. Maybin's journal entries and letters?

21 A. Ms. Maybin kept a journal while she was in jail
22 awaiting trial, and during this time she also began
23 exchanging letters with Nichole Mills and others.

24 Initially, her journal entries include one the day
25 after Mr. Spruiell's probable cause hearing in which she

1 writes that she only saw a man get killed but didn't kill
2 him. In another journal entry the day after Mr. Jones's
3 probable cause hearing, she writes that she looks stupid
4 because Mr. Spruill and Mr. Jones were denying everything.

5 And then two days after that journal entry, she
6 begins writing letters and journal entries that indicate
7 that she had lied about her, Mr. Spruill, and Mr. Jones's
8 involvement in the murder. At least one entry references
9 the fact that she had lied for the reward money and to get
10 back at Mr. Jones for hurting her.

11 Q. Can you tell the commissioners about any
12 additional statements that were made by Ms. Maybin prior to
13 Mr. Jones's trial?

14 A. At Ms. Maybin's first probable cause hearing, her
15 attorney, Regina Moore, requested a continuance based on a
16 letter that Ms. Maybin had written indicating that she was
17 recanting her statements to police. After this,
18 Investigator Willie Williams interviewed Ms. Maybin at which
19 time she told him that she was wrong to write the letter and
20 that it was wrong what they had done.

21 On January 19th, 1995, Seth Edwards wrote to
22 Maynard Harrell regarding information provided by Nichole
23 Mills about Ms. Maybin. Ms. Maybin had told Nichole Mills
24 she was not involved in any way. Ms. Maybin had also told
25 Nichole Mills that, quote, "A female named Sherry," end

1 quote, made up the lie about the murder because of something
2 Mr. Jones had done to Sherry. And Edwards asked Ms. Mills
3 to look at Ms. Maybin's journal.

4 On February 8th, 1995, Ms. Maybin met with
5 Assistant District Attorney Hensley and Special Agent --

6 JUDGE WAGONER: Can I ask just one question?

7 THE WITNESS: Uh-huh.

8 JUDGE WAGONER: Is it a typo? Should it be at the
9 bottom that Edwards asked Mills to look at the journal, or
10 should it be Edwards asked Maynard to look at the -- ?

11 THE WITNESS: Mr. Edwards said he had asked
12 Ms. Mills to look at Ms. Maybin's journal while they were in
13 jail together.

14 JUDGE WAGONER: Okay. Okay.

15 A. On February 8th, 1995, Ms. Maybin met with
16 Assistant District Attorney Hensley and Special Agent
17 Inscoe, and Ms. Maybin told them she was going to testify
18 truthfully for the State about what she did and saw during
19 the murder.

20 On February 9th, 1995, Attorney Vosburgh reviewed
21 notes that Nichole Mills had provided to him that Ms. Mills
22 stated had been written by Dana Maybin. The notes indicated
23 that Ms. Maybin had a meeting with law enforcement and D.A.
24 Norton where Norton was angry with her. The notes indicate
25 that they told her that she would be left, quote, "Holding

1 the bag," end quote, if she changed her story now, and that
2 it was best for her to stick to her story and not change it
3 all the time.

4 On March 7th or March 8th, 1995, Attorneys
5 Vosburgh and Harrell interviewed Maybin in Women's Prison
6 for the first time to find out what her testimony will be.
7 Although there is no report of this interview, testimony by
8 Maynard Harrell indicated that the substance of that
9 interview was the same as his recorded conversation with her
10 from March 10th, 1995.

11 As you listened to yesterday, on March 10th, 1995,
12 Maynard Harrell interviewed Dana Maybin and recorded that
13 interview, and in that interview she told Mr. Harrell that
14 Mr. Spruiell and Mr. Jones had nothing to do with the murder
15 of Frank Swain and also said that she had been given
16 information and details about the crime from law
17 enforcement.

18 MS. GUICE SMITH: And Commissioners, just as a
19 point of clarification, yesterday you did hear that
20 interview between Maynard Harrell and Dana Maybin. As we
21 pointed out on page 244 of your brief, that was introduced
22 at trial as Defense Exhibit 1.

23 BY MS. GUICE SMITH:

24 Q. What else -- what other statements were made by
25 Dana Maybin prior to Mr. Jones's trial?

1 A. On August 20th, 1995, Attorneys Harrell, Charles
2 Ogletree, and Regina Moore -- Mr. Ogletree and Ms. Moore
3 were Ms. Maybin's attorneys -- met with Dana Maybin at the
4 courthouse and conducted a direct and cross-examination of
5 her.

6 According to Maynard Harrell, her statements were
7 compatible with what she had said in her recorded statement,
8 and there's no written documentation of the substance of
9 this meeting. Mr. Harrell did testify to its occurrence
10 both during Mr. Jones's trial and during his Motion for
11 Appropriate Relief hearing.

12 And then on August 21st, 1995, Ms. Maybin pled
13 guilty.

14 Q. Can you tell the commissioners about Ms. Maybin's
15 testimony at Mr. Jones's trial?

16 A. Ms. Maybin testified that she was present when
17 Mr. Spruiell and Mr. Jones had committed the murder and that
18 they then returned to Big Ed's Bar after the murder. And
19 her testimony -- she initially says that they had gone to
20 the victim's house a first time that night and then went
21 directly to the bar in Mr. Spruiell's dad's truck. She later
22 says on cross-examination that she was not sure how they got
23 to the bar the first time they went, and she wasn't sure if
24 Ray Hurst had taken them.

25 MS. GUICE SMITH: Commissioners, as a reminder, we

1 provided you-all with Ms. Maybin's testimony from trial
2 earlier this week.

3 Commissioners, if you will please refer back to
4 Handout 1 in your Hearing Handout Notebooks, that is the map
5 of the Plymouth and Roper area. I'm putting it on the
6 screen, and also Ms. Matoian is going to put the poster of
7 it on the easel as well.

8 JUDGE WAGONER: Handout 1 in Volume 1 notebook?

9 MS. GUICE SMITH: Handout 1, Volume 1.

10 JUDGE WAGONER: Yeah.

11 BY MS. GUICE SMITH:

12 Q. Ms. Matoian, can you please show the commissioners
13 on the map the two routes described by Dana Maybin in her
14 testimony?

15 A. Ms. Maybin indicated that they -- in the first
16 scenario where she would -- they would have gone directly
17 from the victim's house that first time to the bar the first
18 time in Mr. Spruiell's dad's truck: If you follow
19 Ms. Maybin's description of the crime, they would have
20 driven from Big Ed's Bar, stopped at the Red Apple, which
21 was about .4 miles away.

22 COMMISSIONER BRITT: Is that at Plume Street?

23 THE WITNESS: Plume street, that's correct.

24 A. And then driven 3.6 miles to Folly Road where the
25 victim's home was. After that, they would have driven 3.1

1 miles back to Ed Champ's residence for Mr. Jones to get
2 clothes, and then returned driving -- I don't know how many
3 miles are in between Jack Spruiell's house -- they would have
4 returned to Leroy Spruiell's residence where they showered,
5 changed clothes, and burned their clothes.

6 Ms. Maybin then indicated that Mr. Spruiell left to
7 return his car to his dad's house, which is 1.3 miles away
8 and that Mr. Spruiell would have had to walk back to
9 Mr. Spruiell's house, and they then walked back to Big Ed's
10 Bar.

11 In the second scenario where she indicated that
12 she was not sure how they got to the bar the first time or
13 if Ray Hurst had given them a ride, they would have been at
14 the bar, and they would have either had to walk to Leroy
15 Spruiell's house if his dad's truck was there, or Jack
16 Spruiell's house if his dad's truck was there. Again, going
17 back to the victim's house, back to Ed Champ's house, then
18 back to Leroy's house to shower, change, and burn their
19 clothing. And then Leroy Spruiell would have returned the
20 car to his dad's house and then gone the 1.3 miles back to
21 his house where they then returned to the bar.

22 COMMISSIONER THOMPSON: How far is Leroy's house
23 from the bar?

24 THE WITNESS: His house is about .4 miles away
25 from the bar.

1 JUDGE WAGONER: And the victim's house is, again,
2 how far from the bar?

3 THE WITNESS: The map indicates it's 3.6 miles.

4 MS. GUICE SMITH: Do you have any additional
5 questions for Ms. Matoian about the map?

6 COMMISSIONER GRACE: Tell us which -- you've given
7 us the first and second statement. Tell us when they were
8 made and which -- what testimony or which statement she
9 made.

10 THE WITNESS: In her direct examination, she said
11 that they had gone directly from the victim's house the
12 first time to the bar. On cross, she says that she was not
13 sure how they had gotten to the bar the first time and said
14 she was not sure if Ray Hurst had given them a ride to the
15 bar or not.

16 JUDGE WAGONER: And the second statement -- oh,
17 that is the second statement --

18 THE WITNESS: Correct.

19 JUDGE WAGONER: -- on cross.

20 EXAMINATION BY ALT. COMMISSIONER NEWTON:

21 Q. May I circle back with one question --

22 A. Sure.

23 Q. -- while you're doing that?

24 You were talking about Dana Maybin's various
25 statements. She was in custody on August 20th of '95 when

1 Harrell and the other lawyer did a cross and direct of her
2 in the courtroom? I assume that was a mock cross/direct
3 getting her ready for her testimony?

4 A. That's what Maynard -- Maynard Harrell indicated
5 in his testimony, that they had done a direct and
6 cross-examination of her during that meeting.

7 Q. So she's in custody, and they were able to take
8 her to the courtroom with her lawyer, Regina Moore, and
9 prepare for court the next day?

10 A. He doesn't say that directly. I -- I -- you could
11 assume that.

12 Q. But she was in custody.

13 A. She was in custody. She was in custody from the
14 time that she was arrested. She was initially at the
15 Beaufort County Jail. She's later moved to Women's Prison
16 in Raleigh as a safe keeper. I don't know if they had
17 brought her back to Washington County in anticipation of
18 some kind of hearing in the case or not, but we do know that
19 she was in the Beaufort County Jail and in Women's Prison.

20 Q. And that was the Sunday before Jones's trial was
21 to start. That's what the notes say, correct?

22 A. Yes.

23 Q. Okay. And that -- that was Ogletree and staff.
24 And then she -- the next day she pled guilty.

25 A. Uh-huh.

1 Q. Did the Commission find out that anyone else took
2 her out of the jail and visited her after they did that
3 apparently in-court prep session while she was in custody?

4 A. The Commission has not been able to determine if
5 there -- or has no record of any additional meetings
6 happening with Ms. Maybin after that. Ms. Maybin declined
7 to waive her attorney-client privilege for Attorneys
8 Ogletree and Moore, so we were not able to see what they
9 remembered about that, but we have no record of any meetings
10 with Dana Maybin after that.

11 Q. I'm sorry. Maybin had privilege with Ogletree?
12 Oh, yeah, he's one of his -- he's the other attorney there.

13 A. Uh-huh.

14 Q. And Moore was Regina Moore.

15 A. Yes.

16 Q. So they were there when -- when -- when Maynard
17 was doing that apparently mock cross and direct, and then
18 the next day she pled guilty.

19 A. That's correct.

20 Q. So that's a sea change. He was expecting one
21 thing, and the next day she entered a guilty plea,
22 completely different. Do I have that right?

23 A. Mr. Vosburgh did indicate, I think, at his
24 testimony at the Motion for Appropriate Relief that they
25 were --

1 COMMISSIONER FRYE: Shocked?

2 BY ALT. COMMISSIONER NEWTON:

3 Q. Shocked. Yeah, that's what I would -- shocked.
4 So we don't know if anyone had access to her, law
5 enforcement, the night before after -- to affect that
6 result?

7 A. We don't have any record of any additional
8 meetings with Ms. Maybin on that day.

9 Q. And specifically the Commission asked her to waive
10 privilege with Regina Moore or Ogletree, and she
11 specifically refused to allow that in order to get that
12 information.

13 A. During my deposition of Ms. Maybin, I had asked
14 her about that. She initially agreed to sign the waivers,
15 and then after the deposition was over, she became concerned
16 about her personal information being released to the
17 Commission and said she wanted to talk to the two attorneys.
18 I provided contact information that I had for both
19 Mr. Ogletree and Ms. Moore.

20 And the Commission followed up with Ms. Maybin
21 multiple times after that to see if she had spoken to them
22 or would still agree to waive her privilege with regard to
23 those two attorneys, and she did not respond to any of those
24 requests.

25 ALT. COMMISSIONER NEWTON: Thank you.

1 JUDGE WAGONER: Yes, ma'am, Ms. Cover?

2 COMMISSIONER COVER: I want to go back to this
3 diagram. So they're in a vehicle on Folly Road when this
4 murder occurred, and they -- they get out of the vehicle at
5 Ed's to get clothes, and then they go back to Leroy's house
6 to wash up.

7 They're getting out bloody, or somebody is getting
8 out bloody. Do they know nobody's at home at Ed's? I mean,
9 what -- I don't understand -- this just seems very precarious --
10 a precarious story. You -- you're bloody. You're getting
11 clothes. Is there vegetation around Leroy's house so you
12 can get out? I mean, do you know anything about what's
13 around Leroy's house?

14 THE WITNESS: No, we don't. There are no pictures
15 in the file of Mr. Spruill's house from around the time of
16 the murder. Ed Champ's residence is where Wallace Brandon
17 Jones was living at the time. They stopped there to get
18 clothes. I know some members of the Champ family were at
19 the bar. Gail Champ has indicated in interviews that the
20 Bobby Spruill that Lynn Rogers was talking about yesterday
21 was babysitting her children. They also lived on Ed Champ,
22 Sr.'s property. And then they returned to Leroy's house,
23 and Leroy Spruill lived alone at the time.

24 COMMISSIONER THOMPSON: Dana wasn't living there?

25 THE WITNESS: I'm sorry. Ms. Maybin was staying

1 with Leroy Spruiell.

2 COMMISSIONER THOMPSON: So somehow Leroy and Dana
3 were having -- had clothes over at Jones's house as well as
4 their own house?

5 THE WITNESS: They stopped at Ed -- Ms. Maybin
6 indicated in her testimony that they stopped at Ed Champ's
7 residence for Mr. Jones to get clothes and then returned to
8 Leroy Spruiell's house where they all changed, washed up, and
9 then burned those clothes.

10 COMMISSIONER FRYE: He was staying in a camper --

11 THE WITNESS: Correct.

12 COMMISSIONER FRYE: -- at -- at Big Ed's.

13 JUDGE WAGONER: Did somebody -- oh, excuse me.
14 Yes, sir.

15 COMMISSIONER FRYE: Have we conducted -- is there
16 any -- has there been any search of newspaper articles,
17 things of that nature that were published right after the
18 murder and during the time of the trial or prior to the
19 trial that shows what information was given to the public?

20 THE WITNESS: We do have newspaper articles from
21 around the time of the crime and prior to the trial. We can
22 double-check those.

23 COMMISSIONER GRACE: Would you walk me through
24 what was done and what was known about the truck? I
25 understand that the truck was Spruiell's father's truck and

1 that it may have been inoperable at the time?

2 THE WITNESS: Mr. Spruiell's dad's truck, there's
3 been conflicting testimony about how operable it was or, if
4 it was operable, how far you could drive it. Mr. Spruiell,
5 Leroy Spruiell himself, has indicated that he had taken it on
6 an errand that day, I believe to the Winn-Dixie. However,
7 they've stated that it -- you could not drive long distances
8 in it because of some issue that was going on. And there
9 was testimony at trial from a mechanic about the truck and
10 Mr. Spruiell's father.

11 COMMISSIONER GRACE: Leroy Spruiell became -- well,
12 he was being interviewed early on this process. Did anyone
13 do an examination of -- of what truck or vehicle he would
14 have had at his disposal when they started interviewing him?

15 THE WITNESS: Not when they start interviewing
16 him. (Addressing staff.) I need a computer.

17 COMMISSIONER GRACE: Was -- was the truck ever
18 forensically examined? I read something about it, but I'm
19 -- I'm --

20 JUDGE WAGONER: And if it was, when?

21 COMMISSIONER GRACE: Yeah, when.

22 THE WITNESS: Okay. So Mr. Spruiell's dad's truck
23 was not field-tested by the S.B.I. until January [sic] 22nd,
24 1994. So that would be about seven months after the murder,
25 and no evidence of blood was detected in the truck at that

1 time.

2 JUDGE WAGONER: Did they use Luminol?

3 THE WITNESS: Yes, ma'am.

4 JUDGE WAGONER: And nothing?

5 THE WITNESS: Nothing.

6 COMMISSIONER GRACE: Any indication that it had
7 been washed in an attempt to sanitize it?

8 THE WITNESS: I can -- we'll double-check that
9 report and make sure. How we have it in the brief just was
10 that no evidence of blood was detected.

11 COMMISSIONER BOSWELL: You just said seven months
12 after. I think you meant three weeks after.

13 THE WITNESS: July 22nd, 1994.

14 COMMISSIONER BOSWELL: Oh, July.

15 THE WITNESS: I'm sorry, I misspoke.

16 COMMISSIONER GRACE: You said January.

17 THE WITNESS: I'm sorry. July 22nd, 1994.

18 COMMISSIONER BOSWELL: Okay.

19 JUDGE WAGONER: July.

20 COMMISSIONER FRYE: (unintelligible)

21 JUDGE WAGONER: Did you have a question? You
22 asked? I might be getting a little off topic, but -- or
23 getting ahead of myself. Ms. Maybin said that the clothes
24 were thrown into the what to be burned?

25 THE WITNESS: Mr. Spruill's wood heater.

1 JUDGE WAGONER: Okay. In all of the photographs I
2 saw, I saw a Kerosun heater. I did not see a wood heater.

3 COMMISSIONER FRYE: A wood heater --

4 COMMISSIONER GRACE: Leroy Spruiell.

5 COMMISSIONER BRITT: That's at Frank's.

6 JUDGE WAGONER: Huh?

7 COMMISSIONER FRYE: The Kerosun heater was at
8 Frank Swain's.

9 COMMISSIONER BRITT: At Frank Swain's.

10 JUDGE WAGONER: Gotcha. Okay. Do you have any
11 photos of the wood burner of Mr. -- at Mr. Spruiell's house?

12 THE WITNESS: We'll double-check. I don't believe
13 I've ever seen any photographs of Mr. Spruiell's residence.

14 JUDGE WAGONER: And did they --

15 THE WITNESS: And -- but --

16 JUDGE WAGONER: I thought -- I thought there was a
17 -- I thought someone -- I thought Mr. Spruiell agreed to let
18 them look at his wood burner to see what was there. Or?

19 THE WITNESS: He let them -- he consented to let
20 them look through his woodpile where they found that piece
21 of lace and that sock. I believe that was in April or May
22 of 1994. They also did Luminol testing throughout his house
23 and found several reactions to that Luminol but did not take
24 any samples of that to test it to confirm whether or not it
25 was blood, with the exception of a shirt that was taken from

1 Mr. Spruiell's house.

2 COMMISSIONER THOMPSON: And that was confirmed to
3 be animal blood.

4 THE WITNESS: It was inconclusive for animal
5 blood.

6 MS. GUICE SMITH: But it was negative for human
7 blood.

8 THE WITNESS: Correct.

9 JUDGE WAGONER: It was negative for human -- the
10 shirt they took --

11 THE WITNESS: Yes.

12 JUDGE WAGONER: -- was negative for human blood.

13 MS. GUICE SMITH: Yes.

14 COMMISSIONER BRITT: We don't have her journal, do
15 we?

16 THE WITNESS: We do have copies of her -- of some
17 of her journal entries, yes.

18 COMMISSIONER BRITT: Like, for example, on the
19 compilation 3/24/95 journal entry, Maybin writes in her
20 journal regarding what was said in her 3/22/95 letter about
21 the rumor that Maybin was being told what to say by
22 Vosburgh. And then you go down. The only information she
23 had about the murder came from law enforcement and this --
24 and Mitchell whatever his last name is. It says she is a,
25 quote, "good liar when it comes to getting what I want."

1 JUDGE WAGONER: What page is this on, if you don't
2 mind? I don't --

3 COMMISSIONER BRITT: It's on page 9 and 10 --

4 JUDGE WAGONER: Thank you.

5 COMMISSIONER BRITT: -- 15. And that was actually
6 introduced at trial?

7 THE WITNESS: I just want to make sure you said
8 March 24th, 1995?

9 COMMISSIONER BRITT: Yes.

10 JUDGE WAGONER: Correct. That was introduced at
11 trial as State's Exhibit 37.

12 JUDGE WAGONER: That was introduced, you said.

13 THE WITNESS: Yes.

14 JUDGE WAGONER: Yes.

15 COMMISSIONER BRITT: Okay.

16 COMMISSIONER BARROW: It was State's Exhibit 37?

17 THE WITNESS: That's correct.

18 JUDGE WAGONER: Okay. Moving along.

19 CONTINUATION OF EXAMINATION BY MS. GUICE SMITH:

20 Q. What else did Ms. Maybin testify to?

21 A. She also testified that she had lied in her
22 journal entries and letters and said that she had been told
23 to write the journal entries by Nichole Mills and Attorney
24 James Vosburgh. And she testified that during the recorded
25 interview with Maynard Harrell that he was writing down

1 answers for her and passing them to her.

2 Q. And what did Ms. Maybin testify to specifically
3 regarding what she saw, as it relates to the murder of the
4 victim?

5 A. Question: "What did you observe about Frank Swain
6 when you first pushed the door open and stepped inside?"

7 Answer: "Blood."

8 Question: "Where did you see the blood on him?"

9 Answer: "All over his face and neck (and
10 indicates)."

11 Question: "And across his chest?"

12 Answer: "Uh-huh."

13 Question: "Now, when you first came in, you saw
14 Leroy there. What was Leroy Spruiell doing at that time,
15 Dana?"

16 Answer: "He had his hands on his shoulders."

17 "The Court: What?"

18 Answer: "He had his hands on his shoulders."

19 Question: "How was he holding him? Leroy Spruiell.
20 How was he holding Mr. Swain at the time?"

21 Answer: "With both of his hands."

22 Question: "He had both of his hands up on his
23 shoulders?"

24 Answer: "Uh-huh."

25 Question: "Now, Mr. Solis, Wallace Jones, you

1 said he was down on this side (indicates). What was
2 Mr. Solis doing at that time? What did you see him doing
3 when you first stepped inside the room?"

4 Answer: "It happened fast. He reached around,
5 like, the top of Frank. He had a baggie or something in his
6 hand. Like a baggie."

7 Question: "Now, you said that you saw Solis reach
8 around behind him, behind Frank. What happened then, Dana?"

9 Answer: "I walked in the door, and everybody
10 looked at me and, um" -- parentheses, "(crying, hands over
11 face)," end parentheses -- "and Frank looked at me and his
12 hands was out to the sides. And he lifted his hands a
13 little like he wanted me to help him, and I couldn't help
14 him."

15 One moment.

16 Answer: "Yes. Then Robert cut his throat."

17 Question: "Dana, can you describe for us how it came
18 to be that Robert cut his throat?"

19 Answer: "He just reached around and cut it."

20 Q. Ms. Matoian, did the medical examiner testify as
21 to his opinion of the order of the injuries?

22 A. Yes. Yesterday during the course of the hearing,
23 or it may have been two days ago at this point, the -- I
24 read portions of the medical examiner's testimony about his
25 opinion. And he indicated that he had never seen a beating

1 following a stabbing in the 30 years that he had been a
2 medical examiner. So in his opinion the beating occurred
3 first, and then the victim had been stabbed.

4 Q. And did he provide an opinion as to whether or not
5 the blows rendered during the beating would have made
6 Mr. Swain unconscious?

7 A. He did. He indicated that he -- it was his
8 opinion that the victim would have been unconscious after
9 sustaining the blows to the head that he had.

10 Q. Can you tell the commissioners about other
11 statements by Dana Maybin prior to the Commission's
12 involvement in the case?

13 A. On August 17th, 2005, Ms. Maybin was interviewed
14 by the S.B.I. during the reinvestigation of the case. In
15 that interview, she stated that she was present when
16 Mr. Spruill and Mr. Jones killed the victim and that she had
17 gone through the victim's pockets. She stated that her
18 testimony at trial was the truth and that she had never been
19 threatened with perjury.

20 She was interviewed by the Center on October 28th,
21 2008. She stated that Mr. Spruill and Mr. Jones weren't in
22 the house long; maybe five minutes. She heard shuffling and
23 went in. She said the door was cracked and she pushed it
24 open. She said she saw the three of them, and the victim --

25 COMMISSIONER GRACE: Excuse me. She said she

1 pushed it open?

2 THE WITNESS: That's correct.

3 COMMISSIONER GRACE: Thank you.

4 A. She said she saw the three of them. The victim
5 was sitting on the ground leaning on the couch. She thought
6 that he looked over at her. Mr. Jones was holding a knife,
7 but she said that maybe he had pulled it out of Mr. Swain's
8 neck. She stated, quote:

9 "I've thought about it and wondered if maybe
10 they went in after someone beat Swain and the
11 other ones went out the back. Maybe Swain was
12 beaten before they got there."

13 COMMISSIONER BRITT: That was her testimony or
14 that was in the interview with the Center?

15 THE WITNESS: That was in her interview with the
16 Center.

17 COMMISSIONER BRITT: Gotcha.

18 BY MS. GUICE SMITH:

19 Q. Was Dana Maybin ever interviewed by John Floyd
20 during his reinvestigation of the case?

21 A. The investigative documents that we have from
22 Mr. Floyd's investigation do not include any interview with
23 Dana Maybin. Both Mr. Spruiell and Mr. Jones, in letters,
24 have indicated that John Floyd interviewed Dana Maybin and
25 that she had recanted her testimony. And Mr. Jones stated

1 that Mr. Floyd called both he and Mr. Spruiell at Hyde
2 Correctional and told them that he had spoken to Dana Maybin
3 and that she had recanted.

4 Q. And did the Commission staff follow up with
5 Mr. Floyd?

6 A. We did. We spoke with him by phone on September
7 27th, 2018, and he said he did not remember interviewing
8 Dana Maybin and did not believe he ever told Mr. Spruiell or
9 Mr. Jones that he had done so.

10 Q. And did the Commission staff interview Dana
11 Maybin?

12 A. We did. We interviewed her first by phone on
13 March 24th, 2014.

14 Q. Was that interview recorded and transcribed?

15 A. It was.

16 MS. GUICE SMITH: Commissioners, that interview is
17 provided in full in your brief beginning on page 711 and
18 going through page 717.

19 BY MS. GUICE SMITH:

20 Q. What did Ms. Maybin tell the Commission?

21 A. Ms. Maybin stated that if we let Mr. Jones loose,
22 we would be letting a killer loose. She stated that
23 Mr. Jones was crazy and mean, and that he would kill her.
24 She stated that she was present when the victim was killed
25 and that Mr. Jones had killed the victim by cutting his

1 throat. She stated that Mr. Spruiell was near the victim,
2 but she did not see a weapon in his hand. And she stated
3 that she was pushed down and told that if she ever said
4 anything, she would be killed.

5 Q. And did the Commission later depose Ms. Maybin?

6 A. We did, on February 9th, 2018.

7 Q. And was that deposition recorded by a court
8 reporter and then transcribed?

9 A. It was.

10 MS. GUICE SMITH: Commissioners, you have been
11 provided the full deposition of Dana Maybin in your briefs.
12 Commissioners have identified some portions of that
13 deposition that they want played, the video of that. We
14 will do that at some point later today once our staff has
15 been able to find those locations and cue them up for us.

16 JUDGE WAGONER: I have a question, Lindsey.

17 MS. GUICE SMITH: Yes.

18 JUDGE WAGONER: At some point in this deposition,
19 I believe I read that Dana Maybin indicated that Janice
20 Spruiell told her that because Mr. Swain was so large it
21 would take two people to do this. Is that -- I believe
22 that's somewhere in there, probably towards the end.

23 THE WITNESS: (Reviewing documents.)

24 JUDGE WAGONER: If you want to look it up later,
25 we can do it --

1 THE WITNESS: Okay.

2 JUDGE WAGONER: -- because I have a question based
3 on --

4 THE WITNESS: Okay.

5 JUDGE WAGONER: -- that assertion. We can just do
6 it after.

7 BY MS. GUICE SMITH:

8 Q. Ms. Matoian, what did Dana Maybin testify to in
9 her deposition?

10 A. Ms. Maybin testified that she was present when
11 Mr. Spruiell and Mr. Jones had killed the victim. She
12 testified that she couldn't remember a lot of the details,
13 and even when shown prior statements that she had made, they
14 sometimes did not refresh her memory.

15 Q. What did she recall about the night of the crime?

16 A. She testified that she remembered being at the
17 bar, Mr. Jones pitching a fit, and then going to the trailer
18 in a truck, and Mr. Spruiell and Mr. Jones getting out of the
19 truck.

20 She testified that the only truck she ever rode in
21 while in North Carolina was Mr. Spruiell's dad's truck and
22 Mitchell Nowarah's truck. She testified that after they got
23 out of the truck, they went in, and she could see lights
24 moving or something and could hear a struggle. She said it
25 sounded like they were fighting.

1 She testified that she then got out of the truck
2 and went up to the door. The door was partly open. She
3 pushed the door open and went in. She testified that
4 Mr. Jones was over the guy that was laying there. He was up
5 against a chair or a couch or something, and Mr. Spruiell was
6 on the other side.

7 She remembered seeing lots of blood and being
8 pushed down into some blood. She testified that she did not
9 remember the leaving part but remembered being at
10 Mr. Spruiell's house and said that they made her take her
11 clothes off to burn them. And she also remembered someone
12 trying to grab her hands and stick them to the wood heater.

13 She testified that she remembered the cops coming
14 and asking her if she knew anything and that she told them
15 no.

16 When given a diagram of the victim's living room,
17 she was unable to label anything and stated that she didn't
18 remember. She testified that she didn't recall if
19 Mr. Spruiell and Mr. Jones were wearing gloves that night,
20 but that she was not wearing gloves. She testified that she
21 did not remember going to the victim's house another time
22 that day. She recalled going to his house another time
23 before but did not know if it was the same day. She
24 remembered being in a truck when she went before but did not
25 remember who she was with.

1 After refreshing Ms. Maybin on her testimony about
2 going to the victim's house earlier that day, Ms. Maybin
3 testified that she didn't remember it until she read it but
4 did not remember the other details.

5 She testified that she remembered being at Big
6 Ed's Bar the night of the crime but did not remember how
7 they got there, and she testified that the only person she
8 could remember seeing at the bar that night was a guy named
9 Shorty and that he had had a brain tumor.

10 Q. And Ms. Matoian, were you able to identify who
11 Shorty was?

12 A. Based on Ms. Maybin's prior statements, as well as
13 the description she provided of Shorty, we believe that she
14 was referring to Smarty Spruill. Smarty Spruill also had a
15 brain tumor and has stated that he was at the bar that
16 night.

17 Q. What else did Ms. Maybin recall about the night of
18 the crime?

19 A. She testified that there was a woman at the bar
20 and a dude serving drinks. She couldn't remember their
21 names. She testified that she remembered Jones leaving the
22 bar once but didn't remember how long he was gone or whether
23 anyone left with him, and she said that she remembered
24 having blood on her clothes but could not remember what she
25 was wearing.

1 Q. Did Ms. Maybin recall whether the victim was alive
2 when she was in his home?

3 A. She testified that, quote:

4 "No, I'm -- I'm -- all I know, I seen the
5 knife in Robert's hand, and he was standing. He
6 was, like, over him. He wasn't, like, standing.
7 He was, like, knelt, standing over this man, and
8 he had the knife in his hand, and there was blood
9 everywhere. And the man's arm moved this way
10 toward me. It seemed like -- it seems like it was
11 this way, and that's all I remember. I don't --
12 if, you know -- I don't know if it's because it
13 was -- it just happened like that, you know. I
14 don't -- this ain't something that somebody wants
15 to remember. God." End quote.

16 Q. Did Ms. Maybin recall touching the victim?

17 A. Initially, Ms. Maybin testified that she
18 remembered being pushed down on the victim, and I provided
19 her a portion of her trial testimony related to touching the
20 victim. After reading it, she stated that she remembered
21 the money and a money roll. She indicated with her hand
22 that the size of the roll of money -- with the size of the
23 roll of money and confirmed that it would have been about
24 two inches.

25 She testified that if she testified that the money

1 was from the left pocket, she wouldn't have had any reason
2 to lie about it and that she didn't remember going into any
3 other pockets. She testified that a small baggie fell out
4 of the money but that she did not remember what it had in
5 it, but said it was probably drugs. She testified that she
6 thinks she gave the money to Jones and maybe put it in his
7 pocket.

8 Q. And what else did Ms. Maybin say?

9 A. She did not remember if Mr. Spruill or Mr. Jones
10 had any visible injuries or if they were bleeding. She
11 testified that she did not remember touching anything in the
12 victim's home other than the victim. When asked if she went
13 back to Big Ed's Bar that night, Maybin testified, quote:

14 "Most likely. It seems like, you know, that's
15 probably what I would have done besides just
16 sitting at the house. I'm not sure." End quote.

17 Even when refreshed with her trial testimony, she
18 stated that she -- that that didn't refresh her recollection
19 with respect to going back to Big Ed's Bar. She did not
20 remember talking to anyone about the murder and said that
21 she had never talked to Sherry Honea about the murder. When
22 confronted that Ms. Honea said that Ms. Maybin told her she
23 would have had to buy Ms. Honea new shoes because Ms. Maybin
24 got blood on them and Spruilled them -- Spruilled them --
25 burned them in Mr. Spruill's wood burner, she stated that

1 she didn't remember but that they were talk -- her and
2 Ms. Honea were talking then and were friends.

3 Q. Did you ask Ms. Maybin about any post-convictions
4 that she had made -- post-conviction statements that she had
5 made?

6 A. She recalled an interview with the newspaper Lady
7 in 2004, and an interview with the S.B.I. in 2005. Upon
8 reviewing the memo from her interview with the Center on
9 October 28th, 2008, she stated that the date of that
10 interview was her birthday, and she was sick of it. She
11 stated that she told the people who had come for that
12 interview to leave and that she didn't want them there.

13 She stated that what she told them was not
14 accurate. And when asked why, she stated, quote:

15 "Because I was pissed at her, and I wanted her
16 to go away and leave me alone and never come
17 again, and that's pretty much what I kind of told
18 her," end quote.

19 She testified that during -- other than these
20 three interviews with -- with those individuals, the
21 interview with the Commission in 2014 and our deposition,
22 she did not recall speaking to anybody else after she was
23 convicted.

24 Q. And did you show Ms. Maybin her other statements?

25 A. I did.

1 Q. Did she recall those statements?

2 A. Generally, she only recalled that she was present
3 and witnessed Mr. Spruiell and Mr. Jones killing the victim.
4 She otherwise generally testified that she didn't really
5 remember any of the other statements she made or the details
6 that she provided in them.

7 Q. And did she recall anything else?

8 A. She testified that she recalled talking to one of
9 Mr. Spruiell and Mr. Jones's attorneys while she was in
10 prison in safekeeping. She said that was the one that kept
11 trying to get her to change everything. She testified he
12 was sliding stuff in an interview and getting her to say
13 stuff on a recorder. She could not recall which lawyer it
14 was. She testified that she agreed to say that stuff
15 because she thought he -- maybe he might get them all out of
16 there or at least get her out of there.

17 She testified that she was told, quote:

18 "If I changed my statement a lot, that I
19 would, you know, be an incompetent witness, which
20 was what I was hoping for so I wouldn't have to
21 testify to nothing," end quote.

22 She also testified that in a way she felt
23 pressured by Mr. Harrell. She stated that he told her if
24 she would do as he told her, they could all get out of it,
25 and she believed him. And she also testified that Nichole

1 Mills was trying to get her to change her story.

2 MS. GUICE SMITH: Commissioners, questions for
3 Ms. Matoian about this?

4 JUDGE WAGONER: Let me just -- I found the
5 statement I was looking for --

6 THE WITNESS: Okay.

7 JUDGE WAGONER: -- on page 107. I have a
8 question.

9 THE WITNESS: I'm sorry, which page is it?

10 MS. GUICE SMITH: 107.

11 JUDGE WAGONER: 107, if I'm reading correctly.

12 THE WITNESS: (Addressing staff.) Can you pull
13 the medical examiner's report real quick?

14 JUDGE WAGONER: Line 12.

15 THE WITNESS: Would you like me to read that,
16 Judge Wagoner?

17 JUDGE WAGONER: About the way the door opens. And
18 then line 22 really, "Did Janice Spruiell tell you," at the
19 very bottom. You can read that.

20 THE WITNESS: Okay.

21 Question: "Did Janice Spruiell tell you which way
22 the door opened at Mr. -- which way the door at Mr. Swain's
23 house opened?"

24 Not that I can recall."

25 And then question: "Did Janice Spruiell tell you

1 that more than one person had to be there because the victim
2 was a big man?"

3 "No."

4 JUDGE WAGONER: And in fact, if I read the medical
5 examiner, the victim was like 5' 7" and weighed 140 pounds.

6 MS. GUICE SMITH: It's right here.

7 THE WITNESS: The -- the medical examiner's report
8 -- just one second, I'm sorry. (Reviewing document.) --
9 said he is 67 inches tall, and his weight is within a pound
10 or so of 140 pounds.

11 JUDGE WAGONER: Okay. Ms. Thompson?

12 COMMISSIONER THOMPSON: Didn't -- didn't she say
13 several times that Mr. Swain's body was leaning against the
14 couch? That -- that he was, like, on the floor, his back is
15 to the couch? Is that --

16 THE WITNESS: That's correct.

17 COMMISSIONER THOMPSON: Then she also says that
18 Mr. Jones is standing behind the victim, or kneeling behind
19 the victim?

20 THE WITNESS: That's correct.

21 COMMISSIONER GRACE: Where'd you find -- where'd
22 you find that testimony? I was interested in that, too,
23 because she said he had both his hands on his -- on his
24 shoulders, right? His hands on his shoulders. I think that
25 was the trial testimony that never really -- no one had --

1 none of the cross-examine or direct asked in what position
2 they were in at that point. I'd like to know if you have
3 any indication.

4 THE WITNESS: We'll find that for you.

5 COMMISSIONER GRACE: Thank you.

6 JUDGE WAGONER: Yes, ma'am, Ms. Newton.

7 ALT. COMMISSIONER NEWTON: When you -- I'm back at
8 the statement in the deposition of Ms. Maybin where she
9 wants to be an incompetent witness, and that's at 842 of the
10 brief. Line 18 through 20 she said in response to --

11 THE WITNESS: Can you see the -- I'm sorry to
12 interrupt you -- the page of the deposition? I don't have
13 the brief page numbers --

14 ALT. COMMISSIONER NEWTON: Sure.

15 THE WITNESS: -- on my copy.

16 ALT. COMMISSIONER NEWTON: It was --

17 MS. GUICE SMITH: Page 842 of the brief, page 124
18 of the --

19 ALT. COMMISSIONER NEWTON: Yeah, 842 of the brief.

20 MS. GUICE SMITH: -- deposition.

21 THE WITNESS: Thank you.

22 JUDGE WAGONER: And what page again?

23 COMMISSIONER BOSWELL: 124.

24 MS. GUICE SMITH: 124 of the deposition, page 842
25 of the brief.

1 ALT. COMMISSIONER NEWTON: And it -- it's line --

2 JUDGE WAGONER: Line 18 maybe?

3 ALT. COMMISSIONER NEWTON: That's correct.

4 "Oh, yeah. I mean, my whole point of this was
5 I wanted to be an incompetent witness because I
6 wanted to go home."

7 You were interviewing Ms. Maybin?

8 THE WITNESS: Correct.

9 ALT. COMMISSIONER NEWTON: Okay. And so in other
10 places where she is transcribed speaking, she didn't appear
11 to be a particularly well-educated woman in the way she
12 spoke. So did you find her to be particularly smart when
13 you were talking to her?

14 An incompetent witness is sort of a complicated
15 concept, and I'm wondering where she got it from. Now, for
16 the first time I'm understanding that she's saying an
17 attorney put that thought in her head when he was recording
18 her, so.

19 THE WITNESS: She did indicate that that was
20 something that she was told by defense attorneys. I don't
21 know that I can make an assessment as to what I thought
22 Ms. Maybin's intelligence was.

23 ALT. COMMISSIONER NEWTON: But in speaking with
24 her, did she -- or do you know what her education level is?

25 THE WITNESS: I do not off the top of my head. I

1 can see if it's elsewhere in the file.

2 JUDGE WAGONER: And we're gonna have an
3 opportunity to listen to at least parts of what she said in
4 this deposition with you in a little bit.

5 COMMISSIONER FRYE: In the investigation, are both
6 Leroy Spruiell and Brandon Wallace -- or Wallace Brandon
7 Jones -- Brandon Wallace Jones, are they both right-handed?

8 THE WITNESS: I do not know. We can look into
9 that.

10 COMMISSIONER BRITT: They're going to be here,
11 aren't they?

12 THE WITNESS: They are.

13 JUDGE WAGONER: They have --

14 COMMISSIONER FRYE: It's kind of hard to tell when
15 they're handcuffed, through.

16 COMMISSIONER BRITT: Not if you ask them.

17 COMMISSIONER FRYE: Yeah.

18 COMMISSIONER BRITT: Do you have a copy of
19 Ms. Maybin's plea transcript?

20 THE WITNESS: We do. I believe --

21 COMMISSIONER BRITT: Because that will answer --

22 THE WITNESS: -- we may have provided it in the --

23 COMMISSIONER BRITT: -- about her education level.

24 THE WITNESS: -- in the brief.

25 ALT. COMMISSIONER NEWTON: I'm sorry?

1 COMMISSIONER BRITT: That'll answer the question
2 about her educational level.

3 MS. GUICE SMITH: One second. It is on page --

4 MS. TANNER: 240.

5 MS. GUICE SMITH: -- 240 and 241 in the brief.

6 COMMISSIONER BRITT: The actual transcript is?

7 MS. GUICE SMITH: Yes. Well -- well, the
8 Transcript of Plea.

9 JUDGE WAGONER: Form?

10 MS. GUICE SMITH: The form.

11 COMMISSIONER BRITT: The form, yes.

12 MS. GUICE SMITH: Yes.

13 COMMISSIONER BRITT: What were those page numbers
14 again?

15 MS. GUICE SMITH: 240 and 241.

16 COMMISSIONER BRITT: Ninth-grade GED.

17 JUDGE WAGONER: Ninth-grade GED.

18 ALT. COMMISSIONER NEWTON: Thank you, sir.

19 MS. GUICE SMITH: Mr. Grace, can you repeat your
20 question as to what you were looking for in her testimony?

21 COMMISSIONER GRACE: It was either one of her
22 pretrial interviews or -- or at trial where she indicated
23 that one of the men, either Jones or Spruiell, was standing
24 with his hands on her -- on -- on the deceased's shoulder.

25 COMMISSIONER THOMPSON: I think it was Spruiell

1 that had his hands on his shoulders and then Brandon's
2 behind him either kneeling or standing with a knife to his
3 throat. So it's -- Spruiell's in front with his hands on his
4 shoulders.

5 THE WITNESS: What page?

6 COMMISSIONER THOMPSON: Jones is behind, either
7 kneeling or standing getting ready to cut his throat.

8 COMMISSIONER GRACE: And I'm trying to determine
9 whether he was -- whether, according to Ms. Maybin, the
10 deceased was standing or leaning against that sofa. 'Cause
11 it's pretty hard to stand behind him if he's leaning, as
12 we've seen in the pictures.

13 COMMISSIONER THOMPSON: Exactly, yeah.

14 MS. GUICE SMITH: Ms. Matoian has that --

15 COMMISSIONER GRACE: Thank you.

16 MS. GUICE SMITH: -- in a moment.

17 ALT. COMMISSIONER NEWTON: I have a follow-up.

18 MS. GUICE SMITH: She's going to read. She's
19 going to answer Mr. Grace's question in just a second.

20 THE WITNESS: In her trial testimony, Ms. Maybin
21 indicates that the victim was sort of half on and half off
22 the sofa with his bottom on the floor and that Leroy Spruiell
23 had his hands on the victim's shoulders, and that Mr. Jones
24 reached around the top of the victim and then had cut the
25 victim's throat.

1 COMMISSIONER GRACE: Thank you.

2 ALT. COMMISSIONER NEWTON: It looks like from this
3 transcript that she got the GED after Frank Swain's murder,
4 and she was -- confirmed she was in custody.

5 THE WITNESS: Correct.

6 ALT. COMMISSIONER NEWTON: Got it.

7 JUDGE WAGONER: Could -- as a follow-up to
8 Ms. Thompson and Mr. Grace's question, could y'all put that
9 photo, Exhibit 2, of Mr. -- of the victim I guess laying on
10 -- laying somewhere, and indicate where the -- exactly
11 where's the sofa.

12 THE WITNESS: The diagram of his home, or a crime
13 scene photo?

14 COMMISSIONER BRITT: Here.

15 JUDGE WAGONER: No, no, this picture.

16 COMMISSIONER BRITT: Both, please.

17 MS. TANNER: The crime scene photo?

18 COMMISSIONER BRITT: Do you have a -- if we have a
19 diagram?

20 JUDGE WAGONER: Yeah.

21 COMMISSIONER BRITT: It's page 463 of the brief.
22 This is the photograph that the judge is talking about.

23 JUDGE WAGONER: Oh, 463, you're correct. Thank
24 you. What y'all put on the screen is a lot better than our
25 photograph.

1 COMMISSIONER BRITT: That's why I asked if they
2 had the actual photograph.

3 THE WITNESS: Can the commissioners see?

4 COMMISSIONER BRITT: That's the home, right?

5 THE WITNESS: Can the commissioners see?

6 COMMISSIONER BRITT: That's the mobile home,
7 right?

8 COMMISSIONER GRACE: Yeah, we have that.

9 THE WITNESS: Yes, sir. Yes.

10 JUDGE WAGONER: It's in our booklet somewhere.

11 COMMISSIONER BRITT: What page is that in our
12 booklet?

13 THE WITNESS: It's four sixty-something, if I
14 remember correctly.

15 JUDGE WAGONER: 463 is a photo.

16 COMMISSIONER BRITT: 461 is the diagram of the
17 mobile home part.

18 THE WITNESS: 468 is the diagram?

19 COMMISSIONER THOMPSON: For the home?

20 JUDGE WAGONER: Okay.

21 COMMISSIONER BRITT: Let's see.

22 JUDGE WAGONER: Yep.

23 COMMISSIONER BRITT: There we go.

24 THE WITNESS: Commissioners, this diagram is
25 actually the one that was used at trial, and it indicates in

1 testimony that the district attorney was asking her to write
2 her initials on the diagram as to where people are. I can
3 walk around and show you where she has indicated that Robert
4 Solis, Frank Swain, and Leroy Spruiell were.

5 I don't -- I don't know if you can see from where
6 you are. I can walk around and show all of you if you'd
7 like to see where she had indicated during the trial.

8 COMMISSIONER BRITT: If you can do that, it'd be
9 great.

10 JUDGE WAGONER: Yeah. And is the front door way
11 up there at the top?

12 THE WITNESS: The front door --

13 JUDGE WAGONER: The door is there.

14 THE WITNESS: -- that Ms. Maybin indicates --

15 JUDGE WAGONER: Gotcha. Gotcha.

16 THE WITNESS: -- she went into is this door right
17 here.

18 JUDGE WAGONER: Okay, okay.

19 COMMISSIONER THOMPSON: Can you -- can you just --
20 I couldn't see.

21 THE WITNESS: This is the front door where
22 Ms. Maybin --

23 COMMISSIONER THOMPSON: Okay.

24 THE WITNESS: -- said she had walked up.

25 COMMISSIONER THOMPSON: Uh-huh.

1 THE WITNESS: Right here is Robert Solis, so
2 Wallace Brandon Jones, Frank Swain, and Leroy Spruiell.

3 COMMISSIONER THOMPSON: And there's the TV in the
4 corner. Is that right? Right there?

5 THE WITNESS: Correct. That's where she indicated
6 Mr. Jones was and Mr. Swain and Leroy Spruiell. Here's the
7 front door, and that is where Wallace Brandon Jones, Frank
8 Swain, and Leroy Spruiell.

9 JUDGE WAGONER: Where's the sofa?

10 THE WITNESS: This is the sofa.

11 JUDGE WAGONER: And she said?

12 THE WITNESS: This is the sofa, and that is where
13 she indicated Wallace Brandon Jones was, where Frank Swain
14 was, and where Leroy Spruiell was.

15 JUDGE WAGONER: So the victim, she said, was in
16 between them.

17 THE WITNESS: Uh-huh.

18 COMMISSIONER BRITT: And the tire tool was
19 found --

20 THE WITNESS: Right here.

21 COMMISSIONER BRITT: -- in the kitchen. It's
22 marked as Number 9.

23 THE WITNESS: 9, and 10 is the plastic bag.

24 COMMISSIONER BRITT: Which is basically the
25 opposite end of the room from where Mr. --

1 JUDGE WAGONER: Victim.

2 COMMISSIONER BRITT: -- the victim's body was
3 located.

4 THE WITNESS: And the victim's body is ultimately
5 located right here.

6 COMMISSIONER BRITT: Okay. Let me ask you a
7 question.

8 JUDGE WAGONER: What did she -- I'm sorry, but she
9 said --

10 COMMISSIONER BRITT: That's right.

11 JUDGE WAGONER: -- it was there.

12 THE WITNESS: She says this is where they are when
13 she enters into the home. The photographs and the diagram
14 indicate that where the victim is ultimately found is right
15 here.

16 COMMISSIONER GRACE: And we don't have any --

17 COMMISSIONER BRITT: Wait, wait.

18 COMMISSIONER GRACE: -- testimony that someone
19 moved the --

20 COMMISSIONER BRITT: Wait a minute. So 2 and 3
21 indicate where -- 3 indicates where Mr. --

22 THE WITNESS: The tapings that they took from --

23 COMMISSIONER BRITT: -- where Frank's body was.

24 THE WITNESS: -- where his body is. So this is
25 where the victim's body was found.

1 COMMISSIONER BRITT: But he was cut over here --
2 JUDGE WAGONER: According to her.
3 COMMISSIONER BRITT: -- by the sofa.
4 THE WITNESS: According to Ms. Maybin's testimony.
5 COMMISSIONER BRITT: All right. And then the tire
6 iron is found in the kitchen at the opposite end -- this is
7 -- the kitchen and the den are one room. Is that right?
8 THE WITNESS: Yeah, they -- yeah.
9 COMMISSIONER BRITT: Okay. So the tire iron is
10 found at the opposite end of the room from where Mr. --
11 where the victim's body was located.
12 THE WITNESS: Uh-huh.
13 COMMISSIONER BRITT: All right.
14 COMMISSIONER GRACE: Orient his body for us.
15 Where -- would the head be towards the kitchen or towards
16 the den area?
17 COMMISSIONER THOMPSON: Towards the TV. His
18 head's towards the TV.
19 COMMISSIONER BRITT: All right. The TV is behind
20 him. What is that?
21 THE WITNESS: The TV is down here, so Mr. Swain's
22 body -- his head would be --
23 COMMISSIONER THOMPSON: 'Cause, well, I can --
24 THE WITNESS: -- this way.
25 COMMISSIONER THOMPSON: It's his feet. It's his

1 feet.

2 COURT REPORTER: One at a time, please.

3 THE WITNESS: Sorry.

4 COMMISSIONER THOMPSON: Sorry.

5 THE WITNESS: The victim's head is facing this
6 way, and his feet are facing this way.

7 COMMISSIONER BRITT: When you say "this way," the
8 victim's head is facing toward Number 7, which is the
9 television?

10 THE WITNESS: Correct.

11 COMMISSIONER BRITT: And his feet are turned
12 toward, well --

13 COMMISSIONER GRACE: 9 and 10.

14 COMMISSIONER BRITT: -- 9 and 10.

15 THE WITNESS: Correct.

16 COMMISSIONER BRITT: All right.

17 JUDGE WAGONER: But there's been no -- to follow
18 up Mr. Grace, we have heard no testimony that anyone moved
19 his body.

20 COMMISSIONER BARROW: There was some testimony
21 about smear patterns of blood.

22 THE WITNESS: Ms. Maybin did not testify to them
23 moving the body after his throat had been cut. She did
24 indicate him moving around some after his throat had been
25 cut and her touching the body, but did not indicate that it

1 had been moved.

2 COMMISSIONER BRITT: Okay. Let me ask you, using
3 that diagram, we have a photograph that appears on Page 466
4 of the room, Exhibit Number 5.

5 THE WITNESS: That is going to be those windows --

6 COMMISSIONER BRITT: And that's --

7 THE WITNESS: -- behind the couch.

8 COMMISSIONER BRITT: And so this big bloodstain is
9 on the curtain there?

10 THE WITNESS: Correct.

11 COMMISSIONER BRITT: And on page 467, Exhibit 6,
12 we have a photograph of what appears to be some type of
13 bi fold door. Do you know where that was located with a lot
14 of blood-smearing?

15 JUDGE WAGONER: Like somebody --

16 THE WITNESS: I do not. I can check the -- I
17 know it's mentioned at the trial. I'll check the testimony
18 and see if I can narrow down where that was.

19 JUDGE WAGONER: Yeah, that would be helpful.

20 THE WITNESS: Yeah.

21 COMMISSIONER BRITT: And then Number 10 on this
22 diagram, those are the plastic bags that had been -- the
23 items that had been purchased earlier at the Red Apple. Is
24 that correct?

25 THE WITNESS: No. Number 10 is the plastic bag

1 that was found over the tire tool. The plastic bags from
2 the Red Apple that they -- with the items bought earlier, I
3 believe, were found in one of the bedrooms.

4 JUDGE WAGONER: The plastic bags, again, were over
5 the tire iron.

6 THE WITNESS: On the tire iron.

7 COMMISSIONER THOMPSON: What are we looking for,
8 the plastic bag from the Red Apple?

9 THE WITNESS: This is a photo of the plastic bags
10 from the Red Apple. They appear to be on the bed.

11 JUDGE WAGONER: From the Red Apple.

12 COMMISSIONER BRITT: That's from the Winn-Dixie,
13 according to the bag.

14 THE WITNESS: My apologies.

15 COMMISSIONER BRITT: No, no, no, no. That was my
16 fault. I probably asked the question wrong.

17 THE WITNESS: The plastic bags with the items they
18 bought earlier from the Winn-Dixie (inaudible) on the bed.

19 COURT REPORTER: Ms. Matoian?

20 THE WITNESS: I'm sorry, I'm sorry. The plastic
21 bags from the Winn-Dixie that appear to be on the bed.

22 MS. GUICE SMITH: Commissioners, there are two
23 sets of photos the Commission has received. One set are the
24 actual exhibits from trial, and I believe Mr. Britt has
25 requested some of those be passed around, so we're pulling

1 those together now.

2 The other set we simply received in a digital
3 format. They're not digital photos. They're just scanned
4 in. So those are mostly what you have in your brief. I
5 don't -- if I print a paper copy, it's going to look exactly
6 as your brief. I can put some of those on the screen that
7 show the victim's body. They are graphic, but I will do
8 that if you'll just give us a few minutes to --

9 JUDGE WAGONER: Sure.

10 MS. GUICE SMITH: -- pick some.

11 JUDGE WAGONER: The ones I -- whatever y'all did
12 yesterday or the day before, the photo was much clearer --

13 MS. GUICE SMITH: They are.

14 JUDGE WAGONER: -- than -- than we have.

15 MS. GUICE SMITH: When they print out, they just
16 don't print well. But that's right. So I'm going to --

17 JUDGE WAGONER: So I'd request at least the
18 photograph at page 463.

19 MS. GUICE SMITH: I'm going to first come around,
20 though, with one of the State's exhibits. It's State's
21 Exhibit 2. This photo is of the victim's body. The quality
22 is poor. It appears that something was spilled on the
23 photo, but --

24 (Ms. Guice Smith showed the photograph to
25 each commissioner.)

1 MS. GUICE SMITH: That is the photo you're looking
2 at, and the quality is poor just because that's the way it
3 came to us.

4 JUDGE WAGONER: Okay. But are you going to be
5 able to put this on the screen?

6 MS. GUICE SMITH: I can scan that in and put it on
7 the screen, but this is the original, and that's as good as
8 it gets. I will put some other photos on the screen. I
9 don't know that --

10 JUDGE WAGONER: That show his body?

11 MS. GUICE SMITH: That show his body, but not this
12 photo that was introduced at trial.

13 COMMISSIONER BRITT: Do we have a photograph
14 showing the victim's body in relationship to the door?

15 MS. TANNER: I will look.

16 MS. GUICE SMITH: We are looking.

17 JUDGE WAGONER: Do you want to take a recess right
18 now?

19 MS. GUICE SMITH: Yes. It would be great if we
20 could do that.

21 JUDGE WAGONER: Why don't we take a 15-minute
22 recess while they try to find this stuff?

23 COMMISSIONER FRYE: Judge, if we have to figure
24 out, you know --

25 MS. GUICE SMITH: I can pass around during the

1 break, if you wish, the --

2 COMMISSIONER FRYE: -- if she saw the --

3 MS. GUICE SMITH: -- State exhibits that Mr. Britt
4 has asked --

5 COMMISSIONER FRYE: -- crime scene --

6 MS. GUICE SMITH: -- for. The exhibit numbers are
7 on the back. And then we'll --

8 COMMISSIONER FRYE: -- or if Janice Spruiell --

9 MS. GUICE SMITH: -- get the additional photos on
10 the screen for you after the break.

11 COMMISSIONER FRYE: -- constructed a memory for
12 her.

13 (Off the record at 10:32 a.m.)

14 (A brief recess was taken.)

15 (Back on the record at 10:54 a.m.)

16 CONTINUATION OF EXAMINATION BY MS. GUICE SMITH:

17 Q. Ms. Matoian, prior to the break there was some
18 discussion about the orientation of the victim's body in
19 relation to the TV. Can you correct that information so
20 that we have the correct orientation on the record, please?

21 A. I can. The victim's head was facing towards the
22 kitchen and his feet were towards the TV.

23 JUDGE WAGONER: Did y'all get that?

24 COMMISSIONER GRACE: Do you -- do you have a wider
25 angle? Are these pictures? Okay. Then I have what you

1 have.

2 THE WITNESS: Or, I'm sorry, we do have some that
3 were not entered in --

4 COMMISSIONER GRACE: There it is.

5 THE WITNESS: -- at trial.

6 COMMISSIONER GRACE: That's the -- that's the one.

7 COMMISSIONER BRITT: Okay.

8 COMMISSIONER GRACE: That's the good picture.

9 MS. GUICE SMITH: Commissioners, you asked for
10 additional photos of the victim's body. I've got a series
11 of these. We -- these are from the District Attorney's
12 file. We do not have matching exhibits, so these have not
13 been a part of the public record before as far as we can
14 tell, but we --

15 MS. TANNER: Some of them are.

16 MS. GUICE SMITH: -- can compare them to the
17 State's Exhibit.

18 COMMISSIONER BRITT: Do we know -- do we know who
19 took these photographs? Was this done by the S.B.I.? Was
20 this done by Washington County Sheriff?

21 THE WITNESS: Dennis Honeycutt indicated in his
22 crime scene report that he took photographs.

23 COMMISSIONER BRITT: All of the photographs.

24 THE WITNESS: Correct.

25 BY MS. GUICE SMITH:

1 Q. Ms. Matoian, we didn't receive any photographs
2 with the Washington County Sheriff's Office file. Is that
3 accurate?

4 A. We received some photographs from the Washington
5 County Sheriff's Office file, but not any of the crime
6 scene.

7 Q. So the first photo, Ms. Matoian, can you explain
8 what that depicts?

9 A. Commissioners, this is the couch. The table is
10 next to the couch here, and the door is next to the table.
11 The victim's feet are facing towards the TV and the
12 Christmas tree that you can see there, and his head is
13 facing towards the kitchen. And there you can see the
14 overturned coffee table that that plastic cup was under.

15 Q. This is another photo of the victim's body.

16 A. Again, this is the table. The door is next to
17 that table, and the couch is on the other side of the table.

18 COMMISSIONER FRYE: Can you go back one
19 photograph, please? Okay. If I'm looking at this
20 correctly, and I just want to -- do we -- I see three
21 cushions on the floor, correct?

22 THE WITNESS: Correct.

23 COMMISSIONER FRYE: I see two cushions missing
24 from the couch. Where'd the third cushion come from?

25 ALT. COMMISSIONER NEWTON: Well, there's a cushion

1 back to the couch. There are other cushions the same size
2 that stand up, it looks like.

3 COMMISSIONER FRYE: Okay, okay. I see now. I see
4 a better picture of that. Okay. Never mind.

5 COMMISSIONER BARROW: Would -- would jumper cables
6 have any connection with his drug trade?

7 THE WITNESS: Not from any information that we
8 received in the file.

9 BY MS. GUICE SMITH:

10 Q. The third photo?

11 A. You can see the TV in the top right corner of that
12 one, the overturned coffee table, and the couch cushion
13 that's on the one side of Mr. Swain. Again, the door would
14 be right here next to this table. There's the couch.
15 There's Mr. Swain with the couch cushions, the TV and the
16 Christmas tree and the overturned coffee table.

17 JUDGE WAGONER: And where are the blood smears
18 that was referenced if he was pulled or something?

19 THE WITNESS: In looking at Mr. --

20 MS. TANNER: Here, I'll hold it.

21 THE WITNESS: Sorry. I checked back on Dennis
22 Honeycutt's crime scene report.

23 JUDGE WAGONER: Uh-huh.

24 THE WITNESS: He indicated the louvered door that
25 had the --

1 JUDGE WAGONER: Blood.

2 THE WITNESS: -- the bloodstain on it was a door
3 that housed the heating unit for the mobile home. And his
4 diagram indicates heat right here, so I believe that that's
5 where that louvered door was located. So on the other side
6 of the door.

7 COMMISSIONER BRITT: And it's just to the left of
8 the door that you enter.

9 THE WITNESS: Correct.

10 COMMISSIONER GRACE: So if -- if I'm looking at
11 this right, his head is right parallel to the door as you
12 open the door.

13 THE WITNESS: Correct.

14 Commissioners, we also looked back at Ms. Maybin's
15 testimony as to what she said she could see when she walked
16 up to the door.

17 All right. Ms. Maybin was asked whether the door
18 was opened or closed when she got up to it. She indicated
19 that it was cracked, and she said she just pushed it open.
20 That's this door right here. She was asked if she stepped
21 inside the house at that time, and she said she had. She
22 said to her right she saw the victim.

23 She said that, quote, "Like the cushions had slid.
24 You know how when somebody sits down on a couch, like when
25 someone sits on a couch and the cushions slide off."

1 Question: "Where was his bottom at this time?
2 Was he sitting on the floor?"

3 "On the floor."

4 "What about the rest of his position, the rest of
5 his body?"

6 Answer: "His back was on the couch."

7 Question: "Where was Leroy Spruiell standing at
8 this time?"

9 Answer: "Away from me, on his left side, on
10 Frank's left side. He was like the farthest away."

11 And then that's where she indicates -- they ask
12 her to indicate on here where I showed you those initials
13 were, where everybody was.

14 Question: "Now, you said that Frank was sort of
15 half on and half off the sofa with his bottom down on the
16 floor."

17 Answer: "Yes."

18 "What else did you notice in this area at that
19 time, Dana?"

20 Answer: "Cushions, a Christmas tree, and the
21 couch. That's all I really paid attention to."

22 "At that time?"

23 "Uh-huh."

24 Question: "What did you observe about Frank Swain
25 when you first pushed the door open and stepped inside the

1 door?"

2 Answer: "Blood."

3 COMMISSIONER BOSWELL: Would you point out real
4 quick where she said the three people were in front of the
5 sofa? Who was where?

6 THE WITNESS: She indicates that Wallace Brandon
7 Jones was on the side of the sofa closest to the door.

8 COMMISSIONER BOSWELL: Okay.

9 THE WITNESS: That the victim was in the middle,
10 and that Leroy Spruiell was on the other side, farthest away
11 from Dana Maybin.

12 COMMISSIONER BOSWELL: Okay.

13 JUDGE WAGONER: And what was allegedly each one of
14 the defendants doing, again? I know --

15 THE WITNESS: She said that Leroy Spruiell was
16 holding both of the victim's shoulders and that she saw
17 Mr. Jones reach around the front of the victim.

18 JUDGE WAGONER: Did y'all see that?

19 BY MS. GUICE SMITH:

20 Q. Ms. Matoian, I placed the last photo up.

21 MS. GUICE SMITH: This is just a wider angle,
22 Commissioners.

23 ALT. COMMISSIONER NEWTON: May I ask a question?
24 Had Dana Maybin been shown the photograph that we have in
25 front of us, would -- prior to testifying, would her

1 testimony have been consistent with what she said, or what
2 you said she said, with that photograph? In other words, if
3 her testimony was informed by that photograph, was that
4 consistent with what she said?

5 THE WITNESS: I don't know whether or not she was
6 shown any photographs prior to the trial.

7 MS. GUICE SMITH: The Commission staff's not going
8 to be able to draw a conclusion on that.

9 ALT. COMMISSIONER NEWTON: Thank you.

10 MS. GUICE SMITH: All right. Commissioners, we're
11 going to turn our attention now to the claimants, Wallace
12 Brandon Jones and Leroy Spruiell.

13 JUDGE WAGONER: We do know that -- I guess our
14 video is still being worked on, correct?

15 MS. GUICE SMITH: The video is still being worked
16 on, yes.

17 THE WITNESS: Yes.

18 MS. GUICE SMITH: And before we move on, there's a
19 few more questions that the Commissioners had asked.
20 Someone had asked about measurements of the interior of the
21 victim's home.

22 BY MS. GUICE SMITH:

23 Q. Ms. Matoian, do you have any information on that?

24 A. Dennis Honeycutt's -- I don't have a diagram with
25 the exact dimensions on them. Dennis Honeycutt's report

1 does give some feet measurements about certain items, if the
2 Commissioners would like me to read through and go through
3 any measurements that he gives in that report.

4 COMMISSIONER THOMPSON: I just want to know how
5 far his feet would have been or his body would have been
6 from the couch.

7 THE WITNESS: Okay.

8 COMMISSIONER THOMPSON: If possible.

9 JUDGE WAGONER: And would you repeat the question
10 before you answer it?

11 COMMISSIONER THOMPSON: (No response.)

12 JUDGE WAGONER: Your question was what,
13 Ms. Thompson, how far?

14 COMMISSIONER THOMPSON: How far was the body of
15 the victim from the sofa.

16 THE WITNESS: I don't have that specific answer.
17 I will read you some measurements you -- he's given.

18 "The location of the body of the victim was
19 then measured. The head of the victim was located
20 approximately five feet, four inches east of the
21 west wall and two feet, nine inches south of the
22 north wall.

23 "The left foot was located six feet, six
24 inches east of the west wall and eight foot, three
25 inches south of the north wall.

1 "The right foot was located five feet, two
2 inches east of the west wall, and seven feet, nine
3 inches south of the north wall.

4 "The left hand was located approximately six
5 feet, seven inches east of the west wall and five
6 feet, one inches south of the north wall.

7 "Around the victim on the floor were three
8 cushions which belonged on the couch on the west
9 side of the den. The cushion to the left of the
10 victim was located approximately five feet, six
11 inches south of the north wall, and seven feet,
12 four inches east of the west wall.

13 "The cushion located on the floor to the right
14 of the victim was approximately five feet, six
15 inches south of the north wall of the den and
16 three feet, ten inches east of the west wall.

17 "The third cushion, which was located south of
18 the feet of the victim, was approximately twelve
19 feet, four inches south of the north wall, and
20 five feet east of the west wall."

21 BY MS. GUICE SMITH:

22 Q. Another question was asked about the search of
23 Mr. Spruill's truck. What information do you have about
24 that, Ms. Matoian?

25 A. Mr. Spruill's truck was searched by the S.B.I. on

1 September 22nd, 1994.

2 JUDGE WAGONER: That was Spruiell's?

3 A. I'm sorry, July 22nd, 1994. It said, quote:

4 "This vehicle was extremely dirty and
5 contained numerous items, both in the bed of the
6 vehicle and on the interior. S.A. Honeycutt and
7 S.A. Jernigan then proceeded to conduct a Luminol
8 examination of the vehicle. No chemical reactions
9 indicating the presence of blood were found."

10 ALT. COMMISSIONER NEWTON: No knife?

11 BY MS. GUICE SMITH:

12 Q. Was there a knife found in the vehicle?

13 A. No, there was not.

14 Q. And, finally, there were questions asked about the
15 search of Leroy Spruiell's residence, and I think
16 specifically with respect to whether we had a photo of the
17 wood heater. What did you find out about that?

18 A. We do not have photographs of the exterior of
19 Mr. Spruiell's home or the wood heater. We do have one
20 picture of what appears to be the Mountain Dew can that they
21 collected.

22 MS. GUICE SMITH: Any other questions before we
23 move on to Mr. Jones?

24 JUDGE WAGONER: I just wanted to be sure that no
25 one has any objection if we start with Mr. Jones and then

1 once the video is done, we'll take it out of order. Is that
2 all right with everybody?

3 (No response.)

4 JUDGE WAGONER: Okay.

5 MS. GUICE SMITH: Do you have a question,
6 Mr. Barrow?

7 COMMISSIONER BARROW: These car floor mats or
8 automotive floor mats, were -- were they found on the porch?

9 THE WITNESS: They were.

10 BY MS. GUICE SMITH:

11 Q. Okay. Ms. Matoian, who is Wallace Brandon Jones?

12 A. Wallace Brandon Jones is a co-defendant in the
13 murder of Frank Swain, and he was convicted after a trial of
14 first-degree murder -- first-degree murder and robbery with
15 a dangerous weapon.

16 MS. GUICE SMITH: Commissioners, if you will refer
17 to Handout 68 in your Hearing Handout Notebook Number 2,
18 this will be the first handout in Notebook 2. This is the
19 criminal record of Mr. Jones.

20 (Handout Number 68 was identified for the
21 record.)

22 MS. GUICE SMITH: You were also provided a copy of
23 Mr. Jones' prior statements throughout your brief. Because
24 he is testifying here today, I've also provided a copy of
25 those statements all together for you in your handouts as

1 Handout 69 in your Hearing Handout Notebook Number 2.

2 BY MS. GUICE SMITH:

3 Q. Ms. Matoian, how did the Commission receive
4 Mr. Jones's claim?

5 A. His claim was referred to the Commission by the
6 North Carolina Center on Actual Innocence in late 2009.

7 Q. Did the Commission interview Mr. Jones?

8 A. We did, on February 21st, 2011.

9 Q. And was that interview recorded and transcribed?

10 A. It was.

11 MS. GUICE SMITH: Commissioners, earlier this week
12 you were provided a copy of that transcript. It is now in
13 your Hearing Handout Notebook Number 2 as Handout 70.
14 You've all had an opportunity to read it prior to today.

15 BY MS. GUICE SMITH:

16 Q. Ms. Matoian, during that interview, what did
17 Mr. Jones tell the Commission about his involvement in the
18 crime?

19 A. Mr. Jones denied being involved in the crime.

20 MS. GUICE SMITH: Mr. Jones will be here later to
21 testify. Do you-all have questions for Ms. Matoian about
22 any of Mr. Jones's prior statements that you've had an
23 opportunity to review prior to today?

24 (No response.)

25 BY MS. GUICE SMITH:

1 Q. Ms. Matoian, did the Commission review Department
2 of Public Safety records for Mr. Jones?

3 A. We did, including his education, substance abuse
4 treatment, medical, and mental health records, and combined
5 records, which include his case management notes.

6 Q. And did Mr. Jones's D.P.S. records reflect that he
7 had talked about this case while he was in prison?

8 A. Yes. There are those case management notes and
9 mental health reports where he's noted to have discussed the
10 case.

11 Q. And do any of those records indicate whether
12 Mr. Jones has admitted guilt or maintained innocence to his
13 case managers or mental health providers?

14 A. They do. His case management notes indicate that
15 Mr. Jones does not admit guilt in this crime and discusses
16 efforts to get assistance with his case so that the truth
17 could come out. His mental health reports also reflected
18 that he always maintained his innocence and never admitted
19 guilt.

20 Q. Did you receive any additional information about
21 Mr. Jones and his involvement in this crime?

22 A. We did. On January 11th, 2018, the Commission
23 received a phone call from Mr. Jones's sister, Cathy
24 Campbell. We then interviewed her by phone on January 12th,
25 2018.

1 Q. And was that interview recorded and transcribed?

2 A. It was.

3 Q. What did Ms. Campbell tell you?

4 A. Ms. Campbell stated that when all this happened,
5 Jones called her from a bar and told her that he had killed
6 an N-word.

7 MS. GUICE SMITH: Commissioners, I am --

8 COMMISSIONER BRITT: So can you say that again?
9 That he called her from where?

10 JUDGE WAGONER: A bar.

11 THE WITNESS: From a bar.

12 JUDGE WAGONER: It's Handout Number --

13 ALT. COMMISSIONER NEWTON: 71.

14 MS. GUICE SMITH: 71.

15 JUDGE WAGONER: Yeah, 71. It's all in there.

16 MS. GUICE SMITH: I'm going to play a 14-minute
17 interview of Ms. Campbell. I am also providing the
18 transcript in your Hearing Handout Notebook -- because
19 sometimes Ms. Matoian is difficult to hear, and Ms. Campbell
20 was quite loud -- so that you can follow along with the
21 questions being asked. The audio has some, quite frankly,
22 foul language, so I'm warning you about that ahead of time.

23 JUDGE WAGONER: She was not under oath.

24 THE WITNESS: No, she was not. It was a phone
25 call.

1 JUDGE WAGONER: Just a phone call. You received
2 from her?

3 THE WITNESS: She called the Commission first, and
4 then I called her back and --

5 JUDGE WAGONER: Okay.

6 THE WITNESS: -- spoke to her on the phone.

7 COMMISSIONER BOSWELL: Can you -- can you remind
8 me who Ms. Campbell is?

9 THE WITNESS: She is Mr. Jones's sister.

10 COMMISSIONER BOSWELL: Okay.

11 COMMISSIONER BRITT: Is she in prison?

12 THE WITNESS: No, she's not.

13 (The audio recording was played from 11:14
14 a.m. to 11:27 a.m.)

15 BY MS. GUICE SMITH:

16 Q. Ms. Matoian, did Commission staff do anything
17 further to follow up on the information that was provided by
18 Cathy Campbell?

19 A. The District Attorney's file included phone
20 records from Big Ed's Bar. Although the court order
21 requesting those files included the month of the murder,
22 December 1993, the records that were received only covered
23 from January 1994 through January 1995. So they do not
24 include the night of the crime.

25 Although the night of the crime was not included,

1 we reviewed those phone records that were available, and
2 determined that there were no calls to or from Tennessee
3 from Big Ed's Bar during the time period that the records
4 covered.

5 Q. And was Ms. Campbell living in Tennessee at the
6 time of the crime?

7 A. She was, and there was nothing else in the law
8 enforcement or District Attorney's files to suggest that
9 they had gotten phone records from Big Ed's Bar for the time
10 period of the murder, and phone records from that time are
11 no longer available today.

12 Q. What else did Commission staff do to follow up
13 regarding Ms. Campbell?

14 A. The Commission was attempting to obtain a birth
15 date for Cathy Campbell and requested that information from
16 Mr. Jones's attorney, Chris Mumma. She did provide the
17 birth date. She also forwarded along a message from Debbie
18 Hammett, who was mentioned in the phone call by Cathy
19 Campbell, with information about Cathy's relationship with
20 their mother and her health issues.

21 Q. And can you read that to the commissioners,
22 please?

23 A. I can. Quote:

24 "Late January 2018, Patricia Ann Cagle,
25 Brandon's mom, was admitted into Milan General" --

1 I'm sorry, they pronounce it Milan [with long I].
2 -- "Milan General Hospital. While there, she was
3 in an argument with her daughter, Cathy Campbell,
4 Brandon's sister.

5 "Patricia was then transferred to N.H.C.
6 Healthcare, 731-686-8373, in Milan, Tennessee.
7 She was to stay for 21 days. Near the end of
8 Patricia's stay at N.H.C., there was a meeting
9 with Patricia, Cathy, N.H.C. staff, and N.H.C.
10 social worker.

11 "Cathy started speaking in a threatening
12 manner. Patricia had stated that Cathy had taken
13 Patricia's money from the sale of her house and
14 taken her Social Security check for three months.
15 The staff and social worker became concerned for
16 Patricia's welfare. It was stated that if
17 Patricia returned to Cathy's home, Human Services
18 would be contacted to make home visits.

19 "Cathy is drawing a Social Security disability
20 of her own, and not sure if she and her partner,
21 Jeff Campbell, are legally married. At one point,
22 years ago, they divorced for insurance purposes.
23 N.H.C. staff and social worker convinced Patricia
24 to stay a few more days in the facility until she
25 could find suitable living arrangements. N.H.C.

1 staff and social worker urged Patricia to notify
2 law enforcement and press charges against Cathy,
3 but she refused to do so.

4 "Patricia then found suitable living
5 arrangements in the home of Debbie Hammett, where
6 she has resided happily for the last eight months.
7 Patricia is currently admitted into Milan General
8 Hospital again. Her daughter Cathy is staying
9 with her around the clock and has convinced
10 Patricia to return to Cathy's home to live upon
11 discharge from the hospital.

12 "You may also contact Patricia's primary care
13 physician, Dr. Misty Allen, or her nurse, Angie
14 Cantrell, 731-34 -- 541-4923, for further details
15 and accounts of Cathy's behavior during office
16 visits in which Cathy accompanied Patricia."

17 And I'm sorry, that e-mail was forwarded to the
18 Commission on September 30th, 2018, and was sent by Debbie
19 Hammett to Chris Mumma on September 29th, 2018.

20 MS. GUICE SMITH: Commissioners, I'm going to call
21 another staff member about some additional follow-up that's
22 been done this week on this matter. Do you have any
23 questions for Ms. Matoian before I do that?

24 COMMISSIONER BOSWELL: Prior to her calling you,
25 did you have any idea what she was going to say?

1 THE WITNESS: No, I did not.

2 COMMISSIONER BOSWELL: And you said the phone
3 records are no longer available. Did we check with AT&T or
4 BellSouth or whomever?

5 THE WITNESS: That's correct. We had not checked
6 specifically for the Big Ed's phone records. We were
7 checking on another matter but had received information from
8 the phone company that they no longer had records from that
9 time period.

10 COMMISSIONER GRACE: How did we --

11 JUDGE WAGONER: I --

12 COMMISSIONER GRACE: I'm sorry.

13 JUDGE WAGONER: I would think that he called her
14 collect. Did anybody ever ask her if she had -- if she
15 hated him so much, I guess I'm curious why she would accept
16 his phone call and pay for it.

17 THE WITNESS: She did not indicate that, a reason
18 for that in her phone call with me.

19 COMMISSIONER GRACE: How did -- how did the
20 Commission determine that she had this information?

21 THE WITNESS: That Ms. Campbell had that
22 information?

23 COMMISSIONER GRACE: Yeah.

24 THE WITNESS: The only record we have of that is
25 from Ms. Campbell herself. She had called the Commission

1 the day before my phone call with her, and I was unavailable
2 at that time, and she told our staff a shortened version of
3 what she told me in the phone call. I called her back the
4 next day, and she said what -- what you-all just heard. And
5 that is the first time I've ever had any indication of a
6 statement like that being made by Mr. Jones to Cathy
7 Campbell.

8 COMMISSIONER GRACE: Thank you.

9 BY MS. GUICE SMITH:

10 Q. Did the Commission reach out to Ms. Campbell, or
11 was that call just on her own?

12 A. That call was on her own. We had not attempted to
13 reach Ms. Campbell prior to that.

14 COMMISSIONER BRITT: Did you ever have a follow-up
15 interview with Mr. Jones where you asked him about this
16 alleged phone call?

17 THE WITNESS: No, we have not done that.

18 MS. GUICE SMITH: Any other questions?

19 (No response.)

20 MS. GUICE SMITH: Ms. Matoian, you may step down.

21 (The witness left the stand.)

22 MS. GUICE SMITH: The Commission would call Staff
23 Attorney Brian Ziegler.

24 JUDGE WAGONER: Mr. Ziegler, if you'd remain
25 standing and place your left hand on the Bible. Raise your

1 ri ght hand.

2 BRIAN ZIEGLER,
3 having been called as a witness for the Commission, was
4 sworn by Judge Wagoner and testified as follows:

5 JUDGE WAGONER: You may be seated.

6 EXAMINATION BY MS. GUICE SMITH:

7 Q. Mr. Ziegler, what did the Commission do to follow
8 up regarding the information provided in Ms. Hammett's
9 e-mail that was forwarded to the Commission by Ms. Mumma?

10 A. I called Ms. Hammett this past Monday, October
11 1st.

12 Q. And what did she tell you?

13 A. She told me that she speaks to Brandon Jones on
14 the phone almost every day, and that he's written her
15 thousands of letters over the years.

16 She said that he has always denied any involvement
17 in the crime, and the closest he came to ever offering any
18 theories or any details about the crime was once long ago he
19 had told Ms. Hammett that, her words, the first guy
20 questioned had a girlfriend on city council or something,
21 and that that first guy's name stopped coming up, and his
22 name and Mr. Spruiell's name started coming up. She did say
23 that it has been years ago since he mentioned that, and she
24 may have remembered some details wrong.

25 I'd asked Ms. Hammett what she meant when she

1 asked if Cathy was causing trouble again, and she said that
2 Cathy had always hated Brandon Jones, as well as hating
3 their other sister who's now deceased. She described Cathy
4 as hateful to the mother Patricia, and said that Cathy threw
5 Patricia out of her house, that is Cathy -- that is,
6 according to Ms. Hammett, Cathy threw Patricia out of
7 Cathy's house; and that when Patricia, the mother, sold her
8 own home after the death of her husband, that Cathy and her
9 husband pocketed the -- the money from the sale of the home,
10 which was \$9,000, according to Ms. Hammett.

11 She told me that last year, the mother Patricia
12 spent time in the hospital and was then moved into a nursing
13 home, and she described Cathy, in her words, pitching a fit
14 at the nursing home. Ms. Hammett said she thought that was
15 because Cathy wanted Patricia to live with her, and Patricia
16 did not want that.

17 Ms. Hammett told me that the nursing home was able
18 to convince the insurance company to allow for a few more
19 days at the nursing home in order to find what -- her words
20 were "a more suitable living situation," and that Patricia
21 did stay a few more days at the nursing home because the
22 doctors and social workers were concerned about "red flags"
23 in Ms. Hammond's [phonetic] words, related to Cathy.

24 Ms. Hammett told me that she was not present for
25 any of the meetings at the nursing home, so it was unclear

1 how she had that information, but that was her description
2 of what happened there. Ms. Hammett described Patricia as
3 her best friend. They met when, years ago, Mr. Jones dated
4 Mr. Hammett's daughter and have been best friends since.

5 Ms. Hammett's home is where Patricia ended up
6 moving after leaving the nursing home, and according to
7 Ms. Hammett, Patricia stayed there for months and was happy
8 there. She said that the two of them would pray for Cathy,
9 who Patricia -- this is Cathy's mother -- described as evil
10 and demon-possessed.

11 Ms. Hammett told me that Patricia told her she
12 never wanted to go back and live with Cathy. And she
13 described Cathy cutting off Patricia's cell phone whenever
14 Patricia was living with Cathy, and Ms. Hammett stated she
15 believed that was so Patricia could not make or receive any
16 calls without Cathy being somehow involved in that.

17 Ms. Hammett described Cathy as once calling the
18 sheriff on Patricia for not taking a bath, and stated that
19 Cathy acts sweet at first, but then she will get loud and
20 curse at people, including her grandchildren.

21 Ms. Hammett told me that Patricia was recently
22 readmitted into the hospital and that Ms. Hammett told her
23 she would go there every day and began to go there every day
24 until at some point Cathy discovered that Patricia was in
25 the hospital, and in Ms. Hammett's words "set up camp"

1 because she knew it would keep Ms. Hammett away if Patricia
2 was there.

3 Ms. Hammett told me that Patricia was released
4 from the hospital last Sunday, September 30th, and did go to
5 live with Cathy at that point. She's not sure why Patricia
6 would go to live with Cathy after her previous description
7 of not wanting to do that anymore. She stated that she
8 thought Patricia threatened -- was threatened or scared into
9 living with Cathy but then added she doesn't have any
10 evidence; that was her own speculation.

11 Ms. Hammett reiterated that Brandon Jones has
12 always denied any involvement in the crime and that
13 Patricia, the mother, has believed Brandon, I suppose you
14 could say. She said Patricia also said that Jones was not
15 involved and described when she -- when she, Patricia the
16 mother, traveled to North Carolina for the trial, she
17 reported to Ms. Hammett that the African-American population
18 of the town approached her to pray with her and say that
19 they knew her son was innocent.

20 Ms. Hammett told me that Cathy -- this is the
21 sister now -- has never said anything to her about
22 Mr. Jones's guilt or innocence, and that Mr. Jones -- and
23 that Cathy has never mentioned Mr. Jones ever making any
24 statements about the murder or any involvement in the
25 murder.

1 She said that the only thing she's heard Cathy say
2 on multiple occasions is that she hopes the prison keeps
3 Jones until he rots and dies. Ms. Hammett told me that in
4 her daily contact with Mr. Jones he told her that last week
5 -- either on Thursday or Friday of last week he had tried to
6 call his mother Patricia in the hospital, and Cathy either
7 answered the phone or took the phone, and at that point
8 cursed Mr. Jones and again said she hopes that he would stay
9 in prison.

10 Ms. Hammett told me that she knows Cathy's
11 daughter, Crystal, from going to church together, and that
12 Crystal also describes Cathy as crazy, and states she does
13 not want to be around her. She said that Crystal went to
14 see Patricia in the hospital recently, and Cathy caused a
15 scene because she thought Crystal was too close with
16 Ms. Hammett.

17 Q. Did you make any other efforts to follow up with
18 anybody about this matter?

19 A. I did. As you heard in the e-mail that was
20 forwarded, there was some -- a doctor and a nurse mentioned.
21 I tried to follow up with both of them, and I was unable to
22 reach the doctor. I spoke with a different nurse that works
23 with that doctor, and once I found the doctor was
24 unavailable, I explained to the nurse why I was calling.
25 And she said that she was familiar with the situation, that

1 she was familiar with Cathy, but she didn't want to tell me
2 anything without talking to the doctor first. And I asked
3 that the doctor would call me when she came in.

4 Later that day, a different nurse called me back
5 and said that she'd spoken with the doctor who said she had
6 no knowledge of the situation and dealt only with the
7 patient, not with the daughter. I asked that nurse if I
8 could talk with the doctor for a few minutes and verify that
9 with her, and she said she would have the doctor call me
10 back. And the following day, a different nurse called me
11 back and essentially relayed the same information, that the
12 doctor didn't have any information.

13 MS. GUICE SMITH: Do you-all have questions for
14 Mr. Ziegler?

15 ALT. COMMISSIONER NEWTON: I have one brief one
16 about the phone call with the investigator. Mr. Ziegler,
17 did you-all ask Ed Champ, Sr., who owns Ed's Bar, as I
18 understand it --

19 THE WITNESS: I have had no contact --

20 MS. GUICE SMITH: Mr. Ziegler has not worked on
21 this case.

22 THE WITNESS: -- with Mr. Champ, Sr.

23 ALT. COMMISSIONER NEWTON: I'm sorry, not Ziegler.
24 No -- I'm sorry.

25 MS. GUICE SMITH: This attorney has not worked on

1 this case except for this one issue.

2 ALT. COMMI SSIONER NEWTON: Oh.

3 MS. GUI CE SMITH: Ms. Matoian will be able to
4 answer that question.

5 ALT. COMMI SSIONER NEWTON: Never mind. Thank you.

6 JUDGE WAGONER: That would be with her, I guess.

7 MS. GUI CE SMITH: You may step down.

8 JUDGE WAGONER: Thank you.

9 (The witness left the stand.)

10 MS. GUI CE SMITH: Ms. Matoian, if you will go back
11 up in just a moment to answer Ms. Newton's question.

12 Can we go off the record for just a moment to
13 discuss scheduling?

14 JUDGE WAGONER: Yes.

15 (Off the record at 11:43 a.m.)

16 (Discussion off record.)

17 (Back on the record at 11:44 a.m.)

18 MS. GUI CE SMITH: One other matter -- one other
19 matter. There were questions -- a question yesterday about
20 how many or who connected the night that they saw
21 Mr. Sprui ll and Mr. Jones leave the bar and come back in
22 different clothes with the night that the -- the baby,
23 Virginia [sic] Furlough, was born.

24 JUDGE WAGONER: Uh-huh.

25 MS. GUI CE SMITH: We're working on putting

1 together a chart of that information that we will pass out
2 after lunch.

3 MS. MATOIAN: Can I just correct that real quick?
4 Virginia Furlough was Curtis Furlough's wife. The baby that
5 was born was named Victoria.

6 JUDGE WAGONER: Was named what?

7 MS. MATOIAN: Victoria.

8 CATHERINE MATOIAN,
9 having been re-called as a witness for the Commission and
10 having been previously sworn by Judge Wagoner, testified as
11 follows:

12 EXAMINATION ALT. COMMISSIONER NEWTON:

13 Q. Ed Champ, Sr. owns Ed's Bar.

14 A. Big Ed's Bar no longer exists, but he did own it,
15 yes.

16 Q. He did.

17 A. Yes.

18 Q. At the time of the murder --

19 A. Yeah.

20 Q. -- he owned the bar, and that is where Mr. Jones
21 was apparently, supposedly, according to his sister, calling
22 from after the murders.

23 A. She said he was calling from a bar. She did not
24 specify Big Ed's Bar.

25 Q. And you followed up trying to find out if there

1 was a phone call made from Ed's Bar to Tennessee where his
2 sister lived, correct?

3 A. With the phone records that we had previously in
4 the District Attorney's file.

5 Q. So my question is, if Ed Champ owns the bar, did
6 anyone inquire whether he kept his landline records? That's
7 '94, so you would think he would have a landline. Did
8 anyone check to see if he kept his business records to
9 include bills paid to include those phone records? At that
10 time, as I recall, those records would detail the phone
11 calls with the numbers.

12 A. No, I didn't ask Ed Champ, Sr. if he still had his
13 phone records.

14 EXAMINATION BY MS. GUICE SMITH:

15 Q. Ms. Matoian, how long, if you recall, did Ed
16 Champ, Sr. own the bar?

17 A. I do not recall.

18 Q. And is he now deceased?

19 A. He is.

20 ALT. COMMISSIONER NEWTON: You said the bar's
21 closed?

22 THE WITNESS: Yeah, it's my understanding it's now
23 a Hispanic Church.

24 ALT. COMMISSIONER NEWTON: And --

25 COMMISSIONER GRACE: That's about right.

1 JUDGE WAGONER: It's about what?

2 ALT. COMMISSIONER NEWTON: -- so chasing down
3 those --

4 COMMISSIONER GRACE: A Hispanic church.

5 ALT. COMMISSIONER NEWTON: -- business records,
6 they might/may not exist?

7 THE WITNESS: I did not ask him about his business
8 records. Ed Champ and Lottie champ are both deceased.

9 ALT. COMMISSIONER NEWTON: Thank you.

10 MS. GUICE SMITH: Any other questions before we
11 break for lunch?

12 (No response.)

13 JUDGE WAGONER: Okay. So we'll go get our lunch
14 and bring it back in here.

15 MS. GUICE SMITH: I think it will be ready in just
16 a couple of minutes, but you can head on back and use the
17 restroom on the way.

18 JUDGE WAGONER: Thank you

19 (Off the record at 11:46 a.m.)

20 (A lunch recess was taken.)

21 (Back on the record at 12:05 p.m.)

22 JUDGE WAGONER: At least two of us thought it
23 would be nice to see what the demeanor of Ms. -- or it might
24 be helpful or instructive to see Ms. Maybin's demeanor as
25 she testified -- as she spoke to the investigator.

1 THE WITNESS: Is the chair bothering anyone? Do
2 you want me to move it?

3 JUDGE WAGONER: What now?

4 THE WITNESS: Do you want me to move the chair?
5 Is it bothering you-all?

6 JUDGE WAGONER: And Mr. Boswell and I sort of went
7 through this separately last night, and basically agreed on
8 the same sentence -- the same portions that we might hear.
9 So thank you very much, Mr. Boswell, for doing that.

10 COMMISSIONER BOSWELL: You're welcome.

11 JUDGE WAGONER: Okay, are y'all ready?

12 MS. GUICE SMITH: Yes. So we have, I believe, six
13 clips to play. The first one is a long portion. It's 37
14 minutes.

15 Commissioners, I would just ask if you're going to
16 have questions, the preference would be that we wait until
17 the clips are done, but if you have a pressing question that
18 you need to ask of Commission staff in the middle, if you'll
19 please just make it clear that you're going to ask questions
20 so that the court reporter can get that on the record.

21 JUDGE WAGONER: And this is all her deposition
22 that she gave to --

23 MS. GUICE SMITH: This is her deposition by --
24 that was taken by Ms. Matoian of the Commission.

25 (Clips of Dana Maybin's videotaped deposition)

1 were played from 12:06 p.m. until 1:01 p.m.)

2 MS. GUICE SMITH: That concludes all of the clips
3 of Ms. Maybin's deposition by Commission staff that the
4 commissioners had requested to see.

5 JUDGE WAGONER: Did anyone have any questions they
6 wanted to ask?

7 (No response.)

8 JUDGE WAGONER: All right. I think -- never mind.
9 Okay. Yes, ma'am.

10 MS. GUICE SMITH: Okay. One moment.
11 Commissioners, we're going to pass around Handout 100 for
12 your notebook. One of the commissioners yesterday had
13 requested, as I said earlier, information on who associated
14 the birth of Victoria Furlough with the night that
15 Mr. Spruiell and Mr. Jones left the bar and came back in
16 different clothes. So we put together a chart of those
17 incidences for you. That will be Handout 100. It'll go in
18 the back of your second Hearing Handout Notebook.

19 (Handout Number 100 was identified for the
20 record.)

21 MS. GUICE SMITH: Commissioners, we also had
22 passed around several photos that were State's exhibits, the
23 originals of those earlier. Those are not being made into a
24 handout, as they have been provided. Copies of those were
25 provided in your brief. That is true also of the chart that

1 we have -- the diagram from the victim's trailer. The
2 originals that we have, we'll -- we'll have to return to the
3 Clerk's office at the conclusion of the Commission's inquiry
4 as that was an item of evidence that we received from them,
5 so we no longer have possession of those. So since this is
6 already in your brief and provided to you there, we're not
7 going to make it a separate handout since it will be copies
8 again.

9 ALT. COMMISSIONER NEWTON: Can I simply just point
10 out I'm missing 98, and I'm -- I'm sure it was an oversight,
11 but I just want you to know my notebook does not have 98 in
12 case you're looking for it later.

13 MS. GUICE SMITH: Does everyone else have a 98?

14 JUDGE WAGONER: It might be --

15 COMMISSIONER BOSWELL: I do.

16 JUDGE WAGONER: I do.

17 MS. GUICE SMITH: Okay. We will make sure you see
18 that.

19 Commissioners, at this time, if you'll just be at
20 ease for a minute, we're going to get Mr. Jones.

21 JUDGE WAGONER: While we're at ease for a second,
22 if anyone wants to run to the restroom --

23 MS. GUICE SMITH: Yes.

24 JUDGE WAGONER: -- we could do that, and then run
25 back in.

1 (Proceedings were at ease until 1:09 p.m.)

2 JUDGE WAGONER: You're Wallace Jones, correct,
3 sir?

4 MR. JONES: Yes, ma'am.

5 JUDGE WAGONER: Okay. My name is Anna Mills
6 Wagoner. I'm the Superior Court Judge and chairperson for
7 this Commission. So before we go any further, if you would
8 please place your left hand on the Bible, raise your right
9 hand. Can you stand up? Stand up. Okay. And be sworn.

10 WALLACE BRANDON JONES,
11 having been called as a witness for the Commission, was
12 sworn by Judge Wagoner and testified as follows:

13 EXAMINATION BY MS. GUICE SMITH:

14 Q. Good afternoon, Mr. Jones.

15 A. Good afternoon.

16 Q. My name is Lindsey Smith. I'm the Director of the
17 North Carolina Innocence Inquiry Commission. I've got some
18 questions that I'm going to ask you today, and then when I'm
19 done the commissioners sitting around the table -- there are
20 nine of them -- are going to have some questions for you as
21 well, okay?

22 A. Yes, ma'am.

23 Q. Can you please state your full name for the
24 record?

25 A. Wallace Brandon Jones.

1 Q. And if you can speak up just a little bit, the
2 court reporter needs to be able to hear your answers.

3 A. Wallace Brandon Jones.

4 Q. Mr. Jones, did you kill Frank Swain?

5 A. No, ma'am.

6 Q. Were you present when Frank Swain was murdered?

7 A. No, ma'am.

8 Q. Where were you on the night of the murder?

9 A. Ed Champ's bar.

10 Q. What time did you get there?

11 A. I had went earlier with Big Ed after we had done
12 some work and went to his house and showered and all that.
13 It was probably about 7:30, 8:00 at the latest.

14 Q. And how long did you stay?

15 A. Till it closed.

16 Q. What time did it close?

17 A. I believe 2:00. 1 or 2:00. I can't remember
18 exactly. 1 or 2:00. But the door was closed.

19 JUDGE WAGONER: Just a little -- a little bit
20 louder, please, sir. Speak up a little bit. Thank you.

21 A. 1 or 2:00 --

22 JUDGE WAGONER: That's better, thanks.

23 A. -- when the door was closed.

24 BY MS. GUICE SMITH:

25 Q. And who were you with that night?

1 A. Leroy Spruiell, Dana Maybin.

2 Q. What were you doing at the bar?

3 A. Drinking, dancing, shooting pool, just different
4 stuff.

5 Q. Who did you dance with?

6 A. A whole bunch of people. I really didn't know a
7 lot of the people there at the time.

8 Q. And from the time you got there that evening, I
9 think you said around 7 or 7:30 --

10 A. Yes, ma'am.

11 Q. -- until the time you left at 1 or 2:00, did you
12 leave the bar?

13 A. No, ma'am.

14 Q. Did you go outside of the bar?

15 A. I think we went outside a few times and had some
16 whiskey in a can. You couldn't drink whiskey in the bar.

17 Q. So you went outside to drink whiskey?

18 A. Yeah. Maybe one -- once or twice. It wasn't many
19 times.

20 Q. How long would you say you were outside when you
21 went outside to drink whiskey?

22 A. It was cold. Not long.

23 Q. When you say it was cold, what do you mean?

24 A. It was December. It was cool outside.

25 Q. Who else saw you at the bar?

1 A. Ed Champ. Ms. Lottie. His whole family.

2 Q. All of Mr. Champ's family?

3 A. Yes, sir -- ma'am, they was there.

4 Q. Did you say -- I'm sorry?

5 A. They was all there.

6 Q. When you say Ed Champ, do you mean Ed Champ, Sr.
7 or Ed Champ, Jr.?

8 A. Both.

9 Q. This night you've been telling me about, how do
10 you know that was the night of the crime?

11 A. Because after the crime, Mr. Champ, he put a log
12 book in there. It was a big thing in that little small
13 town. He put a log book in for when you came in you signed
14 your name and stuff.

15 Q. But that log book didn't exist the night of the
16 crime?

17 A. No, ma'am.

18 Q. When you left the bar that night at 1 or 2, where
19 did you go?

20 A. Leroy Spruiell's house.

21 Q. How did you get there?

22 A. Walked.

23 Q. Who did you walk with?

24 A. Dana Maybin.

25 Q. Anyone else?

1 A. No.

2 Q. How did Leroy Spruiell get there? Do you know?

3 A. Mr. Champ drove him.

4 Q. Was anybody with them?

5 A. It was a truckload of people.

6 Q. Did they all go to Leroy Spruiell's house?

7 A. No, just Leroy.

8 Q. What did you do when you got there?

9 A. We ate some kind of sweet potatoes -- fried sweet
10 potatoes or something like that. It's the first time I'd
11 ever had them, and me and her went to bed.

12 Q. And were you and Dana Maybin dating at the time?

13 A. Yes, ma'am.

14 Q. Did you sleep in the same bed that night?

15 A. Yes, ma'am.

16 Q. How did you learn about the crime?

17 A. Ed Champ and them was talking about it.

18 Q. And when was that?

19 A. I believe it was the next day or the day after.
20 It was a big thing in that little small town.

21 Q. And when you say Ed Champ was talking about it,
22 where were you at that he was talking about it?

23 A. His house.

24 Q. Can you speak up?

25 A. His house.

1 Q. When did you become aware that you were a suspect?

2 A. I believe it was in April.

3 Q. And after the crime, did you ever leave town?

4 A. Yes, ma'am.

5 Q. When was that?

6 A. In January I went to West Virginia one time with
7 Mr. Champ, and then in -- I believe in February I went to
8 Tennessee.

9 Q. And how long were you gone?

10 A. A few weeks.

11 Q. And you came back?

12 JUDGE WAGONER: Which -- which place, Tennessee,
13 or -- or --

14 MS. GUICE SMITH: Sorry.

15 JUDGE WAGONER: -- West Virginia?

16 THE WITNESS: West Virginia, we only stayed like a
17 day or two, me and Mr. Champ.

18 BY MS. GUICE SMITH:

19 Q. And then when you went to Tennessee, how long were
20 you gone?

21 A. A few weeks.

22 Q. And you came back?

23 A. Yes, ma'am.

24 Q. To Plymouth?

25 A. Yes, ma'am.

1 Q. Why did you come back?

2 A. My work. That's where I was staying.

3 Q. Why'd you go to Tennessee in the first place?

4 A. To see my mother.

5 Q. Did you leave again after that?

6 A. Yes, ma'am.

7 Q. Where'd you go that time?

8 A. Tennessee.

9 Q. And when was that?

10 A. In April.

11 Q. Why'd you leave that time?

12 A. Mr. Champ -- the apartment I was staying, he was
13 renting it out, so I was having to leave anyway 'cause he
14 didn't have no other apartment for me. And that's the day
15 the police officers came over to his house wanting to talk
16 to me. But I was already leaving, so I left.

17 Q. When they came over to talk to you, did you know
18 they were looking at you for murder?

19 A. No, ma'am, not at the time.

20 Q. Why did you think they were coming to talk to you?

21 A. I really didn't know at the time.

22 Q. Did you know when you left in April that you were
23 a suspect?

24 A. Yes, ma'am.

25 Q. Did you know the victim, Frank Swain?

1 A. No, ma'am.

2 Q. Had you ever been to the victim's house?

3 A. No, ma'am.

4 Q. Had you ever driven up to his house?

5 A. No, ma'am.

6 Q. You'd never been in his house?

7 A. No, ma'am.

8 Q. You stated a few minutes ago that you did not know
9 Frank Swain.

10 A. No, ma'am.

11 Q. And you weren't present when he was killed.

12 A. No, ma'am.

13 Q. Have you always maintained your innocence?

14 A. Yes, ma'am.

15 Q. Have you ever told anyone that you might have
16 committed the crime?

17 A. No, ma'am.

18 Q. I'm going to hand you what --

19 MS. GUICE SMITH: Commissioners, you have marked
20 as Handout 72 in your Hearing Handout Notebook.

21 BY MS. GUICE SMITH:

22 Q. Mr. Jones, if you could take a look at this and
23 see if you recognize that as some notes from some
24 information that you provided the day of a polygraph exam on
25 December 10th, 1994, and, too, December 12th, 1994.

1 (Handout Number 72 was identified for the
2 record.)

3 A. (Reviewing document.) I can't see that good. I'm
4 doing the best I can. (Reviewing document.) I never made
5 no statement like that.

6 BY MS. GUICE SMITH:

7 Q. You didn't provide a statement while Detective
8 Spruiell and Detective Williams were transporting you?

9 A. Mr. -- Ms. Spruiell kept trying to get me to tell
10 them that I did that, but I knew.

11 Q. Do you remember taking a polygraph?

12 A. Yes, ma'am.

13 Q. Do you remember that you failed that polygraph?

14 A. No, ma'am.

15 Q. Did they ever tell you if you failed or passed?

16 A. The man told me that I passed it, and then another
17 man came in and said I failed my own name, and he kept
18 trying to get me to tell him that Mr. Spruiell killed
19 Mr. Swain.

20 Q. Can you go on the second page of that report, and
21 since you can't see well, do you see that I highlighted --

22 A. Yes, ma'am.

23 Q. -- some things in yellow there?

24 Are you able to read those sentences out loud?

25 A. "Brandon Jones made a statement to" I guess that's

1 Willie Williams "that something was wrong with him. The
2 girl said he did it."

3 JUDGE WAGONER: Can you speak up a little bit,
4 sir? I know. Turn this way so we can hear you, not to the
5 guard.

6 THE WITNESS: Oh, okay.

7 A. It says:

8 "Brandon Jones made a statement to Williams
9 that feels something was wrong with him. The girl
10 had said he did it, that he must have done it, but
11 he didn't remember doing it. Jones said he felt
12 like he needed some help."

13 No, ma'am, that's wrong. Mr. --

14 Q. Did you tell Willie Williams that?

15 A. Mr. Williams told me that. Well, Ms. Janice
16 Spruill told me that, that maybe I had done it and didn't
17 remember doing it. And I told her -- after they showed me
18 some pictures, I said, "You don't do something like that and
19 not remember that."

20 Q. They showed you some pictures?

21 A. Yes, ma'am.

22 Q. Is it true, Mr. Jones, that you may have done it
23 but don't remember doing it?

24 A. No, ma'am.

25 Q. Is it your testimony today that you did not kill

1 Frank Swain?

2 A. I did not kill Frank Swain.

3 Q. And is it your testimony today that you were not
4 present when Frank Swain was killed?

5 A. I was not present.

6 MS. GUICE SMITH: All right, Commissioners, if you
7 have questions for Mr. Jones.

8 JUDGE WAGONER: I just have a question to start
9 with. Who -- who wrote this statement?

10 MS. GUICE SMITH: Judge Wagoner, I would just
11 request that the public stay behind the --

12 MS. CHRIS MUMMA: I'm sorry. I had difficulty
13 hearing back here.

14 JUDGE WAGONER: Okay. Well, just tell one of the
15 staff members --

16 MS. CHRIS MUMMA: I'm sorry.

17 JUDGE WAGONER: -- or something. You're three
18 feet behind me, so --

19 Could you please tell me where this statement came
20 from and who wrote it? I don't understand that.

21 MS. MATOIAN: It came from the Washington County
22 Sheriff's Office file, from their officers' notes.

23 JUDGE WAGONER: But we don't know which officer it
24 was?

25 MS. MATOIAN: No, there's no author on the

1 officers' notes.

2 JUDGE WAGONER: Questions?

3 COMMISSIONER GRACE: Yes, ma'am, I have one.

4 JUDGE WAGONER: Yes, sir.

5 EXAMINATION BY COMMISSIONER GRACE:

6 Q. On December 10th, were you -- what were you in
7 custody for?

8 A. December?

9 Q. 1994.

10 A. December.

11 Q. You were just shown -- shown a statement that was
12 dated December 10, 1994.

13 A. For this crime.

14 Q. Did you have a lawyer at that time?

15 A. No, sir.

16 Q. You had not been appointed a lawyer at that time?

17 A. No, sir.

18 Q. When were you arrested?

19 A. I believe it was December the 9th. 9th or 10th.
20 It's one of those days. I'm not exact [phonetic] sure on
21 the time, but I know it was -- it was soon.

22 Q. Do you remember calling and asking for medical
23 help?

24 A. No, sir. I went to medical -- they took blood
25 samples, hair samples, and stuff of that nature.

1 Q. But you didn't call for help because of some
2 medical condition you were --

3 A. I had a --

4 Q. -- experiencing?

5 A. I was experiencing medical problems, but I had
6 told them on the way from Tennessee, yes. But I never
7 called them. I was in custody.

8 JUDGE WAGONER: Yes, ma'am.

9 EXAMINATION BY COMMISSIONER THOMPSON:

10 Q. Can you tell me about your sister, Cathy, what
11 kind of relationship you have with her?

12 A. I haven't talked to her in a few years, probably
13 -- I don't know, ten, 15 years up until last year. My dad
14 died. And we really never have been close. She took all my
15 mama and daddy's stuff and sold it and told my mama she'd
16 have a place to stay and ended up making her leave. So she
17 went and stayed with my other sister, and my other sister
18 died in October.

19 And I call my mama every day on the phone and talk
20 to her because you never know when it's gonna be the last
21 time. And it got to where she couldn't talk, and she was --
22 they took her phone from her. And so I knew something was
23 wrong, so I called a friend of mine named Debbie, and she
24 went down there and checked on her to see what was going on.
25 They put her in the hospital, and they -- they sent her to a

1 nursing home. And the nursing home let her stay longer
2 without charge because something was going on. And she got
3 well again where she could talk and walk, and they put some
4 red flags on my sister at the nursing home. And she didn't
5 like it very much. She wasn't allowed back out there.

6 Q. Would it be normal for you back in the day when
7 you were a younger man to get drunk and call your sister
8 from a bar?

9 A. No.

10 Q. No?

11 A. No, ma'am.

12 Q. Would she --

13 A. Would not.

14 Q. Would she have received like a collect phone call
15 from you from a bar ever?

16 A. No, ma'am.

17 Q. No? She'd have probably hung up on you or
18 something?

19 A. I would have never called her.

20 Q. Never called her?

21 A. No.

22 Q. Have you always been a big man like this?

23 A. No, ma'am.

24 Q. I don't mean like big. I'm talking about big.
25 Have you always been a big man?

1 A. No, ma'am. I just -- I've been in prison a long
2 time, and you just get big.

3 Q. I wasn't actually -- I wasn't talking about your
4 weight, but have you always been tall and -- and just kind
5 of strong and big?

6 A. I'm basically about the same height, yes, ma'am.

7 JUDGE WAGONER: Well, we'll just go around the
8 table.

9 COMMISSIONER BRITT: That's fine. That's fine.
10 Go ahead.

11 COMMISSIONER BOSWELL: Me?

12 JUDGE WAGONER: Yeah. One of you.

13 COMMISSIONER BOSWELL: Okay.

14 EXAMINATION BY MR. BOSWELL:

15 Q. Mr. Jones, do you know Edward Hudson?

16 A. Prisoner Ed Hudson?

17 Q. Yep.

18 A. I've met him, yes, sir.

19 Q. He wrote a letter to Mr. Coman in '05 alleging
20 that Wyatt -- I guess it was Wyatt Spruiell -- had confessed
21 to being involved with the crime. What do you know about
22 this letter and -- and how that came about? Do you
23 remember?

24 A. I don't know nothing about it. I didn't know
25 nothing about it until we come to -- to the jail. I seen

1 him in there.

2 Q. A couple of days ago?

3 A. Yes, sir.

4 Q. What did he tell you at that point in time?

5 A. He was just saying something, and I told him,
6 "Just don't tell me." You know, 'cause I didn't -- I didn't
7 want to be involved in it.

8 Q. In '05, you and he, according to the record we've
9 seen, were in the same prison, and his letter indicates that
10 you told him who to send the letter to. Does this ring a
11 bell with you at all?

12 A. No, sir. Never.

13 Q. So you don't remember anything about talking to
14 him about putting a -- sending a letter in where Wyatt
15 Spruill, I guess -- well, actually, you know what? I think
16 I'm confused. I think it was Leroy who said --

17 JUDGE WAGONER: Yeah, Leroy.

18 COMMISSIONER BOSWELL: -- knowing about it.

19 BY COMMISSIONER BOSWELL:

20 Q. I apologize. I was confused. Never mind about
21 those questions. But you don't know him, and you don't have
22 any -- you hadn't had any communication with him?

23 A. I -- I have seen him in the prison, but I really
24 didn't really know him, know him, you know.

25 Q. Gotcha. All right. Thank you.

1 JUDGE WAGONER: Now, Mr. Barrow, did you have one
2 -- a question?

3 COMMISSIONERS BARROW: (Shaking head negatively.)

4 JUDGE WAGONER: Okay. Commissioner Frye.

5 EXAMINATION BY COMMISSIONER FRYE:

6 Q. I know it's been a long time ago --

7 A. Yes, sir.

8 Q. -- and you've had to replay this over and over in
9 your mind probably a million times or better since -- since
10 the day that all this happened.

11 You said you arrived at Big Ed's Bar that evening
12 about what time?

13 A. Well, I had went and pumped septic tanks with
14 Mr. Champ, and we stopped at the bar for a few minutes. He
15 was talking to the bartender lady, and we left. It was just
16 getting dark. It was in the wintertime, so it had to be
17 6:30, 7:00, 8:00, something like -- somewhere around that
18 time.

19 Q. And that was about the time it was getting dark,
20 about 8:00?

21 A. 'Round about that time.

22 Q. Okay. Let me ask you this: From -- can you tell
23 me, and give me as much detail as possible -- and I know
24 it's going to be tough -- everything that you done from 6:00
25 that evening until close -- the bar closed that night?

1 A. That's a lot to ask. Mainly just -- at the bar we
2 just -- before the bar?

3 Q. From 6:00 that evening until the bar closed that
4 night.

5 A. I had walked to Leroy's house, and we walked a
6 couple houses down and caught a ride to Mr. Champ's. But it
7 wasn't that far. And at the bar we just danced and drank,
8 and we were just having a good time.

9 Q. Do you remember any conversations you had at the
10 bar? Who you might have danced with? As much detail as you
11 can remember about that night. Just -- just think back.
12 And you've had to play this back in your mind a million
13 times.

14 A. Yes, sir. My mainest [phonetic] deal is I didn't
15 -- I really didn't know -- I hardly knew Mr. Spruiell. I
16 wasn't there but a few months. I hardly knew Mr. Spruiell at
17 all.

18 JUDGE WAGONER: And when you say Spruiell, you mean
19 Leroy.

20 THE WITNESS: Yes, ma'am, Leroy.

21 BY COMMISSIONER FRYE:

22 Q. So who did you catch a ride with?

23 A. One of Leroy's friends. I think he was a preacher
24 man or something like that.

25 Q. Okay. What kind of car?

- 1 A. It was in a truck.
- 2 Q. Color?
- 3 A. Man, I couldn't tell you. I'm sorry.
- 4 Q. Was it a single -- single-cab truck?
- 5 A. Yes, sir.
- 6 Q. Was Debbie [sic] Maybin with you then?
- 7 A. Dana Maybin? Yes, sir.
- 8 Q. Dana, yeah.
- 9 A. She lived with Mr. Spruiell.
- 10 Q. So she was in the truck, you was in the truck,
- 11 Leroy was in the truck, and the preacher man was in the
- 12 truck.
- 13 A. Yes, sir.
- 14 Q. He let you'ins out at the bar.
- 15 A. Yes, sir.
- 16 Q. You stayed there until it closed.
- 17 A. Till it closed.
- 18 Q. How did you leave the bar that night?
- 19 A. I walked. Leroy's house is not very -- it's not
- 20 very far. It's on the highway, 64 Highway. His house is
- 21 here, and the bar is right here. It's not very far.
- 22 Q. Okay. Who -- who left the bar with you?
- 23 A. Dana Maybin.
- 24 Q. Dana.
- 25 A. Yes, sir.

1 Q. Do you remember what you were wearing?

2 A. Not exactly, but I knew most of the time I wore
3 white pants to the bar.

4 Q. Okay.

5 A. I don't remember what shirt I was wearing.

6 Q. Hold each other's hands walking back to Leroy's,
7 or were you --

8 A. Yeah. I had a six-pack of beer, and I dropped it
9 in the street. I do remember that.

10 Q. You dropped it in the street?

11 A. Yes, sir. The bottom fell out of it.

12 Q. And so you'ins walked on back?

13 A. To Leroy's.

14 Q. To Leroy's, you and Dana. Getting along fine,
15 everything's --

16 A. Yes, sir.

17 Q. You think you were wearing white pants.

18 A. Yes, sir.

19 Q. Was there any stain on your --

20 A. That's main -- that's mainly the only clothes I
21 had was white pants.

22 Q. Any stains or anything on your pants at all?

23 A. No, sir, not to my knowledge.

24 Q. Okay. Thank you.

25 JUDGE WAGONER: Any questions?

1 COMMISSIONER GRACE: No, ma'am. Thank you.

2 EXAMINATION BY JUDGE WAGONER:

3 Q. When you and Ms. -- well, first of all, tell me
4 about Dana Maybin. How did y'all meet, and how long had you
5 known each other?

6 A. Just a few months. I met her at a -- a bar.

7 Q. At the same bar, or a different bar?

8 A. The same bar.

9 Q. Okay. Was she there by herself?

10 A. She was with two other girls.

11 Q. Do you know who they were?

12 A. One of them's name was Stacy, and a girl named
13 Terri.

14 Q. Okay. So you met her at the bar. So then what
15 happened?

16 A. We just started going out.

17 Q. Immediately?

18 A. Yeah, really.

19 Q. When you met her at the bar, what did you think
20 her name was, or do you remember?

21 A. I I.D.'d her at the bar. I should have looked. I
22 just looked for the age to make sure she was 21 at the time.

23 Q. Did you ever know her as Nikki?

24 A. Huh-uh. Just Dana.

25 Q. You never knew her as Nikki.

1 A. No, sir -- no, ma'am. Sorry.

2 Q. Did anybody else call her Nikki?

3 A. No, ma'am.

4 Q. You never heard anybody call her Nikki.

5 A. No, ma'am.

6 Q. So if all these people are saying she's Nikki,
7 they're not telling the truth?

8 A. I don't -- excuse me. Sorry. Her name is Dana
9 Maybin. They called her Nikki. That's what it was. I
10 never looked at her ID to see what her real name was. I
11 just would look at the age. I wished I had looked at the
12 name, too. Her name -- she was going by the name Nikki.
13 That's right. Tarkington. Nikki Tarkington. I'm sorry.

14 Q. And did y'all just get along great the whole time?

15 A. So-so. She -- she wanted to move in with me and
16 all kind of stuff, but I wouldn't let her because, you know,
17 it really wasn't that serious of a relationship for me. But
18 it was for her. But it wasn't for me.

19 Q. Did y'all ever get in any fights or arguments and
20 stuff like that?

21 A. Not really.

22 Q. Not really. What does "not really" mean?

23 A. A couple of times she wanted to come and stay at
24 my house; I wouldn't let her.

25 Q. Did you ever assault her?

1 A. No, ma'am. No, ma'am.

2 Q. Did she ever assault you?

3 A. No, ma'am.

4 Q. Okay. Tell me about going to Tennessee.

5 A. Yes, ma'am.

6 Q. When you went to Tennessee, you said the reason
7 you went is because you didn't have a place to live anymore?

8 A. The last time?

9 Q. Uh-huh.

10 A. No, I was -- I was going to go to Florida, but I
11 went to Tennessee first.

12 Q. Okay. And that was because?

13 A. Well, I was going to Florida 'cause I had a place
14 to stay in Tennes-- -- North Carolina. That's the -- that's
15 the same day the police -- the officers came to the house to
16 get me. I was like packing my stuff, putting it in
17 Mr. Champ's back closet in -- it's like a well house.

18 Q. Okay. And then when you were in Tennessee, where
19 -- where'd you stay there?

20 A. I went to my mother's for about a week or two, and
21 then I went to Florida.

22 Q. Okay. But didn't somebody find you in Tennessee,
23 like the authorities?

24 A. Yes, ma'am.

25 Q. Were you hiding under your mother's house?

1 A. Yes, ma'am.

2 Q. Had you dug a hole, or exactly how were you
3 living?

4 A. No, ma'am. No, it wasn't like that. I -- when I
5 came back from Florida to Tennessee to my mother's, when the
6 police came, I just thought they was just looking for me for
7 an outstanding warrant, so I -- I could have went through
8 the back window. It was cold outside, so I went under the
9 house. The police came and asked me if I would sign a
10 waiver to come to North Carolina, and I told them sure.
11 They told me why. I said, yeah, sure, 'cause I knew I
12 hadn't killed nobody.

13 Q. So for that time you were -- you waived
14 extradition and came back to North Carolina.

15 A. Yes, ma'am.

16 Q. Were you arrested at that time for the murder of
17 Mr. Swain?

18 A. Yes, ma'am. In Tennessee?

19 Q. Uh-huh.

20 A. Yes, ma'am.

21 Q. When you got back to North Carolina you were
22 arrested. I mean, you stayed in custody. Is that correct?

23 A. The -- Janice Spruiell and Mr. Williams, and I
24 believe his name was Donnie Varnell --

25 Q. Yep.

- 1 A. They came to Tennessee and got me the next day.
- 2 Q. Okay. Did they ask you questions on the way back?
- 3 A. Yes, ma'am.
- 4 Q. And you didn't have a lawyer then, did you?
- 5 A. No, ma'am. I didn't feel I needed one, you know.
- 6 Q. Okay. Yes, sir. Thank you.
- 7 EXAMINATION BY COMMISSIONER BRITT:
- 8 Q. Mr. Jones?
- 9 A. Yes, sir.
- 10 Q. How -- how big are you right now? How tall are
- 11 you? How much do you weigh?
- 12 A. I'm six-one, probably 300 pounds.
- 13 Q. How much -- were you six-one back in '93?
- 14 A. Yes, sir.
- 15 Q. How much did you weigh when --
- 16 A. Probably about 180 pounds.
- 17 Q. Leroy Spruiell: How big was he back then?
- 18 A. I think he's six-three or four, about the same
- 19 size I was then.
- 20 Q. He's a taller man?
- 21 A. Yes, sir.
- 22 Q. Okay. You never recall meeting Frank Swain?
- 23 A. Never.
- 24 Q. Did you smoke crack back in '93?
- 25 A. No. I have smoked some crack before, but during

1 this time, no, sir.

2 Q. Did Leroy Spruiell smoke crack?

3 A. No, sir, not to my knowledge.

4 Q. And how long had you known Leroy Spruiell --
5 When did you move to Plymouth?

6 A. In September of '93.

7 Q. All right. And this occurred in December.

8 A. Yes, sir.

9 Q. So you'd been there about three months.

10 A. Yes, sir.

11 Q. Okay. And you came to Plymouth with some folks out
12 of Texas or Mexico?

13 A. Florida.

14 Q. Florida. And what kind of work were you doing?

15 A. We went and built a grain bin in Creswell.

16 Q. Creswell, North Carolina?

17 A. Yes, sir.

18 Q. What were you doing in Florida?

19 A. Laying irrigation pumps, stuff like that.

20 Q. Farm work?

21 A. Yes, sir.

22 Q. Construction-related farm work?

23 A. Yes, sir.

24 Q. And then why did y'all come to --

25 A. I had picked some tobacco in North Carolina, too.

1 Q. Why did you come to Plymouth?

2 A. Work.

3 Q. And the people you came to Plymouth with, where
4 were they living?

5 A. In Mr. Champ's house.

6 Q. So everybody you --

7 A. He had a --

8 Q. -- came with worked for Champ.

9 A. He had a -- he had a rental house. No, sir, they
10 didn't work for him. They was just renting the house.

11 Q. Okay. Who did they work for?

12 A. Different people. Whoever needed the -- needed
13 them to come work.

14 Q. And so how is it that you and Mr. Champ became so
15 close?

16 A. He came to his rental place to pick up the rent
17 one day and asked me if I wanted to come paint a garage and
18 make some money. I said, yes, sir, I'll -- I'll do it, and
19 from then on we was --

20 Q. Back in '93, did you carry a knife of any kind?

21 A. I may have carried a pocketknife here and there.
22 It just depends.

23 Q. Would that pocketknife have been a straight-edged
24 knife? Would it have been a serrated-edge knife?

25 A. Just a little knife.

1 Q. Okay. And one that's just, like you said, a
2 pocketknife.

3 A. Yeah, just a pocketknife.

4 Q. And did -- so you met Dana Maybin at the bar.

5 A. Yes, sir.

6 Q. Did you pick her up that night?

7 A. Yes, sir.

8 Q. Did she go home with you that night? Did you go
9 home with her?

10 A. She went home with me.

11 Q. All right. And then y'all started kind of seeing
12 each other.

13 A. Yes, sir.

14 Q. Were you seeing anyone else?

15 A. No, sir.

16 Q. Was she seeing anyone else?

17 A. Not that I knowed [phonetic] of at the time.

18 Q. All right. Was she working?

19 A. No, sir.

20 Q. And who -- she was living with who, the two ladies
21 you mentioned earlier?

22 A. Yes, sir. Stacy and her mother, Betsy.

23 Q. Now, did you ever work for Mr. Champ at the bar?

24 A. Yes, sir.

25 Q. What did you do?

- 1 A. Bartended.
- 2 Q. You said a minute ago that you checked her ID.
- 3 A. Yes, sir.
- 4 Q. Was at the door or was that at the actual bar?
- 5 A. At the bar where you buy beer.
- 6 Q. Where you were serving?
- 7 A. Sir?
- 8 Q. Where you were serving people.
- 9 A. Yes, sir.
- 10 Q. And you checked her ID to make sure she was of
- 11 age.
- 12 A. Yes, sir.
- 13 Q. How big was this bar?
- 14 A. Maybe just a little bit bigger than this room.
- 15 Q. The whole thing?
- 16 A. Yeah, the whole thing. It's not a very -- maybe
- 17 this room and a half of another size. It's not very big.
- 18 Q. From the outside, what did it look like?
- 19 A. A store. It used to --
- 20 Q. Did it have --
- 21 A. -- had been a store.
- 22 Q. Did it have windows?
- 23 A. No, sir.
- 24 Q. It didn't have any windows like on the front?
- 25 A. It had -- it had windows, but he had had them

1 fixed up and painted all up. You couldn't see out.

2 Q. Okay. Was there one door?

3 A. Yes, sir. There's two coming in, two pull out
4 doors.

5 Q. That was the only way in or out was through there?

6 A. Yes, sir.

7 Q. And was it open? Was it, like, open like this
8 room is, or was it divided up?

9 A. It's divided up.

10 Q. How was it divided up?

11 A. It's got like a -- like a wall right here, and the
12 bar is here, and the dance floor is in the back.

13 Q. So where are the front doors?

14 A. Right there at the bar.

15 Q. Where are the pool tables?

16 A. They're in the back, on the side.

17 Q. So if you're working at the bar, can you see
18 everywhere inside this -- when I say "at the bar," where
19 you're serving beer from --

20 A. Uh-huh.

21 Q. -- can you see the pool tables, the front door,
22 the dance floor?

23 A. You can see the pool table area and the front
24 doors real good. You can't see all the way into the dance
25 floor. You can see some of it.

1 Q. And if there was a band, where would the band set
2 up?

3 A. Straight in front of the opening of the bar, back
4 in the very back. It's like a little -- it ain't very high.
5 It's like a little stage-like thing back there. But you
6 could see it from the bar.

7 Q. All right.

8 A. You could see all of that from the bar.

9 Q. How was the inside of the bar lighted?

10 A. Sort of like this right here.

11 Q. Was it -- was it as light as it is in --

12 A. No. All the --

13 Q. -- here? Did some of them turn off?

14 A. All the tile was painted blue.

15 Q. So that was to dim the light.

16 A. Yes, sir.

17 Q. Were there lights outside?

18 A. Yes, sir.

19 Q. Was there a -- when you came into the bar and
20 somebody had to -- was somebody there checking I.D.s?

21 A. No, sir. They --

22 Q. You didn't check I.D.s?

23 A. There was somebody there taking money.

24 Q. Pay a cover?

25 A. So when you came in, they had the bar. It was --

1 it was real close to the front doors. I mean extremely
2 close.

3 Q. So if you came in, did you have to pay a cover?

4 A. Yes, sir. I didn't have to pay a cover.

5 Q. I understand, but customers had to pay a cover.

6 A. Yes, sir.

7 Q. And who collected that money?

8 A. One of the girls. Probably one of his daughters.

9 Q. And so if you left the bar -- if a person left the
10 bar, they had to go out the door they came in.

11 A. Yes, sir.

12 Q. And was there always somebody working that door?

13 A. Yes, sir, somebody's always there collecting the
14 money.

15 Q. All right. You said something about a logbook --

16 A. Yes, sir.

17 Q. -- started after the story came out about
18 Mr. Swain being killed.

19 A. Yes, sir.

20 Q. Whose idea was that?

21 A. Big Ed's.

22 Q. Why did he do that?

23 A. I guess where everybody could say where they was
24 at. I don't know exactly.

25 Q. All right. You said earlier that you understood

1 that when you left for Tennessee the second time in April
2 that you were a suspect.

3 A. That they wanted to talk to me, yes, sir.

4 Q. Had the police at any time between December and
5 when you left to go to Tennessee ever approached you to try
6 to talk to you?

7 A. No, sir. The night before I left, it was a
8 Saturday night. I left on Sunday. Ms. Spruiell and a couple
9 of officers came to the bar, and they was looking for a
10 girl. And they'd asked me if I seen her, and I said, "Naw."
11 And they said, "Are you driving anything?" I said, "No,
12 ma'am, I ain't driving nothing." And they left, and they
13 never said a word about anything.

14 Q. But they never approached you and said, "We'd like
15 for you to come to the sheriff's office. We'd like to talk
16 to you about this case or just talk"?

17 A. No, sir.

18 Q. Had they talked to Leroy at that point?

19 A. Yes, sir.

20 Q. How many times had they talked to Leroy?

21 A. I believe a couple of times.

22 Q. Do you know whether Leroy had implicated you?

23 A. No, sir.

24 Q. When did you find out -- well, let me --

25 Did you leave Plymouth before Dana did?

1 A. No, sir.

2 Q. When did she leave?

3 A. I had -- I had -- yes, I did, excuse me. I had
4 left and came back. And when I came back the last time, she
5 was gone.

6 Q. Was that the last time you saw her?

7 A. Yes, sir.

8 Q. Was that the last -- when was the last time you
9 had communicated with her before you left to go to Tennessee
10 the second time?

11 A. I had seen her at Big Ed's Bar.

12 Q. Okay. Did you know where she had gone?

13 A. No, sir.

14 Q. Did you know how to get in touch with her?

15 A. No, sir.

16 Q. Did you know where she was from?

17 A. No, sir.

18 Q. So when you left to go to Tennessee the second
19 time --

20 A. Yes, sir.

21 Q. -- your plan was to go there for a short period of
22 time, and then go to Florida again and work?

23 A. Yes, sir, and then come back.

24 Q. The same -- come back to Plymouth?

25 A. Yeah. I didn't -- all this right here -- I know

1 it's hard for y'all to understand this, but it was like a
2 big joke around there. Nobody took this serious.

3 Q. What do you mean?

4 A. You know, Leroy came to the bar one time before
5 and said, you know, and they -- and there was about 20
6 people there or better. He said -- oh, man, they questioned
7 him about it and gave him a polygraph and stuff. And I told
8 him, I said -- in front of everybody -- "Don't worry about
9 it. I'll testify for you. I know where you was at. I was
10 with you."

11 Q. Was he saying that to you, or was he saying that
12 to other people?

13 A. He was just saying it to everybody, and everybody
14 was -- it was like a big joke around there. Nobody took it
15 serious.

16 Q. How do you believe that you became a suspect?

17 A. Just what I just told you. When I told them and I
18 said "don't worry about it, I'll testify for you," I believe
19 I became a suspect in somebody's mind.

20 Q. So you don't know if they had already talked with
21 Leroy or talked to Dana or anything at that point?

22 A. I knew they had talked to Leroy a couple times.
23 Everybody knew it.

24 Q. Is that because Leroy was telling you?

25 A. Yeah, he told everybody.

1 Q. Was Leroy --

2 A. Big Ed, everybody.

3 Q. Was Leroy somebody who would joke around a lot?

4 A. Yeah. So --

5 Q. Even over serious allegations like this?

6 A. Well, when you didn't do something, something like
7 that wasn't, you know --

8 Q. Okay.

9 A. It was --

10 Q. So procedurally, let me just make sure I
11 understand. It was not the Washington County Sheriff's
12 Office and the S.B.I. that came to Tennessee when you were
13 taken into custody.

14 A. No, sir.

15 Q. That was the Tennessee authorities.

16 A. Tennessee authorities.

17 Q. And you thought they were looking for you on
18 outstanding warrants from Tennessee?

19 A. Yes, sir.

20 Q. The things that you had kind of run away from?

21 A. Yes, sir.

22 Q. When did you find out that they were looking for
23 you on a charge out of North Carolina?

24 A. As soon as they took me to the jailhouse.

25 Q. Okay.

1 A. A sheriff come back there, Joe Shepherd, and said,
2 "Look, this right here's a little crazy." He said, "Would
3 you sign this paper for extradition to North Carolina?"

4 I said, "For what?"

5 And he said, "They're trying to charge you for a
6 murder."

7 I said, "Yes, sir, I'll sign it, 'cause I ain't
8 killed nobody."

9 Q. So when you were taken into custody in Tennessee,
10 were you actually served with a fugitive warrant? Or do you
11 know what that is?

12 A. They never served me with nothing.

13 Q. They just said we want you to come to the jail
14 with us, and you're gonna stay here.

15 A. They took me and arrested me to the jail, yes,
16 sir.

17 Q. They didn't show you a piece of paper?

18 A. No, sir.

19 Q. Take you before a magistrate?

20 A. No, sir.

21 Q. Take you before a judge?

22 A. No, sir.

23 Q. Then they asked you to -- if you wanted to sign
24 this -- a piece of paper and go -- go to North Carolina?

25 A. Yes, sir.

1 Q. And you did that?

2 A. Yes, sir.

3 Q. Did you understand what you were doing?

4 A. Yes, sir.

5 Q. And then the next day is when Janice Spruiell,
6 Willie Williams, and the S.B.I. showed up.

7 A. Yes, sir.

8 Q. Were you questioned on the way back to North
9 Carolina?

10 A. The whole way.

11 Q. Did they advise you of your rights?

12 A. I believe so. I believe I signed a paper.

13 Q. And during that trip of how many hours?

14 A. It was a long ride. I don't know exactly.

15 Q. Where is -- is it Milan?

16 A. Milan, Tennessee.

17 Q. Where is that?

18 A. It is between Jackson and Memphis.

19 Q. So in the western part of the state.

20 COMMISSIONER FRYE: Oh, wow.

21 JUDGE WAGONER: Long way.

22 A. It's a long way.

23 BY COMMISSIONER BRITT:

24 Q. So they questioned you the whole way back?

25 A. The whole way back.

1 Q. Did you sleep? Did they stop? Did they feed you?

2 A. They -- we stopped one time. They let me go to
3 the bathroom. And pretty much we rode the rest of the way.

4 Q. All of you in the same car?

5 A. Yes, sir.

6 Q. And so when you got to Plymouth, they served the
7 murder warrant on you.

8 A. No, sir.

9 Q. When did they serve the murder warrant on you?

10 A. They never gave me the warrant.

11 Q. You never got a copy of it.

12 A. I did after I got a lawyer.

13 Q. When did you get a lawyer?

14 A. I want to say six, seven days later.

15 Q. They didn't take you to court?

16 A. Yeah, they took me to court, and they appointed me
17 a lawyer.

18 Q. Did they continue to try to talk to you after you
19 got a lawyer appointed?

20 A. Yes, sir.

21 Q. Did they come to the jail and get you out of jail?

22 A. Yes, sir.

23 Q. Did you continue to talk to them?

24 A. Yes, sir.

25 Q. Was your lawyer ever there?

1 A. No, sir. They took my fingerprints probably the
2 whole time I stayed in jail at least 15, 20 times.

3 Q. Okay. You said that they drew blood and pulled
4 hair. Was that at the jail in Plymouth?

5 A. They took me to the hospital for that.

6 Q. Okay. So the doctor did that.

7 A. A nurse.

8 Q. Or somebody did that.

9 A. A nurse and Ms. Spruill.

10 Q. Okay. Let me ask you this: So this case is
11 pending. Are you and Leroy initially in jail together?

12 A. No, sir.

13 Q. Leroy got charged later on, didn't he?

14 A. I think two or three days later.

15 Q. And so where did they keep you in jail?

16 A. They kept me in Plymouth.

17 Q. Do you know where they kept Leroy?

18 A. I believe it's Dare County.

19 Q. So how many people were in your jail cell?

20 A. They had them -- it was one of the old-timey jails
21 with four-man cells, but it was packed to capacity. They
22 had them sleeping on the floor at any given time. It was
23 probably four, eight --

24 Q. Were there people in --

25 A. 30, 40 people.

1 Q. Did you have cellmates that were asking you
2 questions about why you were there?

3 A. They already knew.

4 Q. Did they ask you questions -- try to ask you
5 questions about what happened?

6 A. Well, most of them already told me they knew what
7 happened.

8 Q. In terms of?

9 A. Who done it.

10 Q. And they said that you had done it.

11 A. No.

12 Q. Oh, other people had done it.

13 A. Yeah.

14 Q. Who did they say had done it?

15 A. Maurice Wilkins.

16 Q. Maurice Wilkins.

17 A. Yes, sir.

18 Q. Did you know Wyatt Spruiell?

19 A. No, sir. He testified at my trial.

20 JUDGE WAGONER: Wyatt did?

21 THE WITNESS: Yes, ma'am.

22 BY COMMISSIONER BRITT:

23 Q. Now, during the time that -- before your trial,
24 were you ever offered a plea?

25 A. At trial.

1 Q. At trial?

2 A. Yes. Now --

3 Q. And what was the plea?

4 A. -- I think Mr. Vosburgh -- Mr. Skinner had asked
5 me at some time about a plea or something. I told him no.
6 Mr. Vosburgh --

7 Q. But were you ever offered a plea by the D.A.?

8 A. Yes, sir.

9 Q. Did the D.A. say, "If you plead guilty to second
10 degree murder, this is what you'll get"?

11 A. I can't remember what all they said. It was
12 something about 40 years.

13 Q. Okay. And you turned down the idea of the plea.

14 A. I -- I wouldn't take no plea for nothing in the
15 world.

16 Q. Were you ever asked to testify against Leroy?

17 A. Yes, sir. The whole --

18 Q. How many times?

19 A. The whole time this was going on. I know it's a
20 little bit complicated, but in the beginning I wasn't even
21 the killer. Leroy was. They kept wanting me to tell on
22 Leroy, tell on Leroy. I didn't hardly know Leroy, and I
23 sure wasn't gonna tell a lie on him and take his life.

24 Q. When you say you weren't even the killer, who was
25 telling you that?

1 A. The police officers, Ms. Spruiell and Donnie -- I
2 think his name is Donnie Varnell.

3 Q. Varnell. So were they --

4 They were telling you that they believed Leroy was
5 the killer.

6 A. Yes, sir.

7 Q. They just wanted you to tell on Leroy.

8 A. Yes, sir. And when I took the polygraph test, the
9 -- when I told the man, he kept coming in, kept coming in,
10 stayed there all day long. And he said -- the first man
11 after I took the polygraph test, he said, "Man, you done
12 better than anybody we've ever had." And I said, "Well,
13 will you go out there and tell these guys?"

14 So about 30 or 40 minutes later, another officer
15 come in and said, "Oh, man, you failed horrible. You missed
16 your own name. All you've got to do is tell us that Leroy
17 killed this man, and we'll let you -- you're gonna get to go
18 free" and all this stuff. And I wouldn't do it.

19 Q. Let me ask you this: They told you that you
20 failed the polygraph.

21 A. Yes, sir.

22 Q. Did they give you a number?

23 A. No, sir.

24 Q. Were you ever told it was a -3 (minus three), a
25 -12 (minus 12), a +3, +12?

1 A. Not to my -- not to my memory.

2 Q. So you were never given an actual number.

3 A. No, sir. There was so much stuff going on in
4 between officers, it was a all-day-long thing.

5 Q. Did you ever see any paperwork that your lawyer
6 showed you about the polygraph?

7 A. No, sir.

8 Q. And were you -- did you take more than one
9 polygraph?

10 A. I believe it was six back to back.

11 JUDGE WAGONER: All -- all at the same day or
12 night?

13 THE WITNESS: Same day.

14 BY COMMISSIONER BRITT:

15 Q. Multiple polygraphs?

16 A. Multiple.

17 Q. When Dana Maybin testified at your trial --

18 A. Yes, sir.

19 Q. -- were you surprised by what she said?

20 A. Yes, sir.

21 Q. Did you have any idea that she was going to say
22 that?

23 A. No, sir.

24 Q. What did you think she was going to say?

25 A. Well, I had thought she was going to tell the

1 truth, but she didn't.

2 Q. And let me ask you about your lawyers because you
3 were represented by Mr. Vosburgh?

4 A. Yes, sir, James Vosburgh and --

5 Q. Mr. Harrell?

6 A. No, Skinner.

7 Q. How did they react when Dana Maybin testified?

8 A. Well, they -- up until the very end, they didn't
9 think it wasn't no biggest -- was no big deal.

10 Mr. Vosburgh, he came see me. I seen Mr. Skinner -- when
11 they appointed Mr. Skinner to me, I seen him then and maybe
12 one or two more times. But Vosburgh was the main lawyer.
13 He would come see me about the case and stuff like that.

14 Q. And then when did you become aware that Leroy pled
15 guilty?

16 A. After I had been found guilty.

17 Q. Did that surprise you?

18 A. Well, really yes and no, because his name was
19 mentioned more in my trial than my name was. He was
20 mentioned a lot.

21 Q. And since you've been in prison, you and Leroy at
22 times have been in the same prison.

23 A. Yes, sir.

24 Q. Have y'all ever talked about the case?

25 A. Oh, yes, sir.

1 Q. What have y' all talked about?

2 A. Well, in -- just the basics of it. Like in '04
3 the chief of police told us that he had talked to Dana
4 Maybin, and that she told him the truth. And I -- we was
5 talking about it walking around. And I told him, I said,
6 "Don't tell nobody 'cause if you do, somebody will call her
7 and tell her to change her story again." And that's what
8 happened.

9 Q. Okay. Thank you.

10 A. Yes, sir.

11 JUDGE WAGONER: Other questions? Is that it for
12 now?

13 COMMISSIONER BRITT: That's it, total.

14 JUDGE WAGONER: Yes.

15 EXAMINATION BY ALT. COMMISSIONER NEWTON:

16 Q. Good afternoon, Mr. Jones.

17 A. Yes, ma'am.

18 Q. My name's Deb Newton. I'm a criminal defense
19 attorney.

20 A. Yes, ma'am.

21 Q. I'd like to ask you some questions.

22 A. Yes, ma'am.

23 Q. On the night that you subsequently discovered
24 Mr. Swain was murdered, you were at the bar. You testified
25 today you were bartending. Were you drinking?

1 A. Ma'am, could you repeat that?

2 Q. Were you drinking alcohol that night at the bar
3 when you arrived at Ed Champ's bar?

4 A. Yes, sir -- yes, ma'am, excuse me.

5 Q. Okay. You testified you were bartending.

6 A. Not that night, no -- no, ma'am.

7 Q. So you were in fact not working.

8 A. Not working that night, no, ma'am.

9 Q. Okay. So what were you drinking?

10 A. Budweiser. What's that -- I forgot the name.
11 Some new beer. Not Corona, but something.

12 Q. You were drinking beer in the bar.

13 A. Yes, ma'am.

14 Q. And what were you drinking outside the bar?

15 A. They had -- I believe it was in the can, some
16 whiskey or something, but you couldn't take it in the bar
17 because it's -- you can't have alcohol, whiskey, in the
18 bar.

19 Q. So was it kept in the parking lot, or was it kept
20 in the bar and y'all kept walking out with it?

21 A. Right beside the bar, when you walk out there's a
22 -- a window ledge. It was sitting right there.

23 Q. And -- and who did you go out and drink whiskey
24 with?

25 A. Me and Leroy and Dana.

1 Q. And Dana? How long did you know Dana, all
2 together?

3 A. All together from the time -- from the end of that
4 -- I met Dana one weekend. I met Leroy the next. It was
5 the week before Thanksgiving I had met Dana, and the week of
6 Thanksgiving I met Leroy.

7 Q. Okay. So you only knew her about a few weeks?

8 A. A few weeks.

9 Q. Okay. And you were sleeping with her?

10 A. Yes, sir -- ma'am.

11 Q. Who -- who was using crack during that two weeks
12 that you knew them?

13 A. Nobody.

14 Q. So Leroy did not use crack.

15 A. Not that I know.

16 Q. Okay. And Dana, that you knew, did not use crack.

17 A. No, ma'am.

18 Q. Cocaine? Any other drugs?

19 A. Now, I know she had took some pills, but I don't
20 know what they were.

21 Q. You saw her taking pills, and that's it.

22 A. Yes, ma'am.

23 Q. Okay. So none of them were using crack cocaine.

24 A. No.

25 Q. At least as far as you knew.

1 A. As far as I knew.

2 Q. Do you -- did you ever use any drugs other than,
3 of course, alcohol?

4 A. Yes, ma'am.

5 Q. What did you use?

6 A. Right during that time, no, ma'am.

7 Q. Nothing but alcohol.

8 A. Nothing but alcohol.

9 Q. Beer and whiskey.

10 A. Beer and whiskey.

11 Q. So you were not working that night. You were
12 drinking that night.

13 A. Yes, ma'am.

14 Q. Were you dancing that night?

15 A. Yes, ma'am.

16 Q. Okay. Who were you dancing with?

17 A. Basically everybody in the bar.

18 Q. Did you dance with Leroy?

19 A. Yeah.

20 Q. Did you dance with Dana?

21 A. Yeah.

22 Q. Did you dance with Ed Champ, Jr.?

23 A. Yeah.

24 Q. Okay. So everybody was dancing.

25 A. Some of that stuff was just -- Mr. Champ, he had a

1 little phobia, and we would aggravate him. He would come
2 out there and chase us around.

3 Q. Excuse the question.

4 A. Yes, ma'am.

5 Q. I'm just checking something that has been said.
6 But did you have really rough sex with Dana to the point
7 that she would actually get injured?

8 A. No. I wouldn't think now. No, I wouldn't think.

9 Q. Excuse the question. I was just checking. Did
10 you go with them to buy drugs for anyone?

11 A. No, ma'am.

12 Q. Did you know the other -- was there a bartender
13 serving you-all that night?

14 A. Lynn Rogers.

15 Q. Okay. And so -- but you said you were bartending.
16 You were not bartending. You were not checking ID. You
17 were a patron that night, correct?

18 A. Yes, ma'am.

19 Q. And Ms. Rogers was the bartender.

20 A. They was two or three of them.

21 Q. Okay. She was one of them.

22 A. Ms. Rogers and mostly Big Ed's daughters.

23 Q. So if you were -- you were drinking with Leroy and
24 Dana.

25 A. Uh-huh.

1 Q. And who was buying drinks? Were you buying your
2 own, or were you buying drinks for other people?

3 A. I had bought my own. I -- I'd go back and forth
4 and get Miss Lottie -- that's Mr. Champ's wife -- and get
5 them drinks and stuff. A lot of times I'd just tell them
6 who they was for and didn't have to pay for them.

7 Q. So you weren't paying for drinks.

8 A. Well, I had paid for some for myself, yes, ma'am.

9 Q. Just for yourself.

10 A. Yes, ma'am.

11 Q. The beer.

12 A. Yes, ma'am.

13 Q. Okay. And the liquor in the parking lot?

14 A. They had that.

15 Q. "They" who?

16 A. Leroy and Dana. They had that when I got there.

17 Q. So that's free.

18 A. That was free.

19 Q. Okay. Now, did there ever come a point in the
20 night that you started buying drinks, pulling out wads of
21 money and buying anybody drinks?

22 A. I bought some -- two six-packs to take back later
23 on.

24 Q. And that's it.

25 A. That's it.

1 Q. And where'd that money come from?

2 A. Work.

3 Q. When did you cash -- did you get a check or did
4 you get cash?

5 A. Cash.

6 Q. When did you get paid?

7 A. I had worked with Big Ed's son during the week. I
8 believe that he probably paid me Thursday or Friday. I had
9 no bills. They paid for my --

10 Q. My question was when did you get paid.

11 A. Thursday or Friday.

12 Q. And how much did you get?

13 A. Just a couple hundred dollars.

14 Q. A couple hundred dollars. You had it all on you
15 that night?

16 A. Yes, ma'am. Not all of it, 'cause I made Big Ed
17 -- instead of him paying me Saturday, I told him to keep it.
18 That way -- he wanted to pay me so he could get all his
19 money back.

20 Q. On Saturday night.

21 A. Yes, ma'am.

22 Q. You'd spend it on beer, right?

23 A. Yes, ma'am.

24 Q. All right. So how much did you have on you that
25 night?

1 A. A couple hundred bucks probably. At least that
2 much.

3 Q. How much did you have after you bought the two six
4 packs that you dropped?

5 A. At least a hundred and something.

6 Q. So you spent 80 --

7 A. Yeah, something like that.

8 Q. -- at the bar?

9 Okay. Did you buy Dana's drinks?

10 A. Yeah, I had bought her some.

11 Q. Well, I asked you that. Did you buy her drinks or
12 not?

13 A. Oh, I had bought her a couple, yes, ma'am.

14 Q. A couple of beers?

15 A. Yes, ma'am.

16 Q. And that's it.

17 A. Other people was buying drinks, too.

18 Q. I'm asking what you bought.

19 A. Oh, I can't remember exactly how many I bought,
20 ma'am.

21 Q. Did you buy Leroy any drinks?

22 A. I probably did. At any given time, I could have
23 got the keys to the bar, so the money -- I could just go
24 over and say, "Hey, give me five beers for Miss Lottie," and
25 they'd give it to me.

1 Q. My question was are you paying for them or are you
2 getting them for free?

3 A. I had paid some, and I got some for free.

4 Q. So you spent about \$80 all together.

5 A. Yes, ma'am, probably.

6 Q. Is that accurate? Is that your testimony?

7 A. As accurate as I can get.

8 Q. Okay. And that's from your work --

9 A. Yes, ma'am.

10 Q. -- the money you got.

11 Did you have a fight with the bartender?

12 A. Not that night.

13 Q. What night did you have a fight with the
14 bartender?

15 A. One night -- it was probably in January. I had
16 gave her some -- a \$20 bill, and she never gave my change
17 back.

18 Q. And that's the only fight you've ever had with
19 Ms. Rogers?

20 A. Yes, ma'am.

21 Q. Okay. Did you throw anything at her car and her
22 when you were leaving?

23 A. No, ma'am. Oh, I -- there was a little bitty sign
24 that's out there, and I might have knocked that over.

25 Q. In January?

1 A. Yes, ma'am.

2 Q. Okay. Now, when you said that the -- the guys in
3 the jail told you that you -- they thought it was Maurice
4 Wilkins who did the killing --

5 A. Yes, ma'am.

6 Q. -- is that the jail in Plymouth?

7 A. Yes, ma'am.

8 Q. Okay. And these were -- which -- which crowd of
9 guys told you that in the jail?

10 A. Just inmates.

11 Q. I mean, were there a specific group of inmates
12 that told you that?

13 A. I didn't know none of them. No, ma'am.

14 Q. Okay. Were they black or white?

15 A. Black.

16 Q. Okay. And did they tell you why they thought it
17 was Maurice Wilkins?

18 A. They just told me that he was the one that done
19 it. They knew -- most of the time in the jail I was the
20 only white guy there.

21 Q. You were the only white guy there?

22 A. Most of the time.

23 Q. And how many people told you it was Maurice
24 Wilkins?

25 A. Basically everybody in the little jail.

1 Q. And did you ask them why since you were being
2 accused of it?

3 A. I told my lawyer about it. Yes, ma'am.

4 Q. But did you ask the inmates --

5 A. Oh, yeah.

6 Q. -- why they thought it was Wilkins?

7 A. It was just common knowledge.

8 Q. And did they tell you why it was common knowledge
9 that he did it?

10 A. No, ma'am, they didn't tell me that.

11 Q. They just said it was Wilkins and nobody gave
12 details.

13 A. They just said that they knew I didn't do it.

14 Q. Did you tell your lawyer the names of the people
15 who said they knew you didn't do it?

16 A. Yes, ma'am.

17 Q. Okay. Do you know who BoJack is?

18 A. No, ma'am. I know -- heard the name.

19 Q. And none of these guys mentioned BoJack?

20 A. Yes, ma'am.

21 Q. Who did?

22 A. The guys at the jail. That was supposed --

23 Q. And what did they say?

24 A. That BoJack is supposed to be his daddy, Maurice
25 Wilkins.

1 Q. Okay. And did they mention him in relation to the
2 killing?

3 A. They was just talking about his daddy was BoJack.
4 That's all. They never said BoJack killed nobody.

5 Q. Did they tell you what BoJack did for a living?

6 A. Drug dealer.

7 Q. Okay. Did they relate that to the purpose of the
8 killing when they were telling you that?

9 A. They never really gave me a purpose.

10 Q. Thank you so much.

11 A. Yes, ma'am. Sorry I couldn't -- some of the stuff
12 is -- it's been so long.

13 COMMISSIONER BOSWELL: I have a couple of other
14 questions.

15 JUDGE WAGONER: Okay. Let me -- Mr. -- you
16 haven't gotten a chance to ask a question yet. It's your
17 turn. Thank you.

18 EXAMINATION BY COMMISSIONER BARROW:

19 Q. Did you get to be close to the Champs? And I mean
20 emotionally, like friendship.

21 A. Yes, sir.

22 Q. Okay. And you lived in a trailer right beside the
23 house.

24 A. Yes, sir, until they sold it.

25 Q. Until they sold it. But you used the -- the

1 restroom facilities where?

2 A. The upstairs apartment.

3 Q. Okay. So you'd go up to the upstairs apartment --

4 A. To shower and all that stuff.

5 Q. -- to shower and use the restroom.

6 A. Yes, sir.

7 Q. Which one of the Champs would you have been
8 closest to?

9 A. Big Ed.

10 Q. Big Ed?

11 A. Yes, sir.

12 Q. Was Big Ed somewhat of a father figure?

13 A. Yes, sir. He was a nice man.

14 Q. And if -- if -- if he was the Champ that you were
15 the closest to, other than the Champs, who would have been
16 the other, let's say, man that you were closest friends
17 with?

18 A. I knew nobody else, really, around the area. Just
19 the Champs. I had met Leroy, like I said, for a few months.
20 I really didn't know nobody else in the area.

21 Q. Would you consider Leroy to be a close friend?

22 A. At the time, no, sir.

23 Q. Okay. And now, I'm going to call her Maybin.

24 A. Okay. That's what I call her.

25 Q. All right. You served her in the bar, and you

1 looked at her I.D.?

2 A. Yes, sir.

3 Q. And how old was she?

4 A. 21 at the time. They -- they teach you to -- my
5 ABC guy teaches you to just don't look at the names. Look
6 at the -- the date of birth.

7 Q. Okay. And -- and you and -- and Ms. Maybin got to
8 be close.

9 A. Somewhat, yes, sir.

10 Q. And you were sexual partners.

11 A. Yes, sir.

12 Q. And you don't recall having rough sex with
13 Ms. Maybin.

14 A. No, sir.

15 Q. Did you ever cause Ms. Maybin to be branded or
16 tattooed on her stomach?

17 A. No, sir.

18 Q. Was she tattooed or branded on her stomach?

19 A. Not that I can remember.

20 Q. Now, you went to Leroy's house the night after
21 Frank Swain was killed.

22 A. Yes, sir.

23 Q. And stayed there all night.

24 A. Yes, sir.

25 Q. Did you stay all night in Leroy's house ever

1 again?

2 A. Yes, sir.

3 Q. How many times between the night Frank Swain was
4 killed and you first went back to Tennessee to see your
5 mama, how many nights did you spend the night in Leroy's
6 house?

7 A. Just a -- just a few times.

8 Q. Five times, ten times?

9 A. It was on the weekends. Probably three or four
10 times I'd stayed overnight there.

11 Q. Three or four times? And --

12 A. That's where Dana lived.

13 Q. -- and how long was it between the time Frank
14 Swain was killed and the time you first went back to see
15 your mother?

16 A. Month or so.

17 Q. Did you and Leroy have a falling out?

18 A. No, sir.

19 Q. Did you and Ms. Maybin have a falling out or
20 breakup, whatever --

21 A. Yes, sir.

22 Q. -- you want to call it?

23 When was that?

24 A. Well, we had a couple of them. Probably January
25 or February sometime. Ms. Maybin wanted to -- to move in

1 with me and -- and stuff like that, to come stay at my
2 house, and that just wasn't gonna happen.

3 Q. And when you wouldn't let her come stay at your
4 house, what would she do?

5 A. She would get mad.

6 Q. Had you and Ms. Maybin had a falling out shortly
7 before the night that Frank Swain was killed?

8 A. We had a couple of falling outs. She was a really
9 jealous person. If you'd dance with somebody, she'd get
10 mad, stuff like that.

11 Q. And what was the cause of the breakup between you
12 and Ms. Maybin?

13 A. Ms. Maybin wanted more than I wanted. She wanted
14 a relationship. I wasn't wanting no relationship.

15 Q. Did you ever see her again after she left?

16 A. No, sir.

17 Q. Never talked to her on the telephone?

18 A. No, sir.

19 Q. Never wrote a letter?

20 A. No, sir.

21 Q. Did you see her at the trial?

22 A. Yes, sir.

23 Q. Did you exchange eye contact at the trial?

24 A. I looked at her.

25 Q. Did she look back at you?

1 A. Not really.

2 Q. And -- and you say that you had a couple hundred
3 bucks when you walked through the door of the bar that
4 night?

5 A. Yes, sir.

6 Q. And when you came home, you had more than \$100?

7 A. Oh, yeah.

8 Q. Thank you.

9 JUDGE WAGONER: Yes, sir.

10 COMMISSIONER FRYE: When --

11 COMMISSIONER BRITT: Go ahead. No, go ahead.

12 (Several commissions spoke simultaneously.)

13 JUDGE WAGONER: You go ahead.

14 FURTHER EXAMINATION BY COMMISSIONER FRYE:

15 Q. When you were talking to me earlier --

16 A. Yes, sir.

17 Q. -- you said you had a six-pack and the bottom fell
18 out of it.

19 A. Uh-huh.

20 Q. And when you were talking to Ms. Newton a second
21 ago, you said you bought --

22 A. Two six-packs.

23 Q. -- two six-packs before taking them back.

24 A. Uh-huh. She had one. Ms. Maybin --

25 Q. Ms. Maybin had --

- 1 A. -- was holding one.
- 2 Q. -- was holding one, you were holding one.
- 3 A. Yes, sir.
- 4 Q. The bottom fell out of yours.
- 5 A. Yes, sir.
- 6 Q. Did all the beer break?
- 7 A. Yes, sir. Kicked the glass out of the street.
- 8 Q. So you bought two six-packs. How many beer do you
- 9 think you drank that night?
- 10 A. Ten, 12. I ain't -- I ain't sure.
- 11 Q. You bought all those.
- 12 A. Some of the beers we bought. Some of the beers,
- 13 people give you. They give you.
- 14 Q. How many beers --
- 15 A. And I bought --
- 16 Q. -- did you buy for other people?
- 17 A. I bought a few for other people.
- 18 Q. Okay. Now, you were a bartender.
- 19 A. Yes, sir.
- 20 Q. How much did you charge for a beer?
- 21 A. For myself?
- 22 Q. For anybody. How much were you paying for a beer?
- 23 A. I paid a dollar.
- 24 Q. You paid a dollar a beer.
- 25 A. Yes, sir. The same thing come off a truck.

1 Q. Okay.

2 A. I believe it was a dollar. I just charged \$1.50
3 at the bar.

4 Q. You charged \$1.50 at the bar, but you could get it
5 for \$1.

6 A. Yeah.

7 Q. Okay. And that was not the night that you had an
8 altercation or an argument with --

9 A. With Ms. Rogers?

10 Q. Yes.

11 A. No, sir.

12 Q. Okay. That's all I have to ask you.

13 A. Yes, sir.

14 COMMISSIONER GRACE: No, thank you, ma'am.

15 JUDGE WAGONER: Okay.

16 COMMISSIONER FRYE: I think he's -- he's still up.

17 COMMISSIONER THOMPSON: Oh, your -- your turn.

18 Sorry.

19 COMMISSIONER BOSWELL: That's okay.

20 FURTHER EXAMINATION BY COMMISSIONER BOSWELL:

21 Q. Mr. Jones, as you know, we're here trying to
22 figure out whether you're actually innocent of this.

23 A. Yes, sir.

24 Q. And -- and we've heard a lot of testimony from a
25 lot of people, and it's -- it's really -- I'm struggling to

1 understand why Ms. Maybin would say you were involved in
2 this crime. Do you have any idea she would say you were --
3 you did it?

4 A. At first I believe she did it to get the police on
5 me. But as it -- as it went, I believe it progressed and
6 they kept pressuring her and pressuring her and pressuring
7 her, because, you know, she had said it was me and a guy
8 named Curtis Furlough who done it. And then she changed the
9 story on that. Then she said it was me and Leroy who done
10 it.

11 I just -- I think she just kept going and going
12 and going, and they kept pressuring her because they
13 pressured me and Ms. [phonetic] Spruill and -- mainly
14 Ms. [phonetic] Spruill. Pressuring, pressuring, pressuring,
15 until she ended up involving herself in a crime.

16 Q. Do you know why the bartender would have testified
17 against you saying she overheard you say that you had offed
18 an N-word?

19 A. That's when -- one night when I was -- I think the
20 way Ms. -- the judge here -- when he had come in the bar and
21 said he took a polygraph test and all that, and I told him,
22 "Don't" --

23 Q. Is this Leroy Spruill you're talking about?

24 A. Yes, sir. "Don't worry. I'll testify for you. I
25 know where you was at." Because it was like a big joke.

1 But as far as what she's saying about that, no, sir.

2 Q. That -- the night you were talking about where
3 Leroy came in and you were talking about that, that was in
4 January or February or something?

5 A. Yes, sir. They didn't even -- the police didn't
6 even know where I was at that night. They didn't know about
7 Lynn Rogers or nobody else until I told them. On the way
8 from Tennessee they asked me, "Name some people that you
9 knew." And I didn't know very many people that -- in that
10 area besides, you know, the Champs and stuff.

11 Q. And then -- and then a few people indicated that
12 you and Leroy and Dana had left the bar and were gone for an
13 hour or more. And then when you came back, you had on
14 different clothes.

15 A. Not that night.

16 Q. Okay. What night would -- could that have been?

17 A. In January or February, the apartment I was living
18 -- because, you know, they sold the place I was staying and
19 they put a big trailer there, so they let me have the
20 apartment. It's got a big deck that goes this way and comes
21 up flat and goes straight up.

22 Well, I was coming down it one night, and I fell
23 off of it and cut my leg. And if you -- I still got the
24 scars if you need to see it. And I changed clothes and went
25 to the bar. And I didn't have no Band-aids, so I put some

1 toilet paper on it and some Scotch tape. And that's the
2 only time I could think because I went back and got me some
3 more clothes.

4 Q. Was it you got to the bar and it bled through?

5 A. Yes, sir.

6 Q. And then you left and went and changed clothes and
7 came back?

8 A. Yes, sir, after a girl had kicked me in the leg.
9 Was playing around.

10 Q. Why would they have said that Leroy went back and
11 changed clothes?

12 A. I don't know. That don't make no sense to me.
13 You know, you -- you're talking to guys and women a year
14 after something's happened, and it's like they're just --
15 they're making it up as they go, when it -- when it's not
16 so.

17 Q. Right. Well, would the -- I understand that, but
18 would the bartender lady have had any reason to want to lie
19 on you or Leroy or Dana? Was there any -- was there any bad
20 blood or anything?

21 A. Oh. I did get her fired. She was serving -- at a
22 birthday party she had, she used the bar, and they had a
23 bunch of underaged kids there, and Mr. Champ had fired her
24 for it.

25 Q. Why did you -- how did -- how were you involved in

1 that?

2 A. 'Cause I told him.

3 Q. Okay. Those are my questions.

4 A. And she was a little mad because I turned her in.
5 She stole \$20 from me. I gave her \$20 for some beer, and
6 she never gave my change back. That's the altercation me
7 and her had -- had gotten into.

8 JUDGE WAGONER: Ms. Thompson?

9 FURTHER EXAMINATION BY COMMISSIONER THOMPSON:

10 Q. I have two quick questions. Did you or Leroy
11 Spruiell or any of the Champs ever threaten Lynn Rogers that
12 if she talked to the police or she told the story that
13 somebody would kill her?

14 A. No, ma'am.

15 Q. Doesn't --

16 A. I never talked to her.

17 Q. And do you have fingerprints on your fingers?

18 A. Yes, ma'am.

19 Q. So you never, like, tried to burn your fingers on
20 a wood stove or --

21 A. No, ma'am.

22 Q. -- burn off your fingerprints or hold Dana
23 Maybin's hands to a wood stove and --

24 A. No, ma'am.

25 Q. No? That doesn't sound like something you would

1 be interested in doing?

2 A. No.

3 Q. Thank you.

4 JUDGE WAGONER: Okay. Now, Yes, sir.

5 FURTHER EXAMINATION BY COMMISSIONER FRYE:

6 Q. What kind of heat -- this kind of goes to back
7 with her question. What kind of heat did Leroy Spruiell have
8 in his house?

9 A. He had a wood heater.

10 Q. Did you put wood in it that night?

11 A. No, sir. It was one of them great big ones.

12 COURT REPORTER: I'm sorry?

13 A. It was a great big wood heater.

14 BY COMMISSIONER FRYE:

15 Q. And it was in the house?

16 A. Yes, sir. Living room.

17 Q. Did he have a fire going when you -- by the time
18 you'ins got back home?

19 A. I don't think it ever went out.

20 Q. So it had been going.

21 A. Yeah. It was warm in there.

22 Q. It was warm in the house?

23 A. Yes, sir.

24 Q. But you never put wood in it.

25 A. No, sir, I never had put no wood in it.

1 Q. Leroy put wood in it that night when you'ins got
2 back?

3 A. I never seen him put none in it.

4 Q. Okay.

5 FURTHER EXAMINATION BY JUDGE WAGONER:

6 Q. Okay. I have a couple of questions, please, sir.

7 Okay. Did you say that you and Leroy and Dana
8 walked to Big Ed's the second time you went there that
9 night?

10 A. No, ma'am. We -- me and Dana walked from Big Ed's
11 to Leroy's house that night after the --

12 Q. Okay. So how did you --

13 A. (Unintelligible; speaking simultaneously.)

14 Q. -- get to Big Ed's?

15 A. One of Leroy's friends drove us there. I think he
16 was a preacher or something.

17 Q. Did they -- did they stay at the bar also?

18 A. No, they left.

19 Q. They left.

20 A. Yes, sir [sic].

21 Q. So they drop you and Leroy and Dana off.

22 A. Yes, ma'am.

23 Q. So do y'all -- you do not have a car or a truck or
24 an automobile there.

25 A. No, ma'am.

1 Q. And neither did Leroy.

2 A. No, ma'am.

3 Q. So where were y'all getting this brown liquor from
4 that you were drinking?

5 A. They already had it when I went to Leroy's house.

6 Q. Well, where was it? It wasn't sitting in the car.

7 A. Huh?

8 Q. It wasn't sitting in your car or Leroy's car --

9 A. No.

10 Q. -- because you didn't have a car.

11 A. They had it in a can -- just a regular can. They
12 had poured it in a can.

13 Q. Where were they hiding it?

14 A. Just on the -- it's like a, you know, the
15 windowsill --

16 Q. Uh-huh.

17 A. -- like that right there.

18 Q. So do a lot of people hide their liquor there?

19 A. Yeah.

20 Q. All right. Now, so how -- if you --

21 You said you were not very good friends with --
22 you hadn't really known Leroy that long.

23 A. Yes, ma'am.

24 Q. So how was it that you and Leroy and Dana ended up
25 hanging out together that night and going to Big Ed's?

1 A. Dana -- she lived with Leroy at his house, and I
2 was going out with Dana at the time.

3 Q. So did Dana call and say, "Let's go to Big Ed's,"
4 or what?

5 A. No, they didn't even have no phone.

6 Q. Okay.

7 A. That's usually what everybody done on the weekend,
8 was go to Big Ed's Bar.

9 Q. So did Dana go with Leroy --

10 A. She went me and --

11 Q. -- to Big Ed's?

12 A. -- she went with me and Leroy, both.

13 Q. Well, my question is, how did you -- how did y'all
14 decide to go together that night?

15 A. That's where --

16 Q. Since you weren't that tight with Leroy.

17 A. That's where they always went every weekend.
18 That's the only place to go there.

19 Q. Okay.

20 A. Especially if you ain't got no vehicle. A
21 stone's --

22 Q. Okay.

23 A. I mean, it's just a few -- it ain't very far from
24 his house.

25 JUDGE WAGONER: Okay.

1 FURTHER EXAMINATION BY COMMISSIONER BRITT:

2 Q. I've just got one question.

3 A. Yes, sir.

4 Q. Are you right-handed or left-handed?

5 A. Right-handed.

6 Q. You're right-handed. You do everything
7 right-handed?

8 A. Yes, sir.

9 Q. When you write with a pencil or a pen?

10 A. Right-handed.

11 Q. When you -- when you're eating, you use your right
12 hand?

13 A. Yes, sir.

14 Q. When you work with tools, you use your right hand?

15 A. Yes, sir.

16 Q. Okay.

17 FURTHER EXAMINATION BY JUDGE WAGONER:

18 Q. How long did your trial take?

19 A. The innocence and the guilty -- it was about a
20 month, close to a -- close to a month, I would say, both --
21 both phases of it.

22 Q. You didn't testify?

23 A. No, ma'am. Mr. Vosburgh had told me it wasn't --
24 if you had a been -- if you'd been there, I mean, it was
25 nothing. I mean, it was all lies. There wasn't no --

1 Q. Well, I assume you were surprised when you were
2 found guilty?

3 A. Shocked. I believe everybody was, especially
4 Mr. Vosburgh.

5 Q. Do you know why Leroy pled guilty right after you
6 were found guilty?

7 A. I guess he was afraid he'd get the death penalty.
8 I don't -- don't really know. Or got what I got.

9 JUDGE WAGONER: Further questions? Anybody?

10 (No response.)

11 JUDGE WAGONER: Okay. I think that's it, sir.
12 Okay. Thank you very much.

13 THE WITNESS: I appreciate y'all's time. Thank
14 y'all.

15 JUDGE WAGONER: Thank you. Good luck to you.

16 THE WITNESS: I tried the best I could, you know.

17 JUDGE WAGONER: Tell the truth. That's the most
18 important thing.

19 COMMISSIONER FRYE: Could I ask you one more
20 question real quick?

21 JUDGE WAGONER: He's got one question.

22 THE WITNESS: Yes, sir.

23 COMMISSIONER FRYE: It goes back to -- to --

24 JUDGE WAGONER: Me?

25 COMMISSIONER FRYE: Yeah.

1 FURTHER EXAMINATION BY COMMISSIONER FRYE:

2 Q. You said that Dana and -- and Leroy put the liquor
3 on the windowsill.

4 A. Uh-huh.

5 Q. But you drove together there, so who had the
6 liquor?

7 A. They had it on the way, the whole time.

8 Q. They had it with them the whole time.

9 A. Yes, sir.

10 Q. Who had it?

11 A. I guess Leroy had it. I mean, we was all
12 together.

13 Q. You can't see it, though.

14 A. I didn't see him pour it in the can, no, sir.

15 Q. Did he have a bottle that he poured into the can?

16 A. I never seen them pour it into the can.

17 Q. So when they got there, they put the can on the
18 windowsill.

19 A. Uh-huh. 'Cause you couldn't take it in the bar.

20 Q. Brown liquor? White liquor?

21 A. Brown liquor.

22 Q. That's all.

23 FURTHER EXAMINATION BY JUDGE WAGONER:

24 Q. I do have another one. Who was -- tell me about
25 Avis Arnold. Who's Avis Arnold?

1 A. Avis Arnold is a -- a guy -- I met in -- I met him
2 in prison. And he just came up to me one day and he said,
3 "Look, I'm gonna be the angel that gets you out of prison."

4 I said, "I don't understand what you're talking
5 about."

6 He said, "Well, I know who killed Frank Swain."
7 He said, "I was the lookout man."

8 I said "Hold. Don't tell me no more. Let me call
9 my family and get a lawyer, and you tell the lawyer," 'cause
10 I didn't want him to say that I told him to say anything.
11 So I hired a lawyer from Gastonia to come take an affidavit
12 from Mr. Arnold. I gave him \$1,000.

13 And the lawyer came to see me and I -- I told him,
14 I said, "I don't need you to come see me. I need you to get
15 this affidavit from Mr. Arnold."

16 He told me that, "Don't worry about it. I came to
17 see some other inmates, so I won't keep your money for
18 coming to see you. I will go see him." About two months
19 later, Mr. Arnold had left and went to another prison for
20 some reason. And the lawyer wrote me back and said, "Send
21 me another thousand dollars, and I'll go see Mr. Arnold."

22 And at that time, I didn't have another thousand
23 dollars to send him, especially after he ripped me off the
24 first thousand.

25 Q. So you never found out what Mr. Arnold wanted to

1 tell you?

2 A. I didn't want him to -- I didn't want nobody to
3 say that I told him to say nothing. I told him, "Let me get
4 a lawyer. Talk to the lawyer."

5 Q. And did any of your jail mates tell you why they
6 thought Maurice Wilkins did it?

7 A. Just everybody just -- like common knowledge
8 around there.

9 JUDGE WAGONER: All right. In light of my
10 questions, any other ones?

11 COMMISSIONER GRACE: No thank you, Judge.

12 JUDGE WAGONER: Okay. Okay. Thank you very much,
13 sir. You're free to go, then. Thank you.

14 THE WITNESS: I thank y'all guys.

15 JUDGE WAGONER: Thank you.

16 THE WITNESS: Appreciate it.

17 JUDGE WAGONER: Thank you. You're welcome.

18 MS. GUICE SMITH: Judge Wagoner, would you like
19 Wake County to keep him here for anything else today, or can
20 he be released back to the jail?

21 JUDGE WAGONER: Let's talk informally. In five
22 seconds, we'll tell you. Just -- you can go out there, sir.
23 Thank you. This way.

24 (Mr. Jones left the room.)

25 JUDGE WAGONER: Okay. We'll be off the record for

1 a second.

2 (Off the record at 2:29 p.m.)

3 (Alt. Commissioner Newton left the hearing.)

4 (Back on the record.)

5 JUDGE WAGONER: So I guess are y'all --

6 MS. GUICE SMITH: I'm going to need Ms. Matoian --

7 JUDGE WAGONER: Housekeeping matters, first of
8 all.

9 MS. GUICE SMITH: -- about 102 [sic], which is the
10 polygraph results for Mr. Jones's polygraph. The results
11 you were handed out indicate there were three tests. There
12 is a numeric score of a -12 (negative 12). Deception
13 indicated is noted, and the questions that were asked are
14 included on there.

15 (Handout Number 101 was identified for the
16 record.)

17 MS. GUICE SMITH: Also during the break, or before
18 the break, commissioners request -- not commissioners
19 requested. Mr. Jones was testifying about the layout of the
20 bar. I'm going to call Ms. Matoian to the stand to show
21 you-all a diagram of the interior of Big Ed's Bar, and then
22 when that is done, I have some photographs that I will put
23 on the screen for you-all.

24 JUDGE WAGONER: I just have another question. The
25 -- about this polygraph report.

1 MS. GUICE SMITH: Yes.

2 JUDGE WAGONER: You say his address is
3 M-a-y-b-a-n, Tennessee. Do you think they're attempting to
4 spell Milan or something? Huh? Mayban?

5 MS. GUICE SMITH: M-a-y-b-i-n spells Maybin, which
6 is Ms. Maybin's last name. Mr. Jones was living in Milan,
7 Tennessee.

8 JUDGE WAGONER: They said he lives in Mayban,
9 Tennessee. Just curious.

10 MS. GUICE SMITH: Milan is M-i-l-a-n.

11 CATHERINE MATOIAN,
12 having been re-called as a witness for the Commission and
13 having been previously sworn by Judge Wagoner, testified as
14 follows:

15 EXAMINATION BY MS. GUICE SMITH:

16 Q. All right. Catey, if you can show them the
17 interior of Big Ed's Bar.

18 JUDGE WAGONER: I don't think this is where Mr. --
19 who knows. Okay.

20 A. This was an exhibit that was used at the trial
21 that shows the layout of Big Ed's Bar. The entrance is
22 right here, and the bar is right here. This is the dance
23 area that Mr. Jones -- sorry?

24 COMMISSIONER BRITT: Where is the bar, the bar
25 area?

1 THE WITNESS: Right there.

2 COMMISSIONER GRACE: Are those walls knee walls,
3 or do those walls go from floor to ceiling?

4 THE WITNESS: I'm not sure.

5 MS. GUICE SMITH: We have some photographs that
6 may assist in answering that question.

7 THE WITNESS: This is the dance area that
8 Mr. Jones was talking about, and the area indicated here is
9 where bands were. There was testimony at trial that there
10 is a set of doors here that could sometimes be open, but if
11 a band was playing and it was cold out, they would remain
12 shut. And if that was the case, then the only way in or out
13 of the bar would be there.

14 COMMISSIONER GRACE: Any testimony about whether,
15 in fact, those other doors were closed and locked?

16 THE WITNESS: The testimony was that there was a
17 band there playing that night and that those doors were
18 locked.

19 JUDGE WAGONER: I read that somewhere.

20 MS. GUICE SMITH: Any further questions on that?

21 (No response.)

22 MS. GUICE SMITH: Okay.

23 BY MS. GUICE SMITH:

24 Q. I will show the photographs. Ms. Matoian, to the
25 best of your ability if you're able to point out areas of

1 the bar, please do so.

2 A. This was an exterior photograph of Big Ed's Bar.
3 Another. This is the indoor area. You can see a disco ball
4 in there. I'm not sure from this orientation exactly which
5 room that was. Another exterior shot, and you can see some
6 windows right there.

7 JUDGE WAGONER: So is that the back or the front
8 right there?

9 THE WITNESS: That's the front.

10 JUDGE WAGONER: Okay.

11 THE WITNESS: Again, another interior shot.

12 COMMISSIONER GRACE: Would -- would you back up
13 one screen, please?

14 THE WITNESS: Yes, sir.

15 COMMISSIONER GRACE: So those -- those walls go
16 from ceiling to floor.

17 THE WITNESS: Uh-huh.

18 COMMISSIONER BRITT: Go back to the first shot of
19 the bar. Not the outside, the interior.

20 MS. GUICE SMITH: That one?

21 JUDGE WAGONER: So the bar is like L-shaped, I
22 guess?

23 THE WITNESS: So --

24 JUDGE WAGONER: I think?

25 THE WITNESS: -- you can --

1 COMMISSIONER BRITT: Look at the -- are the doors
2 -- where are the doors?

3 JUDGE WAGONER: The front doors?

4 COMMISSIONER GRACE: You can see right over the
5 top of the bar there. It looks like doors and bars.

6 COMMISSIONER BRITT: In the back of the photo.

7 COMMISSIONER GRACE: No -- yeah.

8 THE WITNESS: There appears to be a door right
9 there.

10 JUDGE WAGONER: I thought that was a refrigerator.

11 COMMISSIONER GRACE: Look to the left.

12 COMMISSIONER BRITT: It's to the left.

13 JUDGE WAGONER: Gotcha. Okay.

14 COMMISSIONER BRITT: Those are windows.

15 COMMISSIONER BOSWELL: I think -- I think these
16 are the doors right here to the right.

17 COMMISSIONER BRITT: Yes.

18 JUDGE WAGONER: Okay. Gotcha, gotcha.

19 COMMISSIONER BRITT: It kind of blends in with the
20 glare.

21 JUDGE WAGONER: It does.

22 BY MS. GUICE SMITH:

23 Q. Okay.

24 A. So this appears to be the pool room. Here's three
25 pool tables indicated on the diagram. Another exterior

1 shot. That appears to be in the dance room where there are
2 booths indicated and then tables. Again, another shot of
3 the pool area.

4 COMMISSIONER GRACE: Looks like Big Ed spared no
5 expense there.

6 JUDGE WAGONER: The lap of luxury.

7 COMMISSIONER GRACE: Swell place.

8 (Commissioners spoke amongst themselves.)

9 MS. GUICE SMITH: We are now going to turn our
10 attention to Leroy Spruiell.

11 JUDGE WAGONER: Okay.

12 MS. GUICE SMITH: Ms. Matoian is going to testify
13 about Mr. Spruiell, and then Mr. Spruiell will be called to
14 testify.

15 MS. GUICE SMITH: Commissioners, if you will refer
16 to Handout 73 in your second Hearing Handout Notebook, that
17 is a summary of Leroy Spruiell's criminal record.

18 (Handout Number 73 was identified for the
19 record.)

20 MS. GUICE SMITH: You have been provided
21 previously a copy of all of Mr. Spruiell's prior statements
22 in various parts of your brief. Because he's going to be
23 testifying later today, I have also included a copy of all
24 of those statements together as Handout 74 in your second
25 Hearing Notebook.

1 BY MS. GUICE SMITH:

2 Q. Ms. Matoian, how did the Commission receive --

3 JUDGE WAGONER: Hold on. Have you got a question,
4 Mr. Grace?

5 COMMISSIONER GRACE: No question. Thank you.

6 JUDGE WAGONER: Oh.

7 BY MS. GUICE SMITH:

8 Q. How did the Commission receive Leroy Spruiell's
9 claim?

10 A. Mr. Spruiell's claim was also referred to the
11 Commission by the North Carolina Center on Actual Innocence
12 in 2009.

13 Q. And did the Commission interview Mr. Spruiell?

14 A. We did. We interviewed him on February 9th, 2011.

15 Q. Was that interview recorded and transcribed?

16 A. It was.

17 MS. GUICE SMITH: Commissioners, earlier this week
18 you were provided with that transcript. It is Handout 75 in
19 your Hearing Handout Notebook, and you have had an
20 opportunity to read it prior to today.

21 BY MS. GUICE SMITH:

22 Q. Did the Commission conduct any other interviews of
23 Mr. Spruiell?

24 A. We did. There was a second interview on August
25 4th, 2011.

1 Q. And was that interview recorded and transcribed?

2 A. It was.

3 MS. GUICE SMITH: Commissioners, earlier this week
4 you were provided with a copy of Handout 76, which was the
5 transcript of that second interview from August 4th, 2011.
6 You've already had an opportunity to review that.

7 BY MS. GUICE SMITH:

8 Q. Ms. Matoian, during that interview, what did
9 Mr. Spruiell tell the Commission staff about his involvement
10 in the crime?

11 JUDGE WAGONER: Which interview, the first or the
12 second, or both?

13 MS. GUICE SMITH: August 4th, 2011.

14 JUDGE WAGONER: Thank you.

15 A. He denied any involvement in the crime.

16 BY MS. GUICE SMITH:

17 Q. Did the Commission review D.P.S. records for
18 Mr. Spruiell?

19 A. We did. We reviewed his D.P.S. records, including
20 the Parole Commission, education, substance abuse treatment,
21 medical and mental health records, and combined records,
22 which included his case management notes.

23 Q. Did Mr. Spruiell's D.P.S. records reflect that he
24 had talked about his case while in prison?

25 A. Yes. There are case management notes and mental

1 health reports where he is noted to have discussed the case.

2 Q. Do any of those records indicate whether
3 Mr. Spruiell admitted guilt or maintained innocence to his
4 case managers or mental health providers?

5 A. Both of those records indicate that Mr. Spruiell
6 has maintained his innocence when speaking about this crime.

7 Q. Was there any additional information in the
8 Department of Public Safety files for Mr. Spruiell related to
9 the crime?

10 A. There is. There was a risk assessment dated
11 August 1st, 2007, that says, quote:

12 "The inmate denies guilt in the crime but
13 notes that he refused to give the names of the
14 people that were involved in the crime, so he was
15 forced into a plea bargain for a life sentence,"
16 end quote.

17 Q. As a result of seeing this assessment, did the
18 Commission do any follow-up?

19 A. We did. We interviewed Mr. Spruiell a third time
20 on October 14th, 2015, and this interview was limited to
21 asking Mr. Spruiell about this statement.

22 Q. What did Mr. Spruiell say about his knowledge of
23 individuals who actually committed the crime?

24 A. He denied refusing to give the names of the
25 individuals who were involved to the police, and he also

1 said that he has always heard that Maurice Wilkins, Billy
2 McNair, and JoJo McNair were involved in the crime, and that
3 he has always told people, including law enforcement, that
4 those individuals were involved in the crime. He then
5 stated that he did not know who actually committed the
6 crime.

7 Q. Is there anything else in the D.P.S. file that the
8 Commission followed up on?

9 A. There is. There was a mental health assessment
10 from January 6th, 1997, in which -- in which Mr. Spruiell
11 told D.P.S. that he had recently received a letter from,
12 quote, "The person that testified against him admitting that
13 she had lied in court," end quote.

14 Q. What did the Commission do to follow up on this?

15 A. The Commission requested that Mr. Spruiell's
16 current attorney go speak to Mr. Spruiell about this, and
17 Mr. Spruiell's attorney reported that, to Mr. Spruiell's
18 recollection, he did not receive such a letter. But he did
19 recall that a female officer had come to Hyde Correctional
20 in either late 1997 or early 1998, and then that female
21 officer had told Mr. Spruiell that she had been told by Dana
22 Maybin that, quote, "We didn't do this," end quote.

23 MS. GUICE SMITH: Do you-all have any questions
24 for Ms. Matoian?

25 COMMISSIONER BARROW: Is there any indication who

1 that female officer was?

2 JUDGE WAGONER: I'm sorry, Mr. Barrow, say it
3 again a little bit louder.

4 COMMISSIONER BARROW: I was asking the identity of
5 the female officer.

6 THE WITNESS: No. And the communication from
7 Mr. Spruiell's attorney did not name the female officer.

8 JUDGE WAGONER: Was this about the same time
9 Mr. Floyd was going to do his -- his investi --

10 COMMISSIONER BRITT: What year?

11 JUDGE WAGONER: That was?

12 THE WITNESS: This was in 1997. I believe
13 Mr. Floyd's investigation was a few years after that.

14 JUDGE WAGONER: Okay.

15 MS. GUICE SMITH: We are ready to call
16 Mr. Spruiell.

17 JUDGE WAGONER: Okay. All right.

18 (Mr. Spruiell was brought into the room.)

19 JUDGE WAGONER: Mr. Spruiell, if you'll please
20 remain standing, sir, and I'll swear you. Place your left
21 hand on the Bible. As best you can, raise your right hand.

22 LEROY SPRUIELL,
23 having been called as a witness for the Commission, was
24 sworn by Judge Wagoner and testified as follows:

25 JUDGE WAGONER: You may have a seat right there,

1 sir, in that chair.

2 All right, Mr. Sprui ll, my name's Anna Mi ll s
3 Wagoner. I'm a Superior Court Judge from Rowan County.
4 Several people -- several of the commi ssioners might want to
5 ask you questions. So if you don't understand a question,
6 just raise your hand; or if you can't hear us, raise your
7 hand also. Okay?

8 Or do you want to go first, Ms. Smi th? Yes.

9 EXAMINATION BY MS. GUI CE SMITH:

10 Q. Good afternoon, Mr. Sprui ll.

11 A. How you doi ng?

12 Q. Good. I am Lindsey Smi th. I'm the Di rector of
13 the North Carolina Innocence Inqui ry Commi ssion. I am goi ng
14 to ask you several questions today, and then as Judge
15 Wagoner just said, the commi ssioners sitting around the
16 table are also going to have questions for you. Okay?

17 A. Yes, ma'am.

18 Q. Can you please state your full name for the
19 record?

20 A. Leroy Sprui ll.

21 Q. And Mr. Sprui ll, did you kill Frank Swain?

22 A. No, ma'am.

23 Q. Were you present when Mr. Swain was killed?

24 A. No, ma'am.

25 Q. Where were you on the night of the crime?

1 A. Bi g Ed' s Bar.

2 Q. What time did you get there?

3 A. I ' d say approxi matel y dark, 5: 30, during the
4 wi nter.

5 Q. And how long did you stay there?

6 A. Until the bar closed.

7 Q. What time did the bar close?

8 A. Around 12: 30, 1: 00, to the best of my knowl edge.

9 Q. Who were you wi th that night?

10 A. A lot of peopl e.

11 Q. Can you name them?

12 A. The man that runs the bar, Ed Champ, hi s
13 daughters, Stacy, Robert, Ni kki , Sherry Hanni kan [phoneti c].

14 Q. When you say Ni kki , are you referring to Dana
15 Maybi n?

16 A. Yes, ma' am.

17 Q. And when you say Robert, are you referring to
18 Wal l ace Jones?

19 A. Yes, ma' am.

20 Q. And at the time, is that how you knew them?

21 A. Yes, ma' am.

22 Q. Robert and Ni kki ?

23 A. Yes, ma' am.

24 Q. What were you doing that night at the bar?

25 A. Pretty much partying and danci ng and dri nki ng.

1 Q. Who were you danci ng wi th?

2 A. Pretty much everybody.

3 Q. Di d you ever l eave the bar that night?

4 A. Not besides going out to the parking lot and
5 drinki ng whi skey drinks.

6 Q. You were drinki ng whi skey i n the parking lot?

7 A. Yes, ma' am.

8 Q. Whose whi skey?

9 A. Mi ne.

10 Q. What was i t i n?

11 A. Tequi l a. Tequi l a bottle.

12 Q. A tequi l a bottle?

13 A. Yes, ma' am.

14 Q. Why was i t i n a tequi l a bottle?

15 A. Well, I bought two fifths earlier that day, and I
16 drank mostly one and I carried the other one there because
17 you can't drink whi skey i n the bar; only beer. So I stashed
18 i t outside. So I kept going outside to drink whi skey.

19 Q. Were you drinki ng whi skey or tequi l a?

20 A. Well, tequi l a, whi skey I call i t, but i t's
21 tequi l a.

22 Q. But clear or dark?

23 A. I t was Two Finger Tequi l a.

24 Q. Well, I'm not fami l i ar wi th what Two Finger
25 Tequi l a i s. Can you expl ai n that?

1 COMMI SSIONER GRACE: Good catch there.

2 A. It's in a black bottle. It's round. And it's
3 kind of low-grade tequila. I mean, you know, it ain't no
4 high-dollar tequila. It's like \$8 a fifth.

5 COMMI SSIONER BRITT: Is it clear or brown?

6 THE WITNESS: It's clear. It's clear.

7 JUDGE WAGONER: But it's in a brown bottle?

8 THE WITNESS: It's in a black bottle.

9 JUDGE WAGONER: Okay.

10 BY MS. GUI CE SMITH:

11 Q. Where'd -- where'd you have that tequila outside?

12 A. Behind the bar.

13 Q. Behind the bar? Where -- where at behind the bar?

14 A. Well, you've got a main entrance in the bar. And
15 then around back, it's like you come out in the parking lot,
16 and you just walk around behind the bar.

17 Q. Where'd you have it sitting?

18 A. And -- no, the bar goes down at a angle, and I had
19 it stashed at the gutter, the top gutter, 'cause I could
20 reach the top of it, tall.

21 Q. So you had it hidden?

22 A. Yes, ma'am.

23 Q. It wasn't just sitting out?

24 A. No, it weren't just sitting out.

25 Q. When you'd go out to drink your tequila, who went

1 with you? Anyone?

2 A. The owner of the bar went out once. Me and
3 Brandon -- Brandon as -- I knew him as Robert Solis and
4 Nikki. We went out several times and took drinks until it
5 was gone.

6 Q. And this was behind the bar?

7 A. Yes, ma'am.

8 Q. Did you go out the front door?

9 A. Out the front door.

10 Q. Walked around?

11 A. Yes, ma'am.

12 Q. How long would you be outside when you were
13 drinking the tequila?

14 A. Not long 'cause it was pretty cold, probably five,
15 ten minutes at the time. Go out there and take a good drink
16 and come back in and dance.

17 Q. How cold was it?

18 A. It -- it was cold. It was right -- now I wouldn't
19 say freezing, but it was right at freezing.

20 Q. And who were you dancing with that night?

21 A. Ma'am?

22 Q. Who were you dancing with that night?

23 A. I danced -- several people.

24 Q. Who?

25 A. The bar -- his wife, Nikki, Stacy. I think I even

1 danced with Robert one time.

2 Q. You did? Have you ever told anyone -- let me ask
3 you this: Were you, Dana, and Mr. Jones all in the bar
4 together all night?

5 A. Pretty much. I'm saying, you know, they shot pool
6 sometimes. I was dancing. Sometimes I went out with Ed to
7 take a drink and they didn't go with me, but pretty much the
8 whole night we were there until we left.

9 Q. Did you ever notice either of them leave for any
10 long period of time?

11 A. No, ma'am.

12 Q. Have you ever told anyone that you-all weren't
13 together all night long?

14 A. No, ma'am. Not that I know of, no, ma'am.

15 Q. I'm going to hand you what I have marked for
16 commissioners as Handout Number 77. This is a report dated
17 April 24th, 1994, of an interview that was done of you by
18 Special Agent Varnell.

19 (Handout Number 77 was identified for the
20 record.)

21 BY MS. GUICE SMITH:

22 Q. Do you remember Agent Varnell interviewing you?

23 A. I think I remember him saying something about
24 taking some -- he found hair samples and blood samples and
25 DNA from the crime scene, I think.

1 Q. Okay. Can you take a look at page 2 of that
2 report where it's highlighted and read that, please?

3 A. Where it says:

4 "Mr. Sprui II stated that would -- would not be
5 surprised if Nikki and Robert had killed Frank
6 Swain. Mr. Sprui II stated that it was just real
7 suspicious to him that Robert and Nikki ran off
8 after the law started coming around Mr. Sprui II's
9 house where they were living also."

10 Q. Keep going.

11 A. "Mr. Sprui II stated that he was not at Frank's the
12 night -- Mr. Sprui II stated that Nikki and Robert
13 left the bar that night and went somewhere to a
14 location where it was unknown to Mr. Sprui II.
15 Mr. Sprui II stated that he had not been to Frank's
16 since -- since October or November when
17 Mr. Sprui II had broken up with his wife.
18 Mr. Sprui II stated that he did not touch any knife
19 of Frank Swain's house at any time.

20 "Mr. Sprui II stated that Russell Sawyer took
21 Mr. Sprui II, Nikki, and Robert" -- I'm reading
22 this -- "Robert Solis to Big Ed's Bar on the night
23 that Frank was killed, December 18th, 1993.
24 Mr. Sprui II stated that he did not leave Big Ed's
25 Bar all night until they went home at about 2:30

1 a.m. Mr. Sprui II stated that Big Ed Champ took
2 him home that night from the bar. Mr. Sprui II
3 stated that himself, Nikki, and Robert left the
4 bar after closing, that they stated [sic] there
5 between 7 p.m. and 2:30 a.m. "

6 Q. And then if you'll read the first paragraph on the
7 next page?

8 A. On the next one?

9 Q. Yeah, go -- flip to the next page, page 3, or 68
10 is at the bottom.

11 A. "Mr. Sprui II stated that he can't remember
12 cooking -- he can remember cooking at his house
13 the night that everybody had sat around the house
14 eating after they cooked. Mr. Sprui II stated
15 there were times that Nikki and Robert were gone
16 for 30 minutes at a time from Big Ed's Bar on the
17 night that Frank Swain was killed. "

18 Q. Mr. Sprui II, do you remember giving this
19 statement?

20 A. I don't remember giving no statement like that.
21 Now, I do remember, I think, talking to him about he had
22 found blood samples and hair samples or something at the
23 crime scene, but I think the only thing I had said to him
24 that we had left the bar but not leaving the bar, going
25 outside and drinking whiskey.

1 Q. Did you tell him that -- that Robert Solis, or
2 Mr. Jones, and Dana Maybin had left the bar for 30 minutes
3 and you didn't know where they were?

4 A. I don't remember giving that statement.

5 Q. Do you -- did they leave the bar for 30 minutes?

6 A. No longer than I know them going outside to drink
7 whiskey.

8 Q. How do you know that the night we just talked
9 about now where you were at the bar all evening is the night
10 of the crime?

11 A. Well, the same night that the next morning that
12 this -- we were at the bar, the next morning my
13 brother-in-law was telling me about this murder that had
14 happened on the Folly Road. That's how I pretty much know
15 how that was.

16 Q. How did you find out about the crime?

17 A. A man named Mitchell Nowarah, which is deceased
18 now, told me that the guy got killed on the Folly Road and
19 his name was Frank, which I had known Frank pretty much all
20 my life.

21 Q. You did?

22 A. Yes, ma'am.

23 Q. Had you been to his home?

24 A. Not in a long -- right good while, and I'm saying
25 approximately -- I'm saying three or four months.

1 Q. Three or four months before the murder?

2 A. I'm saying somewhere in that area.

3 Q. And did you --

4 A. And I don't -- I don't recall ever going in his
5 trailer. I remember pulling up in the driveway part.

6 Q. You don't remember going in?

7 A. I don't never remember 'cause people that sell
8 drugs and all don't want you in there. They usually come
9 out to the -- they don't like you in their place.

10 Q. Would -- would you go to the victim's house to buy
11 drugs?

12 A. Have I ever been there?

13 Q. Is that why you were going --

14 A. Yeah. Yes, ma'am.

15 Q. -- to the victim's house?

16 A. Yes, ma'am.

17 Q. You knew him to sell drugs?

18 A. Yes, ma'am, but I -- I never would carry nobody if
19 I went up there because anybody that sells drugs like that
20 that knew me wouldn't -- they wouldn't let you bring just
21 anybody up there. They knew me, you know.

22 Q. So you went by yourself?

23 A. Most -- 90 percent of the time.

24 Q. Okay. And what would you buy from Mr. Swain?

25 A. I have bought pot and crack cocaine.

1 Q. Earlier you said that you had brought some tequila
2 to the bar.

3 A. Yes, ma'am.

4 Q. Did Dana Maybin bring any alcohol to the bar?

5 A. I don't recall her bringing no -- I was the only
6 one 'cause I had bought two fifths earlier that day.

7 Q. Did Mr. Jones bring any alcohol to the bar?

8 A. Not that I recall, no, ma'am.

9 Q. You-all were all drinking your tequila?

10 A. Yes, ma'am. Well, drinking beer, too, from in the
11 -- buying inside.

12 Q. So you would buy some beers inside?

13 A. Yes, ma'am.

14 Q. Who was buying your beer?

15 A. I was buying.

16 Q. You were buying. Were you buying anybody else's?

17 A. No.

18 Q. Just your own? How many beers did you buy that
19 night?

20 A. Ain't no telling. I probably drank quite a few.

21 Q. How much were beers?

22 A. I can't remember back then what.

23 Q. When did you become aware that you were a suspect
24 in this case?

25 A. I want to say about a month later. I knew Robert

1 and Nikki , and I was asking down to Ed's Bar where's Nikki
2 and Robert, and nobody knew, and I didn't seem them no more.
3 So then I was carried in and questioned and give three vials
4 of blood before I was arrested. I give three vials of blood
5 and fingerprints and took six lie detector tests in
6 Greenville at the S.B.I. agent.

7 Q. Did you pass those?

8 A. And I remember the man telling Ms. Janice Sprui II
9 and Willie Williams that this ain't the man you are looking
10 for.

11 Q. Who said that?

12 A. The man that give me the lie detector test. I
13 can't recall his name.

14 Q. So did they tell you you passed the polygraph?

15 A. They didn't tell me that. They told them that.

16 Q. Have you ever seen the results of the polygraph?

17 A. No, ma'am. No, ma'am.

18 Q. Do you have any direct knowledge of who killed
19 Frank Swain?

20 A. Ma'am, I'm gonna be telling you. From besides the
21 people here that's tried to help me right now, I've been
22 told nothing but a lot of lies.

23 Q. So everything you've heard are rumors, correct?

24 A. Pretty much. I've heard -- I've heard anything
25 from Wyatt Sprui II had set this up to Maurice Wilkins with

1 another crew that went up there, and they sewed his arm up
2 with finishing twine and all. I've heard so many different
3 stories from people that's come on camps where I was at and
4 then I would say, "Well, look. If you heard this and you
5 know that, will you tell my lawyer this?"

6 "Sure."

7 So that's how a lot of that come about. Well,
8 write and tell them that so maybe they can interview you,
9 maybe -- you know, because I was told everything I could
10 find -- if it was good news or didn't know, let somebody
11 know. So that's what I was --

12 Q. Have you always maintained your innocence?

13 A. Well, yes, I have. When Brandon -- when Maynard
14 Harrell and Seth Edwards told me -- well, Maynard Harrell
15 offered me a -- I mean, Mitchell Norton offered me a
16 seven-and-a-half-year plea bargain when all this started
17 going, when they had us all arrested, to say that I done
18 this, to go against Robert Solis, and I didn't take this.

19 So when they got Brandon convicted and she took a
20 plea, to the best of my knowledge, and I was the last one to
21 get tried. And Maynard Harrell and Seth Edwards was more or
22 less telling me if I don't take a no contest plea, then I
23 could go to trial for a capital offense, 'cause that's what
24 they were trying it for, they said, or either get what
25 Mr. Jones got.

1 So I took a no contest plea, which I really didn't
2 know what a no contest plea was until after I got down the
3 road and they started coming to see me saying, well, a no
4 contest plea means that you ain't -- you didn't admit guilt,
5 but they have enough guilt to convict you. So that's where
6 I stand on that at.

7 Q. Have you ever told anyone that you committed the
8 crime?

9 A. No, ma'am, not that -- no, ma'am.

10 Q. So it's your testimony today that you did not kill
11 Frank Swain?

12 A. No, ma'am.

13 Q. And it's your testimony today that you were not
14 present for --

15 A. No.

16 Q. -- Frank Swain's murder?

17 A. No, ma'am. No, ma'am.

18 MS. GUICE SMITH: Commissioner questions?

19 JUDGE WAGONER: Anybody?

20 COMMISSIONER FRYE: Okay.

21 JUDGE WAGONER: You go first. I'll go next.

22 COMMISSIONER FRYE: Okay.

23 EXAMINATION BY COMMISSIONER FRYE:

24 Q. How well do you remember that night?

25 A. Well, I know this. I was in my backyard raking

1 leaves up 'cause it was wintertime. The pecans were
2 starting to fall. And I went with a man named Lewis Jarvis.
3 He asked me did I want to make \$100 putting up a power pole,
4 temporary service power pole. And I went with him and put
5 the power pole up. And on the way back we stopped by the
6 liquor store, and I knew Ed always had that annual like
7 Christmas party. So I said, well, let me buy these two
8 fifths of tequila. So I bought them.

9 When I get home, as I know her as Nikki and me
10 drank pretty much of that. We were gonna walk to the bar,
11 which is not even a half a mile from my house, and then
12 Robert Solis that I know him, Robert Solis -- I know him now
13 as Brandon -- came up about the same time. So we started
14 walking, and I had the fifth in my back pocket. And we
15 walked about halfway there, and a boy named Ray Hurst was at
16 Russell Sawyer's house, and he give us a ride on to the bar.

17 So I know that I danced and drank and this and
18 that, and when we left to come back to my house, Big Ed and
19 Lottie give me a ride and Brandon and Nikki now were --
20 walked. It weren't that far. Went to my house. I cooked
21 salmon cakes and sweet potato French fries, and we all ate.
22 And that's how I remember that night.

23 Q. Okay. Did you go to bed directly after you got
24 through eating?

25 A. I did. Now, where they went, I can't tell you if

1 they left my house out then. I know I went to bed. And
2 there was a boy named Smarty Sprui II. He actually was with
3 us. He went on home 'cause he didn't live far from my
4 house.

5 And the next day, I remember my brother-in-law
6 saying somebody got killed last night on the Folly Road, and
7 then Mitchell Nowarah told me that it was Frank Swain got
8 killed on the Folly Road. So that's how I know that.

9 Q. Start from the time that you went to bed and go
10 backward in your mind. Tell me the story backward up until
11 you were raking leaves in your yard.

12 A. Now, say that again?

13 Q. Start from the time -- tell me the story backward
14 from the time you went to bed. Go backward until the time
15 that you were waking -- raking leaves in your yard.

16 A. Well, I went to bed. Like before that, I cooked
17 salmon cakes and sweet potatoes. Prior to that, Ed Champ
18 and Lottie give me a ride, and Smarty, to my house, and
19 Brandon and his girl, that I knew them, walked from the bar.

20 I danced at the bar and I drank whiskey at the
21 bar. And from then that afternoon, me and her walked to the
22 bar. Walking to the bar, met Brandon. He went there, and
23 then Russell and them carried us -- Russell and Ray Hurst
24 carried us to the bar. But coming back from there, from
25 there back to me and Nikki drinking in my house to me right

1 on up putting -- raking leaves, the power pole with Lewis
2 Jarvis.

3 Q. Okay.

4 A. That's the best I can relate that.

5 Q. Okay.

6 A. And for it to been that long, I have lived this.
7 Maybe some people can say, "Well, I don't remember this,"
8 and I have had a lot of people interview me, but this is
9 something that I have lived for about 24 years.

10 Q. I understand. Ray Hurst, was he known -- did he
11 have a nickname or --

12 A. I -- all I knew him as Ray Hurst, and nobody has
13 never ever been able to get up with him, best of my
14 knowledge.

15 Q. Now, that other person that was with Ray that gave
16 you'ins a ride to the bar?

17 A. Russell Sawyer -- actually, we was in Russell
18 Sawyer's mama's front area, her yard and porch, and Ray
19 Hurst came out because he was married to Russell's sister.
20 And he said, "Where y'all going?" I said, "To Big Ed's
21 Bar." And he said, "Well, I'll give y'all a ride." So it
22 weren't that much farther, though. When he gave us a ride
23 to the bar is where we stayed until Lottie and Ed carried me
24 home, and Brandon and Nikki walked. And I keep saying
25 Brandon and Nikki, but I didn't know who they were.

1 Q. That's okay.

2 A. I didn't know who they were until a year later.

3 Q. What did Ray Hurst give you a ride in?

4 A. A blue Ford pick-up truck.

5 Q. A blue Ford pick-up. Single-cab?

6 A. Yes, sir.

7 Q. So there was four of you in this --

8 A. Four of us in there, yes, sir.

9 Q. How did you sit?

10 A. I think I was next to him, and then it was -- I
11 was next to him, I think, and she was there, and Brandon was
12 outside door, I think.

13 Q. Okay.

14 A. I -- I can't be really true about that.

15 Q. You had a fifth of liquor in your pocket.

16 A. Sir?

17 Q. You had a fifth of liquor in your pocket.

18 A. No, I had it in my hand then, but I had it in my
19 back pocket 'cause I started out walking down there. We
20 were gonna walk to the bar.

21 Q. And you bought a bunch of beer there that night?

22 A. Yes, sir.

23 Q. About how many do you think?

24 A. Probably seven or eight.

25 Q. Seven or eight? Did -- did Robert buy you any

1 beer?

2 A. Not that I recall, no, sir.

3 Q. Did you buy him any?

4 A. Not that I recall.

5 Q. Okay. How much money did you have in your pocket
6 that night?

7 A. Well, Lewis Jarvis give me -- well, I had got paid
8 Friday. I had some. And Lewis Jarvis had give me \$100 for
9 helping him put that power pole down. And I'd probably
10 spent 20 of that on the tequila 'cause it was like eight
11 dollars and something a fifth, pretty cheap.

12 Q. Okay. Now -- that's all I have for right this
13 moment.

14 EXAMINATION BY JUDGE WAGONER:

15 Q. Okay. I've got a question -- couple of questions,
16 sir.

17 Okay. As I understand it, you said you and Nikki,
18 or Dana, whatever her name happened to be, was, y'all were
19 at your place together that Saturday, and then you and Nikki
20 decided to go to Big Ed's. Is that correct?

21 A. Well, me -- she -- she was staying part-time in my
22 house. And see, her and Rob -- Robert, as I know, and her
23 were boyfriend and girlfriend.

24 Q. Yeah.

25 A. Well, he stayed with Ed at his apartment up there

1 at Ed's, and she was staying with a lady named Betsy. But
2 Betsy and them had kicked her out. Supposed to have been
3 her aunt. I don't know that to be true. So she was
4 actually staying some at my house.

5 Q. So why did Betsy kick her out?

6 A. Where?

7 Q. Why did that lady kick her out?

8 A. I have no idea. That's just -- that's all I heard
9 was -- so, anyway, she was at my house, and I was raking
10 leaves that morning. Then I went and done this, and that
11 afternoon when I got back with the money that I had from
12 putting the power pole up, I had the fifth of whiskey. And
13 we started drinking, and then it went from there to the bar.

14 Q. And did -- how long had she been staying with you?

15 A. Well, I -- I didn't -- not long because I had met
16 them -- I didn't -- I met them at a bar on Thanksgiving
17 night, and approximately they saying that this was supposed
18 to happen on the 13th or the 18th. The thing.

19 Q. Of December.

20 A. So that ain't much time that I -- between that.

21 Q. Did she have a job while she was staying with you?

22 A. No.

23 Q. Did you have a job?

24 A. Yes, ma'am, two jobs.

25 Q. Okay. So what --

1 A. I worked in --

2 Q. -- what would she do while you were at work all
3 day?

4 A. Well, she said she used my car to go look for a
5 job, but after -- at the time that's what I thought, but
6 later, as I found out right here, they had warrants in
7 another state or something. So I didn't -- I didn't know
8 this.

9 Q. Did you have a car?

10 A. Yes, ma'am.

11 Q. Okay.

12 A. A -- a red Lincoln Continental.

13 Q. So why didn't you drive your car that night to the
14 bar?

15 A. Because I was gonna get drunk, and I wasn't gonna
16 get on the highway.

17 Q. Well, good for you.

18 A. (Laughing.)

19 (Laughter.)

20 A. 'Cause the bar -- the bar was about a half a --
21 not quite a half a mile from my house.

22 Q. All right. Now, who was -- do you know -- who was
23 Avis Arnold?

24 A. All I know was he was a black guy that I met at
25 Hyde Correctional. And how he knows who I am, I don't know,

1 but he come up to me and he was saying, "Are you Leroy
2 Spruiell?"

3 And I said, "Yeah."

4 And he's saying, "Well, you know, I was present
5 the night that Frank got killed."

6 And I'm saying, "Oh. Oh, you were?"

7 And he said, "Yeah. I was the lookout man. And
8 when they went up there, they robbed Frank. And Avis and
9 Maurice Wilkins got cut from here to here by peeling a
10 orange."

11 Q. Who did?

12 A. Maurice Wilkins.

13 Q. Oh, okay.

14 A. Said that he had got his arm cut real bad like
15 while peeling a orange, but he said that they left there
16 after killing Frank and robbing him and went up to McNair
17 Road, and he sewed him up with fishing twine. But that's --
18 I mean, that's hearsay.

19 So I asked, you know, "Would -- well, will you
20 tell my lawyer this? Will you write and tell my lawyer
21 this?" And I think they did go talk to him. But like you
22 saying and I'm telling everybody right here, 90 percent of
23 this stuff that I have heard that was told to me was -- I'm
24 -- was lies. You know what I mean?

25 But I had to follow up on them. I was grasping at

1 straws to get anybody that could get a lead on something for
2 something that I know me and that boy didn't do.

3 Q. Okay. That's all I've got for now.

4 JUDGE WAGONER: Yes, ma'am.

5 EXAMINATION BY COMMISSIONER COVER:

6 Q. Mr. Spruiell, my name is Camilla Cover, and I want
7 to know how you wore your hair at that time.

8 A. Well, I didn't have long hair and a beard right
9 now. I was pretty well clean-cut.

10 Q. Okay. So no ponytail.

11 A. No ponytail. It was about shoulder length, and it
12 was like a -- not a real tight curly permanent, but kind of
13 like curls, like long, loose curls, but it was like shoulder
14 length. No beard. No long hair.

15 Q. Thank you.

16 COMMISSIONER GRACE: I have one quick question.

17 JUDGE WAGONER: Okay. Yes, sir, Mr. Grace.

18 EXAMINATION BY COMMISSIONER GRACE:

19 Q. Sir, how old were you in 1982?

20 A. Well, this is 24 years right here I think that
21 I've been locked up. I think I was like 36, 36 and a half.

22 Q. I'm talking about '82, not '93. '82.

23 A. Oh, '82. I was about 20 years old.

24 Q. And that's the last conviction you had for
25 anything --

1 A. Yes, sir. That -- that -- that's the only time
2 I've ever -- I went in a agriculture building in a Creswell
3 High School, and me and a boy just -- that I think he's done
4 been here, Wyatt Sprui ll, and we took some chainsaw out of
5 there and took them out in the woods and run them in the
6 dirt and -- and kind of hurt them up pretty bad. Young and
7 stupid.

8 JUDGE WAGONER: Stupi d.

9 THE WITNESS: Yeah.

10 COMMI SSIONER GRACE: Thank you.

11 JUDGE WAGONER: Okay. Yes, ma'am.

12 EXAMINATION BY COMMI SSIONER THOMPSON:

13 Q. My name is Jenni fer Thompson. I just have a
14 couple of questions. Did you ever burn clothes in your wood
15 heater in your home?

16 A. No, but I --

17 Q. Li ke never ever?

18 A. Never. But I -- I can kind of tell you where that
19 come about, if I can.

20 Q. Sure.

21 A. They come down to my house. This is before they
22 actually had found who Robert and Nikki is. They come down
23 to my house one day, and my trash pile out the back -- I
24 burnt wood, and I'd always scoop the ashes out and put them
25 in a pile. And I'd always put them around the pecan tree in

1 the summer, the spring for fertilizer. And they come and
2 looked in my stove, and they took all of my clothes out of
3 the clothes hamper, and they went out there and dug the
4 whole pile up where I had these leaves, you know, like stuff
5 burnt, and they were trying to say that I had money buried
6 down there and all.

7 I said, "What are you talking about?"

8 So they done my house. They took -- they took
9 stuff from my house that I've never seen no more, and then I
10 heard later -- now, this is hearsay, too -- that they took
11 my camouflage clothes out of the clothes hamper because they
12 had blood on them. And come to find out later they tested
13 it, it was animal blood because the week before I had killed
14 a bear the week of December.

15 JUDGE WAGONER: Killed a what?

16 THE WITNESS: A bear.

17 JUDGE WAGONER: A bear?

18 A. 'Cause I do a lot of deer hunting and bear
19 hunting. And I had killed a bear. And when they got the
20 clothes, it was like, "Well, we got these clothes with blood
21 on them." And I'm saying, you know, they're -- they're bear
22 blood. There's not -- animal. You know, I mean, there
23 ain't no human blood.

24 But they took and tore my trash pile up. And then
25 they were looking all in the heater. And I was asking them.

1 But this was way before I was even arrested. I had -- I
2 weren't arrested when all this took place.

3 BY COMMISSIONER THOMPSON:

4 Q. What would happen -- like I -- I've never had a
5 wood heater, but what would happen if you did burn a pair of
6 shoes in your wood heater? Would -- would the rubber --

7 A. You'd a had to have it, I'm saying, mighty hot
8 that you wouldn't leave some kind of stick -- you know.

9 Q. Sticky?

10 A. I would say.

11 Q. Uh-huh, okay. And then Lynn Rogers, the bartender
12 at Big Ed's Bar. Did you or Mr. Jones or the Champs ever
13 threaten her that if she testified that y'all would kill
14 her?

15 A. This is where this comes in, if I -- if I may to
16 tell that.

17 Q. Uh-huh.

18 A. All right. Ed -- Brandon was working for Ed. And
19 I know him -- I'm calling him Brandon, but I knew him as
20 Robert Solis. Well, he was working, 'cause Big Ed had a
21 septic tank business. Well, the reason that Lynn Rogers was
22 mad at Ed and Lottie and everybody, because Big Ed would let
23 Brandon run the bar because he had fired Lynn Rogers because
24 she was stealing money out of the cash trap. So that's how
25 that came about.

1 Q. She was mad.

2 A. So now that's how that statement probably came
3 about. And I do know that to be true, that Ed I let her go
4 from behind the bar, 'cause she was the bartender.

5 Q. Thank you.

6 A. So -- so that's how I know that story came about.

7 Q. Thank you.

8 JUDGE WAGONER: Yes, si r.

9 EXAMINATION BY COMMISSIONER BOSWELL:

10 Q. Mr. Sprui II, do you know Mr. Hudson?

11 A. Inmate Hudson?

12 Q. Yeah.

13 A. Yes, si r, I do.

14 Q. He -- in '05, he wrote a letter to Mr. Coman with,
15 I guess, the Attorney General's Office relating a story that
16 he said he had heard from Wyatt Sprui II. Did you know about
17 this? Did you know about the letter he wrote?

18 A. I -- I'll tell you where I was at. I -- they had
19 sent me to Craven to run the canteen for 90 days, and I met
20 Mr. Hudson there first. And he was telling me -- when he
21 found out who my name was, he asked me did I have a cousin,
22 did I know a boy named Wyatt Sprui II. And I said, yeah,
23 he's like my fourth cousin, third or fourth cousin.

24 He said, "Well, he has confessed to me about a
25 crime that he set up." And I was more or less like, "Well,

1 what do you mean by a crime and all?"

2 "He said, 'Well, I'm dying with AIDS, and I want
3 to get it off my chest.' " And he told him. So when he was
4 telling me, I said, "Well, man, will you write" -- and at
5 the time I think I did write James Coman a letter. That was
6 the next thing, the attorney general, that I was saying,
7 well maybe I can get -- maybe somebody will listen to me,
8 You know what I mean?

9 Q. Uh-huh.

10 A. So that's where that come about.

11 Q. So you had told him -- you -- you had given -- you
12 gave the name of James Coman. How did you find out about
13 James -- about Mr. Coman?

14 A. Got a officer at Hyde Correctional to find me the
15 Attorney General's Office when I was at Hyde 'cause I had a
16 address with different people. I -- I had wrote everybody,
17 man, trying to get somebody to listen to me.

18 Q. Right.

19 A. Just come and listen to me, you know. Come and do
20 the work that weren't done years ago. That's all I ask.
21 You know, I've never asked nobody to lie for me or tell
22 nothing weren't true. Just to tell the truth.

23 Q. Do you have any idea why Dana Maybin would have
24 made this story up and said that you and Mr. Jones had
25 killed this man and she was involved with it? Do you have

1 any idea?

2 A. The story I've always heard from day one was she
3 was facing 15 years to some time in South Carolina, and
4 North Carolina brought her back here and said they'd drop
5 the charges in South Carolina if she would tell the story
6 about me and all this, and that's how I know that she came
7 about telling this, the best of my knowledge.

8 Q. Have you ever had any conversation with her after
9 -- you know, from the time you were arrested and -- and --

10 A. Not besides -- not besides when I was at the
11 courthouse, and I really didn't have no contact with her.
12 They brought her out and asked me did I know who she was.
13 And I said, yes, sir, I know her as Nikki Turner [phonetic].
14 And they said her name is Dana Maybin.

15 Q. Right.

16 A. And then they brought Robert Solis out and asked
17 me did I know him, and I said Robert Solis. And they said,
18 "No, Wallace Brandon Jones." That's how I found them out.
19 But that was like within three days before a year was up
20 when I was arrested.

21 Q. Right.

22 A. Yes, sir.

23 Q. How about the -- the lady who was the bartender?
24 Why -- why in the world would she have testified that you
25 guys had left the bar, changed clothes, and come back? You

1 were gone for like an hour and a half or something.

2 A. The only thing I can think of was whoever talked
3 to her about this deal that she was mad at -- she was mad at
4 Ed and them. But she weren't working behind the bar at the
5 time when this happened. All this that she had told about
6 she was working the bar and heard us boasting about this,
7 no, she weren't even working. She was coming to the bar,
8 but she weren't working behind the bar.

9 JUDGE WAGONER: Had she been fired already?

10 THE WITNESS: She had done been fired.

11 JUDGE WAGONER: When -- when this -- when this
12 murder happened.

13 THE WITNESS: They -- they actually -- they had
14 actually fired her before -- actually, I knew who really
15 Robert and Nikki was. Now, I knew -- I knew from them
16 coming to the bar, and I knew that he worked with Ed, but I
17 didn't know -- I -- I didn't hang out with them like that.
18 I had just met them. You know what I mean? It was like --
19 like I say, I met them on Thanksgiving, and this was
20 supposed to happened the 18th of December. That's how long
21 I knew them, pretty much, them people.

22 BY COMMISSIONER BOSWELL:

23 Q. But -- but the bartender, she was working on the
24 18th, or not?

25 A. I don't think so, sir.

1 Q. Okay.

2 A. I don't think so because I -- I knew -- I -- I'm
3 just saying -- I may be wrong about that. I don't think so,
4 because I remember -- I remember dancing with her, and Ed
5 and Lottie were working the bar. So I -- I'm saying I'm not
6 really sure about that, but I don't think so. I think she
7 had done been fired.

8 Q. But she would have never heard you and Robert talk
9 about offing an N-word?

10 A. No. I -- well, I had heard that later. I heard
11 that she said that we was in there boasting about how we had
12 just killed a N-word, what you called it.

13 Q. Right.

14 A. Yes, sir. That's what I had been told, but I've
15 never said that.

16 Q. Right.

17 A. I mean, I went to school with this boy. I knew
18 his family. I grewed up with this boy's family, more or
19 less. He was black and I was white, but I mean, I'm 60
20 years old. I knew his people lived down the road. And my
21 daddy cut firewood for them. And I mean, I'd known this guy
22 a long time. I just ain't gonna met a -- a girl that's 20
23 years old and a boy that's 20 years old and at a bar and
24 say, "Hey, let's go down here and kill this man."

25 Q. Okay.

1 A. I j ust, you know.

2 Q. Thank you. Those are the questi ons I had.

3 COMMI SSIONER BRI TT: May I?

4 JUDGE WAGONER: Yes, si r.

5 EXAMI NATION BY COMMI SSIONER BRI TT:

6 Q. Mr. Sprui ll, my name's Johnson Bri tt. Let me j ust
7 ask you thi s: You sai d you'd known Frank Swain most of your
8 li fe, most of hi s li fe.

9 A. Yes, si r.

10 Q. And you had been to hi s house two or three months
11 prior to thi s.

12 A. Yes, si r.

13 Q. You started using crack cocaine?

14 A. Well, I had bought from di fferent peopl e, but I
15 knew hi m. I knew of hi m there. But I used to carry hi m
16 fi rewood. My daddy has carri ed hi s peopl e fi rewood. I
17 mean, you know, I've known thi s -- not j ust met thi s guy.
18 You know what I mean? I've known hi m a --

19 Q. How many ti mes do you remember going to hi s
20 trai ler and buyi ng crack cocaine?

21 A. I'm sayi ng three or four ti mes. And I'd del i ver
22 wood and -- where I cut a lot of wood, and I'd carry hi m a
23 load of wood, and he'd al ways say, "Well, here, take thi s."
24 Ri ght? You know what I mean?

25 Q. So --

1 A. We -- we was pretty -- I ain't saying tight, but
2 I've known him all my life, you know.

3 Q. You were trading firewood for crack?

4 A. I have. I have done that, sir. I mean, I have.

5 Q. Now, you were married. Is that correct?

6 A. I -- I was up prior to this happening --

7 Q. And --

8 A. -- for ten --

9 Q. -- you and your wife had split up?

10 A. Yes, sir, for ten years I was married.

11 Q. And y'all split up fall of that year?

12 A. About October where this -- I met them in --
13 around Thanksgiving. I'm saying Thanksgiving Day.

14 Q. Did she move out, or did you move out?

15 A. She moved out.

16 Q. Okay. So she lived where you live?

17 A. No. The house that we lived in that we all -- we
18 sold that --

19 Q. Okay.

20 A. -- prior to -- right along in there had it up for
21 sale, but I had lived in my grandmama's house.

22 Q. So was that where you were living --

23 A. Yes, sir.

24 Q. -- at your grandmother's house --

25 A. Yes, sir.

1 Q. -- at the time this happened?

2 A. Yes, sir.

3 Q. And you let Nikki move in there.

4 A. Well, more or less staying. She didn't have a
5 whole lot of nothing. I mean, she was -- but, you know, I
6 also heard that -- this is hearsay, too. People said, well,
7 we went to my house and changed clothes and burnt the
8 clothes and took a shower and all. Well, I know we didn't
9 go there and take no shower because I didn't have no running
10 water. Prior to a week of that -- that's how I was saying
11 -- they were asking me about how cold it was. I know nights
12 got pretty cold because I had a pipe that had busted coming
13 from the water meter to my house. And I had had the water
14 cut off, so I didn't have no running water at my house.

15 Q. Now, was Sherri Honea friend of Nikki?

16 A. I really don't know her name, sir. I knew it as
17 Sherri Hanniken [phonetic].

18 Q. Okay.

19 A. Or Sherri Honiken [phonetic], but she actually is
20 the one that got this whole ball rolling.

21 Q. And did -- were you seeing her?

22 A. No. She was at -- she hit a boy over the head
23 with a bottle at Big Ed's Bar prior to this, from what -- I
24 weren't there, but prior to this, the law came and found
25 out. That's how the law actually found out that Nikki and

1 her and all them were running from the law, the best I
2 understand.

3 Q. So where did Sherri live?

4 A. She lived with Betsy. Betsy ain't kicked her out
5 yet.

6 Q. Okay. Now, so Nikki moves in with you, and she's
7 already living or staying there with you when you meet
8 Robert.

9 A. I probably met Robert -- well, I actually met all
10 three of them with Betsy at the Oasis, a bar, I think it was
11 Thanksgiving night.

12 Q. And that's another bar in Plymouth.

13 A. Yes, sir. That's -- that's the -- that's when I
14 was actually introduced to who they were.

15 Q. Okay. And so after you met Nikki at the Oasis
16 Bar, when does she move into your -- when did she start
17 staying at your place?

18 A. Probably two weeks after that, take or give, yeah.

19 Q. And did Robert stay there from time to time?

20 A. He did. He did.

21 Q. With her?

22 A. Yes, sir. Like he'd come over. We went to the
23 bar and got pretty loaded. We'd walk from the bar to my
24 house, and he would stay and they'd sleep on the couch.
25 Yes, sir.

1 Q. All right. And so this is not this day, the day
2 that this is alleged to have happened. You had worked with
3 Mr. Jarvis putting up the temporary power pole.

4 A. Well, the day that this -- the night that this was
5 supposed to happen, I had done it with him, but he's just an
6 electrical -- a contractor. I work with my brother-in-law
7 part-time, and I work with a guy named Steve Furlough
8 part-time. So I actually worked two jobs, sometimes 70
9 hours a week.

10 Q. Okay. But on the day, the afternoon that this
11 happened --

12 A. That was on a Saturday.

13 Q. -- you put a temporary power pole --

14 A. Yeah.

15 Q. -- with Mr. Jarvis.

16 A. Yes, sir.

17 Q. And then on the way -- was it on the way back to
18 -- home, is that when you stopped at the liquor store?

19 A. Yes, sir.

20 Q. And you bought two fifths.

21 A. Yes, sir.

22 Q. Went back to your house.

23 A. Yes, sir.

24 Q. And then you and Nikki started drinking --

25 A. Yes, sir.

1 Q. -- tequila.

2 A. Yes, sir.

3 Q. Did anybody ever pour it in a Mountain Dew can and
4 take it to the bar?

5 A. Yes, sir.

6 Q. Who did that?

7 A. Well, I'm saying Big Ed done that because he would
8 carry a Mountain Dew out. And instead of him taking a drink
9 right there, he'd take a drink, and then he'd pour some in
10 that bar -- in the can and take it back in because he was
11 the bartender. He weren't supposed to be in there drinking
12 whiskey. I mean, he's the man owned the bar. He weren't
13 supposed to be in there drinking whiskey. So that's how
14 he --

15 Q. Do you remember the Mountain Dew can ever being
16 left on, like, the windowsill in the front outside the bar?

17 A. Not to my knowledge, sir.

18 Q. So you remember taking the bottle and putting it
19 up in the gutter.

20 A. Yes, sir.

21 JUDGE WAGONER: In the gutter? Is that what you
22 said, gutter?

23 COMMISSIONER BRITT: Gutter.

24 A. Yep.

25 BY COMMISSIONER BRITT:

1 Q. And that's where you and Robert and Nikki would go
2 drink --

3 A. Yeah.

4 Q. -- from.

5 A. And Ed. Here and there Ed would go. Not like we
6 went, though.

7 Q. Okay. Did y'all drink all the second fifth?

8 A. Yes, sir, and I slung the bottle over the -- the
9 wood beside the bar. And I slung the bottle there in the
10 wood.

11 Q. All right. So you're drinking tequila, you're
12 drinking beer.

13 A. Yes, sir.

14 Q. You were inside having a good time.

15 A. Yes, sir.

16 Q. And then you leave and go home.

17 A. Yes, sir.

18 Q. Now, you're saying you never made this statement
19 to the S.B.I. that you remember --

20 A. I don't --

21 Q. -- Nikki and Robert leaving.

22 A. No. The only thing I remember Donnie Varnell, I
23 met him one time, is he told me in the courthouse, he said
24 "I gotcha 'cause I got your fingerprints and DNA from that
25 crime scene," of my best of knowledge.

1 Q. Did you say anything to him?

2 A. I don't think -- him and Inscoe, I said nothing
3 to.

4 Q. Okay.

5 A. Inscoe was a S.B.I. agent, too, I think, from
6 Martin County.

7 Q. Let me ask you this: Did you see Wyatt Spruiell
8 that day?

9 A. Yes, sir. I saw him and Frank in the Winn-Dixie
10 earlier that morning. My sister and my brother-in-law saw
11 them, too.

12 Q. And you said you are related to Wyatt?

13 A. I'm like his -- my daddy -- my daddy and his daddy
14 are brothers.

15 Q. All right. Did Wyatt have a problem with crack
16 cocaine?

17 A. Yes, sir.

18 Q. How would you describe his problems?

19 A. Just as bad as anybody else.

20 Q. Strung out pretty badly on it?

21 A. Pretty bad.

22 Q. Do you remember him ever going to rehab?

23 A. Yes, sir.

24 Q. How long do you remember him going to rehab?

25 A. I don't -- I don't really know, but I know they

1 said they had sent him off for it.

2 Q. And did you ever see him when he came back from
3 rehab?

4 A. No, sir. I never -- I never had a -- I never
5 really hung and done with Wyatt after the deal with the --
6 the school house thing with the chainsaws. I never really
7 had a lot of dealing with Wyatt after that.

8 Q. Okay. When you saw -- you said you saw Wyatt and
9 Frank in the grocery store.

10 A. Yes, sir.

11 Q. Did Wyatt appear to be high?

12 A. I don't know. I didn't -- I passed down the
13 aisle. I don't know. I went to buy some dog food. Now, I
14 do know that they talked to my sister and brother-in-law.
15 But I don't know about what and all because I know they were
16 buying stuff to go to see his sister at Women's Prison in
17 Raleigh.

18 Q. You're talking about Wyatt's sister?

19 A. Yes, sir, the one that's deceased now because she
20 got killed right after he got killed.

21 Q. The -- do you ever remember a time when Robert
22 hurt his leg?

23 A. Yes, sir.

24 Q. What do you know about that?

25 A. He fell down a flight of stairs and skinned his

1 shin up pretty bad, and it bled through his pants.

2 Q. And were you there when that happened?

3 A. I sure -- sure was.

4 Q. Do you ever remember him going to the bar and --

5 A. Yes, sir.

6 Q. -- blood coming through his pants leg?

7 A. Yes, sir, and dancing -- dancing with a girl named
8 -- gosh. I can't think of her name right now, but -- and
9 dancing with her, and she said what's the blood doing on
10 your pants. And he showed her his skin. He did. He fell
11 down about ten steps in a real short stairway and skinned
12 his shin up.

13 Q. And do you remember where the blood was on his
14 pants?

15 A. Somewhere right along his shin area.

16 Q. In the front?

17 A. Yes, sir.

18 Q. You were asked about your hair, your beard. What
19 color was your hair before it turned white?

20 A. Darker color. It weren't quite dark -- it weren't
21 black, but it was kind of a darker brown.

22 Q. And in '93 when this happened, what color was your
23 hair?

24 A. Darker, yeah. Not like this.

25 Q. Did you wear like mousse or gel or something --

1 A. I -- I had --

2 Q. -- to make it look wet?

3 A. Yes, sir. It looked -- it looked kind of like a
4 wet curly permanent, kind of.

5 Q. And you didn't have a beard.

6 A. No, sir, but my hair -- with the curly permanent,
7 I always would put like mousse in it so it would look like
8 it was, like, wet 'cause you didn't have to brush it or
9 nothing. It was like long loose curls.

10 Q. Okay. And you said it was about shoulder length?

11 A. Yeah, about shoulder length. It weren't near long
12 as it is now, like collar length. Yes, sir.

13 Q. And you drove a red Lincoln Continental.

14 A. Yes, sir.

15 Q. And your daddy owned a -- some color of blue
16 pick-up truck?

17 A. Well, it was a blue Ford F150, but it was --
18 almost looked white it was so old. It didn't -- it didn't
19 have no -- it weren't even Carolina blue no more. It was
20 more or less white, but it was blue at the time, Carolina
21 blue.

22 Q. And you said you didn't drive to Big Ed's that
23 night because you were going to -- you were going to drink.

24 A. Yes, sir.

25 Q. And so would you have left Big Ed's and driven any

1 vehicle?

2 A. I have drove on the road before, sir.

3 Q. No, no, no, I'm talking about that night.

4 A. Would I have if I'd have drove there? Probably.

5 Q. If you had driven there?

6 A. If I'd have driven, I probably would've drove home
7 'cause it's like a half a mile. It's not even a half a mile
8 from the bar.

9 Q. How far does your father live from Frank's?

10 A. From Frank?

11 Q. Yes.

12 A. Probably ten miles, eight miles.

13 Q. How far does your father live from you?

14 A. Maybe a mile.

15 Q. And so to get to your father's house, if you were
16 going to go borrow his truck that night from the bar, would
17 you have had to walk by your house?

18 A. Yes, sir. Yes, sir. I mean, you didn't have to,
19 but I mean, that was the quickest way. Yes, sir.

20 Q. That was the way to go?

21 A. Yes, sir.

22 Q. Did you carry a knife back then?

23 A. I've always had a skinning knife, like a hunting
24 knife, you know --

25 Q. You said --

1 A. -- where I --

2 Q. -- you said that you hunted deer and you hunted
3 bear.

4 A. Yes, sir.

5 Q. Now, when you say a skinning knife, describe that
6 for these folks.

7 A. Well, you wear it on your side. It's probably
8 long as that bottle right there.

9 Q. Probably --

10 A. Just like a -- a buck skinning knife, you know.

11 Q. The blade was how long, would you say?

12 A. I don't know, probably that long.

13 Q. Three, four inches? Was it serrated or was it
14 straight-edged?

15 A. Just a straight, yeah. And it -- it -- it was old
16 'cause I'd had it for years.

17 Q. But you didn't carry that, like, on your hip --

18 A. No.

19 Q. -- or on -- in a --

20 A. No. Whenever I went hunting, I carried it because
21 of --

22 Q. Like, on the street.

23 A. No, sir.

24 Q. You're going to the store, you didn't --

25 A. No, no.

1 Q. -- wear it on -- wear it on your belt.

2 A. No, sir.

3 Q. And how -- how tall are you?

4 A. I'm about six-five.

5 Q. How much you weigh right now?

6 A. About 260.

7 Q. Back in the day, how much did you weigh?

8 A. 220.

9 Q. And by comparison, how much bigger were you than
10 Frank McNair [sic]?

11 A. Sir?

12 Q. How much larger were you than Frank McNair [sic]
13 back in --

14 A. How much larger I was than him?

15 Q. Yeah.

16 A. Pretty much big. He was a small --

17 Q. And --

18 MS. GUI CE SMITH: Do you mean Frank Swain?

19 COMMI SSIONER BRI TT: I'm sorry, Frank Swain. Did
20 I say McNair?

21 MS. GUI CE SMITH: You did.

22 COMMI SSIONER BRI TT: Frank Swain.

23 A. Yeah, he weren't no real big guy.

24 BY COMMI SSIONER BRI TT:

25 Q. All right. Would it have taken two people to

1 handle hi m?

2 A. I would say -- I would say -- I would say, well ,
3 he was pretty wiry, yeah.

4 Q. Had you ever had any run-ins with Janice Sprui ll
5 before?

6 A. I sure have.

7 Q. Over what?

8 A. Several things.

9 Q. Like what?

10 A. She had seen me down the road at a place where
11 they sold drugs, but -- and she'd always pull me over and
12 stop me, but she couldn't find nothing and this and that.
13 And my sister worked at the same place she worked at for
14 20-some years until they done me like they done me, and then
15 my sister resigned. But her and my sister don't really see
16 eye to eye, but several little things like that right there.

17 Q. Had she had ever --

18 A. No --

19 Q. She had never arrested you. For example, she
20 wasn't involved in your arrest at the school.

21 A. No. No, sir. No, sir.

22 Q. What about Willie Williams?

23 A. He was the same as her right now on this right
24 here. Him and her was the -- the main ones that kept
25 telling me that I was guilty for this and this and that.

1 And they the ones that took me for the lie detector tests.
2 They the ones that took me to do -- do the blood. And I
3 agreed. I -- I took all this without being arrested. You
4 know what I meant?

5 Q. Let me ask you this: Had you ever had any run-ins
6 with Willie Williams?

7 A. Not Willie Williams. Janice, I had.

8 Q. Okay.

9 A. But I had grewed up with Janice all my life. My
10 -- Janice and her mom and brother lived beside my grandmama.
11 So we played kick ball and football and I mean, I grewed up
12 with her.

13 Q. And you said that you took -- you took a
14 polygraph. You took a lie detector test.

15 A. Six of them.

16 Q. You took six of them.

17 A. In a period of -- they kept me in Greenville for
18 approximately four hours. And they'd take it and then
19 they'd give me a little break. And they'd take it and
20 they'd give me a little break.

21 And I remember Willie Williams and Janice standing
22 behind a glass that you couldn't see -- you could see in,
23 but you couldn't see out. And I remember this guy that was
24 giving me the polygraph test, when he was hooking me up, I
25 looked down at him, and I started laughing, you know. And

1 he was asking me what was so funny. And this man wore --
2 wore socks. And on the side of his heels right there, he
3 had Woody the Woodpecker on his socks. And I'm laughing.

4 He said, "What's so damn funny?"

5 And I said, "You got what's his name, Woody the
6 Woodpecker, on your socks." And then he didn't really like
7 that. And then when he done the test and all, Willie and
8 Janice come around and come inside. And he said, "I don't
9 think this is the man y'all looking for."

10 Q. So he -- he indicated, at least to you, or you
11 interpreted what he was saying that you had passed it.

12 A. Yes, sir. Well, not only that, my sister worked
13 at the sheriff's department at the time, and Janice called
14 her at the sheriff's department and said, "You can call your
15 mama and daddy and tell them that Leroy has cleared his lie
16 detector tests."

17 Q. Did they ever tell you what the numbers were?

18 A. No, they didn't.

19 Q. Did they tell you that there was any deception?

20 A. No. They just told me that it -- the best I
21 understand, the man told me, he said, "This ain't the man
22 y'all looking for."

23 Q. And was that at -- so you said they gave you six
24 tests.

25 A. Yes, sir.

1 Q. Did they -- was there an interview first? Did
2 that man interview you?

3 A. No. He just took me in there and -- and strapped
4 me up to a -- best I understand it, strapped me up to it and
5 asked me all these questions.

6 Q. So that man who gave you the polygraph didn't do a
7 -- what they call a pretest interview.

8 A. Not to my knowledge, sir.

9 Q. He didn't ask you what you knew about it so he
10 could formulate --

11 A. No.

12 Q. -- the questions.

13 A. He -- he hooked -- he hooked me up and then
14 started asking questions. And I knew that Janice and Willie
15 was behind the glass there.

16 Q. Have you ever seen the results of that polygraph?

17 A. No, I've just heard of that. I've never seen
18 the --

19 Q. Did your lawyers ever share it with you?

20 A. No, sir.

21 COMMISSIONER BRITT: Do we have that?

22 MS. GUICE SMITH: We do.

23 MS. TANNER: We're printing it.

24 MS. GUICE SMITH: We're printing it.

25 COMMISSIONER BRITT: You're printing it?

1 MS. GUICE SMITH: It's being printed right now,
2 they said.

3 COMMISSIONER GRACE: Johnson, can I ask him a
4 question about that polygraph?

5 COMMISSIONER BRITT: Sure.

6 FURTHER EXAMINATION BY COMMISSIONER GRACE:

7 Q. Are you certain you took six separate polygraph
8 tests, sir?

9 A. I near 'bout know it was six, sir.

10 Q. And -- and --

11 A. I stayed there approximately five hours with
12 Janice and Willie.

13 Q. And it only took five hours to do six?

14 A. Well, they'd give me -- they'd give me one like
15 that, and then they'd let me go outside and smoke a
16 cigarette, then come back in and do another one. And then
17 they'd come back in and do another one. To the best of my
18 knowledge --

19 Q. You smoked in -- you smoked in between the times
20 you did the polygraph?

21 A. Yes, sir, in the parking lot. I mean, I -- I
22 weren't -- I weren't arrested on all this. I -- I just give
23 this -- they asked me would I give this on my own, and I
24 said, "Yes, sir." I mean, I -- I had nothing to hide on
25 none of it.

1 Q. You were not under arrest at the time you
2 submitted --

3 A. No.

4 Q. -- to the polygraph?

5 A. Or the blood. I give the blood at Washington
6 County Hospital, three vials of it, and was never arrested.
7 I -- they -- Willie Williams and Janice asked me would I
8 give blood, and I went up there and I had a witness and made
9 -- and actually the witness that signed it was Stacy Allen,
10 the lady that signed it, if I'm correct.

11 Q. Thank you.

12 FURTHER EXAMINATION BY COMMISSIONER BRITT:

13 Q. So you're -- you're telling us that you were
14 cooperating with them.

15 A. Yes, sir.

16 Q. All right. Let me ask you this: You get
17 arrested. Were you ever offered a plea by the D.A.'s
18 Office?

19 A. Yes, sir, Mitchell Norton.

20 Q. What did he offer you?

21 A. Seven and a half years to say that I -- I -- that
22 I would testify against Brandon.

23 Q. Plead guilty to what? Conspiracy --

24 A. Accessory after the --

25 Q. -- to commit robbery?

1 A. Accessory after the fact to robbery and murder,
2 seven and a hal f years.

3 Q. Basical ly the same thing that Dana got, the same
4 type of plea.

5 A. Well, they wanted me to go behind her because she
6 was gonna tell the story, I guess, to get out of hers, and
7 they wanted me to corroborate her testimony for this plea.

8 Q. Okay. And you turned that down.

9 A. Yes, sir.

10 Q. And then Robert, Brandon, is tried.

11 A. Yes, sir.

12 Q. Your lawyers told you what happened. He was
13 convicted.

14 A. He told me he was convicted, and she got 19 months
15 and said -- now, this is when Mitchell Norton came back in.
16 He told me he was in the driver's seat, and he said if I
17 don't take this plea that they're going to try me -- they
18 could try me for the first-degree murder. I could get the
19 death penal ty or get what Jones got.

20 Q. Mr. Norton actual ly told you that?

21 A. Mr. Norton, Mitchell Norton.

22 JUDGE WAGONER: Was your lawyer there when
23 Mr. Norton told you that?

24 THE WITNESS: Maynard Harrell was there. Not Seth
25 Edwards. Maynard Harrell.

1 BY COMMI SSIONER BRI TT:

2 Q. Now, was thi s the same day that Mr. -- Mr. Jones
3 had been convicted? Were you -- were you --

4 A. No, thi s --

5 Q. -- back in --

6 A. No, thi s was before. Thi s was when I was in the
7 Manteo jail .

8 Q. So he came to Manteo?

9 A. He -- no, they carried me to Washington County.
10 Brought me --

11 Q. All right, I -- I just wanted to make sure. They
12 brought you back --

13 A. Yes, sir.

14 Q. -- for court or something.

15 A. They brought me back for thi s -- I want to say it
16 was a motion of discovery, if I'm correct. They brought me
17 back to Washington County, but my motion of discovery was
18 held in Martin County.

19 Q. So -- and thi s was after Mr. Jones's trial or
20 before?

21 A. Thi s was before.

22 Q. And that's when they offered you the plea to being
23 an accessory.

24 A. Yeah, to testi fy behind Dana on him.

25 Q. Well , when did he tell you that he was in the

1 driver' s seat?

2 A. I -- I can' t really remember. I know Maynard
3 Harrell was there, though.

4 Q. All right. And then --

5 A. I -- I can' t remember.

6 Q. Was it Mr. Harrell or was it Mr. Edwards --

7 A. No.

8 Q. -- who told you what happened in Mr. Jones' s case?

9 A. Sir?

10 Q. Who told you Mr. Jones had been convicted?

11 A. I was right there.

12 Q. You were -- oh, you had been brought back for
13 court.

14 A. Yeah. I was in the holding cell when they brought
15 him back up there. See, I never -- I never ever went in the
16 courtroom the whole time he was being tried.

17 Q. Right.

18 A. I never heard none of the -- I never heard
19 nothing.

20 Q. So why did you decide to enter the no contest
21 plea?

22 A. Because Maynard Harrell and Seth Edwards was
23 telling me that Mitchell Norton didn' t need my plea no more
24 because Dana had told him they got Wallace. He' s convicted.
25 And they said, "If -- if you go -- if you don' t take this

1 plea, you're gonna go before him, and you could be tried at
2 the death penalty and get the death penalty, or you could
3 get what Wallace got, life and 40 if you don't roll the
4 dice." So that's the dice I had to roll.

5 Q. So you -- you pled to no contest --

6 A. I pled to no contest.

7 Q. -- no -- to second degree murder --

8 A. Yes, sir, but I --

9 Q. -- robbery, no agreement as to a sentence.

10 A. No. Not that I --

11 Q. It was -- it was left up to the judge.

12 A. Well, I -- I took a no contest plea to second
13 degree murder and 40 years robbery.

14 Q. Right.

15 A. And it was supposed to have been run concurrent.
16 But when I got on the State, it ain't run concurrent. So
17 I've done finished my 40 years. That's cut to 20 under the
18 old law, so I've maxed that out by working, and now I do ten
19 years on the Class C life, so I've done that. I've done
20 that, too.

21 Q. So it -- was it your understanding that you were
22 going to get life for second degree murder, 40 for armed
23 robbery, they were going to be consolidated, and you'd come
24 out with one sentence?

25 A. Yes, sir, and they said I'd be out in 11 years.

1 Q. And which sentence was -- was it going to run --
2 was it going to be the life sentence or the 40-year
3 sentence?

4 A. The -- well, the 40 years was going to be first
5 because it used to be paper [phonetic] parole back then.
6 You could parole off of 40 years to a life sentence, and now
7 -- and in 2002 they changed it to one eligibility date. So
8 if you had life and 40, they consolidated them, the State
9 did. So you got one parole eligibility date instead of
10 being paroled from a life sentence to a 40-year sentence.
11 40 years is cut to 20 under the old law.

12 Q. And 20 would have been cut to about 14.

13 A. Yes, sir. And they told me anywhere -- here's
14 what they told me: From 11 to 17 -- 11 to 17 years I'd be
15 home.

16 Q. And the life sentence would have been cut to ten.

17 A. That's right, which that was --

18 Q. Did you come up for parole?

19 A. Yes, sir.

20 Q. How many times?

21 A. I've been up about 14 times now.

22 Q. And you get turned down every time.

23 A. Every time but this last time.

24 Q. And are you being asked about this case when you
25 go back for your parole?

1 A. Yes. Yes, sir. They -- they want me -- they --
2 they actually -- I -- I think I have talked to -- her?
3 (Indicating Ms. Matoian.) I had a decision to make. When I
4 go up there for parole, they just sent me a letter about
5 this MAP contract, if y'all are aware of that. And they
6 went to the hometown and put it in the paper and talked to
7 the sheriff about me coming back there to live or whatever,
8 'cause that's where my home plan and job plans are.

9 Q. You get home release. You got to visit home.

10 A. Well, no, this is for parole.

11 Q. Right.

12 COMMISSIONER GRACE: For MAP.

13 BY COMMISSIONER BRITT:

14 Q. It's the MAP Program.

15 A. Yes, sir. But in order to do this MAP, they could
16 give you 24 months or a year or 36 months. So I'm up for
17 that right now. But when I go for the parole thing, the
18 parole people have a hard time with me going up there
19 saying, "Well, hey I've got the Innocent Project working in
20 my behalf right now. I don't know" --

21 He said, "Well, the State convicted you and you
22 took this no contest plea, so don't come up here saying that
23 this and that and then that. They want me to go up there
24 and say, "I'm sorry. I am sorry for committing this
25 murder," that I feel remorse. And I told them I am very

1 sorry for that man that got killed and his family, but I'm
2 sorry for my family, too.

3 Q. I don't know that we've seen your D.P.S. record in
4 terms of infractions, but you're not getting turned down
5 because of infractions.

6 A. I've had one infraction in 23 and a half years.

7 Q. Major or minor?

8 A. Minor, a D charge. They don't even have it no
9 more.

10 JUDGE WAGONER: A what?

11 THE WITNESS: A D charge, and that's what they
12 call a contraband charge. I had an antenna on a radio where
13 you could pick up.

14 A. But I'm also -- you know, it's like I'm in Level
15 II, if y'all are aware of the steps. You make Level II.
16 You make Level III. So I've been at Level II for four and a
17 half years. I've been out with a sponsor 21 times on C.D.
18 passes.

19 Well, that way you can go -- I've been to church,
20 like bowling, you know, whatever. Been out to eat. I work
21 with Eastern Regional Maintenance, and I've probably rode
22 50,000 miles with one man working with an electrician to go
23 to different prisons, but I come back to my prison at night.

24 Q. Okay. Thank you, sir. I don't have any other
25 questions.

1 FURTHER EXAMINATION BY COMMISSIONER BOSWELL:

2 Q. I have one other question. What did you drive to
3 -- to the grocery store when you saw Wyatt?

4 A. My -- my mom had a white little -- it was a --
5 something like a little Escort, white Escort. And believe
6 me, they didn't let me drive their vehicles much 'cause I
7 was pretty rough on vehicles.

8 Q. Why didn't you drive your car?

9 A. Huh?

10 Q. Why didn't you drive your car?

11 A. Because I didn't have gas in it, but that was
12 early that -- that was early that morning. But --

13 Q. How did you get --

14 A. But --

15 Q. -- how did you get your mom's car?

16 A. Another thing, I got a ten-speed bicycle that I
17 always rode from my house to my mom and dad's house 'cause
18 it ain't about a mile away.

19 Q. Right.

20 A. But let me tell you another reason why I didn't
21 drive my car. The law pretty much knew my car. You know
22 what I mean? If they seen my car different places, they
23 knew my car. My mom's car, they really didn't know that
24 good, so I could kind of -- I could kind of get around
25 different --

1 Q. Why -- why did -- why was the law looking for your
2 car?

3 A. Well, they didn't, but Janice Spruiell had always
4 been pulling me over when she'd catch me coming from places
5 that she knew was crack houses.

6 Q. Oh, I gotcha.

7 A. So she would always would pull me over. And right
8 when this was going on where I took the blood -- you know,
9 the -- the thing with the blood and this and that, they were
10 -- her and the state trooper and all were pretty much
11 pulling me over like regular. I don't know if they were
12 trying to get me as far as drunk driving or something so
13 they'd have me on something, so I could work with some kind
14 of way or something, but I went through a lot in about a
15 year's time right there.

16 Q. Okay.

17 FURTHER EXAMINATION BY JUDGE WAGONER:

18 Q. Sir, was it -- I believe -- was it six -- it was
19 almost a year, less six days, between the time this murder
20 happened and you were actually arrested? Is that right?

21 A. I was --

22 Q. Or charged?

23 A. They tell me the murder happened on the 18th of
24 December, 1993, and I was arrested on December the 13th,
25 1994.

1 Q. And did you ever make bond while you were in jail?

2 A. No, they wouldn't give me --

3 Q. -- after you got charged?

4 A. They said no bond on a capital offense, murder.

5 Q. And why do you think Janice Spruiell had it out for
6 you?

7 A. Really, I -- I don't know. I -- I really -- I --
8 I -- I -- besides me going to places, her pulling me over
9 and trying to find out, you know, catch me, I -- I don't
10 really know. I know she told my sister that she had a
11 smart-ass brother. Now --

12 COMMISSIONER GRACE: Was that true?

13 THE WITNESS: Huh?

14 COMMISSIONER GRACE: Was that true?

15 THE WITNESS: I'm pretty -- say some of it was. I
16 mean, you know, I --

17 (Laughter.)

18 JUDGE WAGONER: Okay. Yes, sir.

19 FURTHER EXAMINATION BY COMMISSIONER FRYE:

20 Q. You and Nikki, were you sexually --

21 A. No, sir. I -- I was kind of seeing a girl here
22 and there, not really a whole lot. Her name was Stacy Allen
23 Willoughby, and I really weren't in love or nothing like
24 that, but I'd always dance with her at the bar. We'd always
25 go places and all, but I was actually -- had -- was seeing

1 her. Believe it or not, I actually -- I actually treated
2 this girl, Dana/Nikki -- I actually treated her like she was
3 my sister, believe it or not. I mean, I'd give her my car
4 to look for a job. She stayed at my house. I had money. I
5 worked two jobs. I fed her when she -- when her aunt, or
6 supposed to have been her aunt -- I don't even know if it
7 was her aunt. I know that they came here living with her.
8 I really don't.

9 Q. But you had never had any kind of relationship.

10 A. No, sir. No, sir.

11 Q. Now, let me ask you one -- did you ever admit to
12 law enforcement or to the courts that you broke into
13 Creswood [sic] High School?

14 A. Into what?

15 Q. Into the -- the agricultural building.

16 A. Did I ever admit to it?

17 Q. Yeah.

18 A. No, sir.

19 Q. Were you offered a plea in that?

20 A. I think everybody was. And out of the seven
21 people that actually was there that went in this agriculture
22 place, I was the only one went to prison.

23 Q. Six out of the seven of them said, "Yeah, we did
24 it, we're sorry"?

25 A. Yeah.

1 Q. And you said?

2 A. And I said no. And I was -- I was a -- I'll say
3 it, too, I was a snotty little-nosed, yeah, young -- yeah,
4 tough.

5 Q. And you were kind of ticked off pretty bad at
6 Wyatt over that, right?

7 A. Well, I was kind of mad at everybody that took the
8 plea. I mean, you know.

9 Q. You thought everybody should go to prison.

10 A. Well, they should -- I'm saying they should have
11 got what I got. Yes, sir. Yes, sir. But I mean, I've got
12 no -- I've got no hard feelings.

13 I've got no animosity to Janice, Wyatt, or nobody.
14 All I've ever wanted was somebody to do this work and find
15 out that me and Wallace Brandon Jones didn't kill this man.
16 That's all I've ever asked.

17 Q. After the deal at the agricultural building, did
18 you ever try to do anything to get even with Wyatt?

19 A. No. I heard that I had had something against him,
20 but when I got out of prison, I got married. And I was
21 married for ten straight years and done good.

22 Q. But you never tried to -- to get him to confess to
23 another crime?

24 A. No.

25 Q. Like stealing some doors that maybe you'ins took

1 sometime?

2 A. No, but I know what you're talking about. I do
3 know what you're talking about.

4 Q. You never -- you didn't have any part in that?

5 A. No. He stole some -- he stole some doors off --
6 he stole some antique doors off a woman's house and tried to
7 get me involved with it, selling it. And I didn't have
8 nothing to do with it. That's the honest-to-God truth.
9 That's what I know what about the doors. That's where the
10 door part come in. Yep.

11 Q. Okay. I have no more.

12 FURTHER EXAMINATION BY JUDGE WAGONER:

13 Q. What did you hear about a tire tool? Tell me
14 about -- have you ever -- tell me about the tire tool that
15 was found in Frank's house.

16 A. All I know, they said his throat was cut with a
17 tire tool. And I'm saying, "Well, how do you cut a man's
18 throat with a tire tool?"

19 Q. Was your knife, the knife that you own, ever
20 tested? Was it ever seized or tested --

21 A. Everything --

22 Q. -- by law enforcement?

23 A. Everything was seized from my house. I had a
24 Mountain Dew can that was been mashed up where, you know,
25 put holes in it like you smoke pot off of. My knife. My

1 clothes hamper with all of my clothes in it that --

2 I actually was told later -- and I don't know this
3 to be true. I knew it was bear blood, but nobody never
4 showed me no paperwork of it. But they just said it was
5 animal blood.

6 Q. Okay.

7 A. But everything was seized from my house, but I've
8 never known where it went or who had it or what. All I --

9 Q. Did you ever get it -- well, did anybody ever get
10 it back --

11 A. No.

12 Q. -- in your family?

13 A. No, ma'am. Don't know what happened to it.

14 COMMISSIONER BARROW: I have just a couple.

15 COMMISSIONER GRACE: Mr. Barrow --

16 COMMISSIONER BARROW: Just a couple.

17 JUDGE WAGONER: Yes. Thank you.

18 EXAMINATION BY COMMISSIONER BARROW:

19 Q. So I'm -- I'm not sure I understand why it wound
20 up with Nikki staying at your house and you looking after
21 her.

22 A. The only thing I know about that that her Aunt
23 Betsy had kicked her out. I -- I don't know why or what,
24 and I don't even know that that was her aunt. All I know is
25 this girl, Sherri Hannikan [phonetic] or Sherri Haynes

1 [phonetic] or something, her and Nikki came here to live
2 with her aunt, running from the law. But I didn't know this
3 until later on in this court deal.

4 Q. Now, was Nikki still at your house at
5 Christmastime?

6 A. I want to say, yes, sir. Not long after
7 Christmas. Then she moved in with a lady named Connie that
8 lived behind the bar.

9 Q. And did she go with you to your mother's house for
10 Christmas?

11 A. No, but she had been to my mom's house and ate and
12 been to church with me.

13 Q. Did you go to your mom's house for Christmas?

14 A. Christmas. I can't remember, sir. I near 'bout
15 know I did 'cause I've got three sisters. I got a big
16 family, my mom and dad. I want to say I did.

17 Q. Was your mom the one who had Christmas dinner?

18 A. Yeah, and I think -- if I'm not wrong, I think I
19 brought a lot of stuff back to my house, like turkey and
20 stuffing and dressing and all, I think. I brought a lot of
21 that back to my mom's -- back -- back to my house.

22 Q. Did -- did Frank Swain have an enforcer or
23 collector who helped him with his drug business?

24 A. I -- I don't really know. I know that from what
25 I've heard on the street that BoJack Clagon was the man that

1 he always got his dope from. And if you didn't pay up on
2 the dope thing, he had -- BoJack had people that would
3 collect. Now, do I know that's true? No, sir. I don't
4 know that's true.

5 Q. So the word on the street was that BoJack was both
6 the supplier and the enforcer.

7 A. Yeah, to -- to not only him but other people.

8 Q. Who was BoJack's enforcer?

9 A. I don't know. He went to the federal
10 penitentiary. I -- I don't know the whole -- but I know he
11 was a big drug dealer around the area. But they always said
12 his son, Maurice Wilkins, was the man that always went to
13 collect. I don't know that to be true, neither. I'm just
14 -- everything I've -- that part right there I've heard.
15 Hearsay.

16 Q. So you understood Maurice Wilkins to be BoJack's
17 collector.

18 A. Yeah, and his son.

19 Q. Okay. Now, you -- you worked a job working for an
20 electrician.

21 A. Yes, sir.

22 Q. And did you also sell firewood on the side?

23 A. Yes, sir.

24 Q. Did your father -- was -- was your father still
25 alive?

1 A. Yes, sir.

2 Q. Did he help with the firewood business?

3 A. Nah, he had got too old, but he had over the
4 years.

5 Q. Okay. And -- and this firewood business, where'd
6 you get the wood?

7 A. I cut -- I'd go and cut -- like somebody'd have a
8 tree in their yard they wanted to take down. I'd go cut it
9 down for a certain price, and I'd keep the wood and split
10 it, and then I'd sell it when it come cold weather.

11 Q. And --

12 A. Which I also burnt wood, too.

13 Q. Okay. And -- and how did you haul this wood
14 around?

15 A. Most of the time my daddy's truck.

16 Q. Okay. And did you sell wood to Frank Swain?

17 A. Yeah, probably the year before, but not -- not
18 since this. I hadn't sold him none this winter; the winter
19 that just come up, I hadn't. But I had sold his daddy and
20 him wood in the past, yeah.

21 Q. And when you would have sold him wood, you would
22 have gone up to his house in your daddy's truck.

23 A. I have, yes, sir.

24 Q. And did you have anybody helping you with the
25 firewood business?

1 A. No, most of the time it was just me.

2 Q. Just you?

3 A. Yes, sir.

4 Q. Would your daddy ride with you just --

5 A. No, my brother had --

6 Q. -- just to go hang --

7 A. -- my brother had once in a while, but it was
8 mainly me.

9 Q. Okay. And back in '93, you were still in the wood
10 business a little bit.

11 A. A little bit.

12 Q. I mean, it's a second job --

13 A. A little --

14 Q. -- or a third job.

15 A. Well, yes, sir. Whenever somebody had a tree in
16 their yard, I would do that. But I worked two jobs. I
17 built houses with my brother-in-law, and then I worked
18 part-time with another contractor that built houses, too.
19 Like I'd work with my brother-in-law a 40-hour week, and
20 then on Saturday and Sundays I'd work with Steve Furlough
21 and made extra money.

22 Q. Did -- did your dad keep a tire tool in his truck?

23 A. I'm pretty sure there was -- it had a jack and a
24 tire tool in the truck, yes, sir. I had never changed no
25 tire or nothing, but I mean, I'm pretty sure it was.

1 Q. Had you ever seen it?

2 A. Don't recall, no, sir.

3 Q. Okay.

4 A. But we had a -- a mechanic when this trial was
5 going on -- my daddy's truck for about -- well, all through
6 Christmas, my daddy's truck couldn't even be drove because
7 they were waiting on a transmission for it. It would only
8 go in low gear, and it wouldn't run but like say five miles
9 an hour because it wouldn't come out of low gear. The band
10 in the transmission were burnt out, so we were actually
11 waiting on a transmission to go in it. And I want to say
12 that the -- the man is deceased now, but I think we actually
13 had a piece of paper, a statement from him on that.

14 Q. Did you -- how long had you had that red Lincoln?

15 A. Since probably -- my daddy bought -- I can't
16 really tell you. He bought it sometime around income tax
17 check, I think.

18 Q. Okay. So that would have been --

19 A. I want --

20 Q. -- January or February the year before?

21 A. Yeah. I want to say - well, no. This was like --
22 this was after all this had went down. So I want to say
23 somewhere around January or something, I had the Lincoln
24 Continental. And the reason I say tax time, because my
25 daddy bought it from a lady and give it to me. And when

1 income tax come, I was supposed to pay him for that car.
2 And it could have been a little sooner than that. I'm not
3 sure. I can't really remember when the Lincoln was. I want
4 to say it was around January. So --

5 Q. So he bought it a --

6 A. -- a year or --

7 Q. -- little before tax time.

8 A. Yes, sir.

9 Q. And the idea was that he would pay for it, and
10 then when you got your tax check --

11 A. I would pay --

12 Q. -- you'd pay him back.

13 A. That was the deal, but that never happened.

14 Q. You never paid him back?

15 A. No, sir.

16 Q. How come?

17 A. Well, daddy always bought me things, and then
18 that's how he always said, well, but I never paid him back
19 for it, a lot of stuff.

20 COMMISSIONER BOSWELL: That's the same
21 relationship I have with my sons.

22 COMMISSIONER GRACE: Mine, too.

23 A. Well, I mean, I'll -- I'll tell it -- the truth
24 like it is. I mean, I -- hey, he did. He used to -- he'd
25 always say, "Son, you're gonna pay for this." And I'd say,

1 "Yeah, Daddy." And then I -- hey.

2 BY COMMISSIONER BARROW

3 Q. Thank you.

4 FURTHER EXAMINATION BY COMMISSIONER BOSWELL:

5 Q. So I -- maybe I misunderstood. I thought you said
6 at the time that the murder happened that you had the
7 Lincoln Continental.

8 A. I don't think so. I think it was the end -- I'm
9 not really sure about some of the dates on that. I want to
10 say my daddy bought this car for me around -- I know -- I
11 know Nikki and them had been gone. Well, I didn't know
12 where they were at.

13 Q. But you said earlier that Nikki would use the car
14 while you were at work to go look for a job.

15 A. Now, this was a -- this was a blue Chevrolet I
16 had, the car that I had. This -- this is a -- that was the
17 old car that I had, the blue Chevrolet --

18 Q. Okay.

19 A. -- that I had tags on. It was a clunker.

20 Q. What happened to that car?

21 A. Tater Davis -- I give it to him for junk and made
22 \$100 off of it, and he got parts off of it and all.

23 Q. Okay. All right. But -- but when you went to the
24 grocery store, you took your mom's car.

25 A. A little -- it's like -- I don't know exactly what

1 it was. Something like a Escort.

2 Q. And I asked you why you di dn' t take your car, and
3 you said it di dn' t have gas in it.

4 A. Yeah, but -- well, I di dn' t have gas, but I -- I
5 kind of ducked the law on that 'cause I would always go
6 di fferent places and --

7 Q. No, I mean the morning -- the morning of the
8 murder, you saw Wyatt Sprui II and --

9 A. Frank.

10 Q. -- the victim, Frank. And you said you -- you
11 said you took your -- your mom' s car.

12 A. I rode -- I rode my ten-speed bike that I always
13 ride from there to my mom' s house. It ai n' t even a mile.

14 Q. Right.

15 A. And I borrowed her car. And mostly where the gas
16 come about was like mom said, "Where' s your car?" "Well, I
17 ai n' t got gas."

18 Q. Okay.

19 A. But I ducked the law on that car.

20 Q. But the car you had at that time would have been
21 the blue clunker, not the --

22 A. Yeah.

23 Q. Okay.

24 A. That' s the one that Stacy used to drive some and
25 -- and --

1 Q. Okay.

2 A. -- she would drive Nikki --

3 Q. But you didn't take your dad's car, your dad's
4 truck.

5 A. Huh?

6 Q. You didn't take your dad's truck to the -- to the
7 grocery store.

8 A. Well, you -- you couldn't drive my dad's truck.

9 Q. Okay.

10 A. The transmission was gone in it. They were
11 waiting for a transmission, and the guy couldn't get it
12 during the Christmas holiday, so we were waiting on a
13 transmission for that.

14 Q. I got it.

15 MS. GUICE SMITH: Can I jump in?

16 COMMISSIONER BOSWELL: Uh-huh.

17 JUDGE WAGONER: Can I say something?

18 MS. GUICE SMITH: This is related to that line of
19 questioning.

20 JUDGE WAGONER: Okay, that's fine.

21 FURTHER EXAMINATION BY MS. GUICE SMITH:

22 Q. Mr. Spruiell, I'm going to hand you a report dated
23 December 24th, 1993, and I'm going to just draw your
24 attention to paragraph 4 starting here where it says,
25 "Stated that after leaving Winn-Dixie." Can you read that

1 out loud?

2 A. "Stated that after leaving Winn-Dixie driving
3 daddy's truck, he went to his dad's house to take
4 truck home. Stated he walked back home to his
5 house on Buncombe Street."

6 Q. That's good. So if on December 24th, which was
7 about six days after the crime, you told law enforcement the
8 day of the crime, after leaving Winn-Dixie, you drove your
9 daddy's truck back to your dad's house to take it home and
10 then walked back to your house, why now do you think you
11 were driving your mom's white Escort?

12 A. Well, who was the law enforcement that said this?

13 Q. To be honest, there is no indication on the report
14 which law enforcement officer took that statement.

15 A. 'Cause I --

16 COMMISSIONER GRACE: Well, that's not a statement
17 then.

18 COMMISSIONER BRITT: That's right.

19 JUDGE WAGONER: No. That's just an --

20 MS. GUICE SMITH: Report, rather.

21 JUDGE WAGONER: -- anonymous report.

22 COMMISSIONER GRACE: Yeah, that's not a
23 statement.

24 JUDGE WAGONER: I have a question.

25 THE WITNESS: I -- I mean --

1 FURTHER EXAMINATION BY COMMISSIONER BOSWELL:

2 Q. Did you say that? Did you tell them that?

3 A. Sir?

4 Q. Did you tell a police officer what's in that
5 report?

6 A. That's -- that's why I'm asking who. I don't
7 remember telling nobody that.

8 Q. Okay.

9 A. And I'm -- I'm gonna be honest, too. There was a
10 lot of stuff that down the road I -- I've been asked and
11 this and that that you told somebody this and all, and I
12 don't remember telling nobody this, a lot of stuff.

13 FURTHER EXAMINATION BY JUDGE WAGONER:

14 Q. But let me ask you a question, changing the
15 subject. How far is it from Big Ed's to Frank's house?

16 A. I'd say ten miles, take or give.

17 Q. Ten?

18 A. I'd say.

19 Q. And Nikki and whatever -- what was his name,
20 Brandon, walked from -- did I understand you --

21 A. No. From -- from my house to the bar is like a
22 half a mile.

23 Q. I'm talking to the house where the murder
24 occurred.

25 A. Oh, no, that's ten -- that's ten miles, if not

1 more.

2 Q. Okay. And your house. Okay, your house is --

3 A. My house is -- was I'm saying --

4 Q. Gotcha.

5 A. -- not even a half a mile from the bar.

6 Q. Okay. All right. Okay. Now, maybe I'm confused
7 about something else. I thought you said you were living in
8 your -- that you and your wife split up. Y'all sold the
9 house, and you lived in your mother's house.

10 A. My grandmama's house.

11 Q. Grandmother's house, gotcha. And that had no
12 water.

13 A. Well, it --

14 Q. I mean --

15 A. -- it did have water --

16 Q. A pipe had burst.

17 A. -- and all, but at the time one of the pipes had
18 busted that's coming from the -- the meter to under my
19 house, so I had the water cut off, and I hadn't fixed it
20 yet.

21 Q. Okay.

22 A. So I didn't have running water at my house.

23 Q. For how long?

24 A. God. Probably a week or so.

25 Q. Well, wasn't it hard to cook all that stuff?

1 A. Do what?

2 Q. Wasn't it hard to cook all that stuff that night
3 without water?

4 A. My -- I always went and got water from my -- and I
5 had it agreed with my next-door neighbor to get water from
6 his spigot.

7 Q. Okay.

8 A. And I always went to my mom's house, which is like
9 you say, a half a mile, and that's where I showered at.

10 Q. Gotcha.

11 COMMISSIONER GRACE: I don't have anything.

12 JUDGE WAGONER: Any other hands? Yes?

13 MS. GUICE SMITH: You -- you may have just asked
14 this.

15 How long did it take you to walk from your mom and
16 dad's house back to your house?

17 THE WITNESS: Somebody that walks pretty fast, I'd
18 say ten, 12 minutes.

19 JUDGE WAGONER: Any other questions?

20 MS. GUICE SMITH: Are you right or left-handed?

21 THE WITNESS: I'm right-handed.

22 MS. GUICE SMITH: Do you do everything with your
23 right hand?

24 THE WITNESS: Well, I can use my left hand, but I
25 mean, I'm right-handed. Mostly everything with my right

1 hand.

2 JUDGE WAGONER: Okay. Where -- where are you
3 being held right now?

4 THE WITNESS: I'm at the detention center.

5 JUDGE WAGONER: I mean not -- I'm sorry. What
6 prison unit?

7 THE WITNESS: I'm at Greene Correctional. That's
8 in Maury, North Carolina.

9 JUDGE WAGONER: Okay. Anything further?

10 (No response.)

11 JUDGE WAGONER: Okay. I think that's it, sir.
12 Thank you very much.

13 COMMISSIONER BOSWELL: Thank you.

14 COMMISSIONER GRACE: Thank you.

15 THE WITNESS: Thank y'all.

16 JUDGE WAGONER: Don't forget your shoe. I think
17 you took it off.

18 THE WITNESS: I have a piece of paper that goes on
19 it.

20 MS. MATOIAN: I'll take care of it. Don't worry.

21 COMMISSIONER BRITT: His shoe.

22 JUDGE WAGONER: That's his shoe.

23 MS. MATOIAN: And I'll take care of the --

24 JUDGE WAGONER: Your shoe's underneath the table.

25 THE WITNESS: Huh?

1 (The witness was speaking with the Wake County
2 Deputy.)

3 WAKE COUNTY DEPUTY: You got -- you're missing a
4 shoe, buddy.

5 THE WITNESS: Oh, let me get turned around. I'm
6 moving kind of slow. I got in a bad wreck --

7 MS. MATOIAN: I'm sorry.

8 THE WITNESS: -- a few weeks -- a few months ago.
9 Yes, sir.

10 (Mr. Spruiell left the room.)

11 MS. GUICE SMITH: Judge Wagoner, the court
12 reporter needs a break --

13 JUDGE WAGONER: Sure.

14 MS. GUICE SMITH: -- if we can take a few minutes.

15 JUDGE WAGONER: We'll be at recess for five or ten
16 minutes.

17 (Off the record at 4:23 p.m.)

18 (A brief recess was taken.)

19 (Back on the record at 4:34 p.m.)

20 JUDGE WAGONER: All right, everybody, we are back
21 in session and on the record. I believe there are a few
22 things that the Commission wishes to bring to our attention,
23 and then I am going to pull rank and we're going to recess
24 at 5 and will resume tomorrow at 9 for deliberations. Okay?

25 MS. GUICE SMITH: Commissioners, we are going to

1 pass around now Handout Number 103. This is a statement
2 from the victim's family.

3 (Handout Number 103 was identified for the
4 record.)

5 MS. GUICE SMITH: The victim's family chose not to
6 be here this week but did provide a letter for the
7 commissioners to review prior to the close of the case.

8 JUDGE WAGONER: Thank you, ma'am.

9 COMMISSIONER BOSWELL: Judge --

10 COMMISSIONER GRACE: Thank you.

11 COMMISSIONER BOSWELL: -- before we -- before we
12 adjourn tonight, I've got three or four questions I wanted
13 to ask the Commission --

14 JUDGE WAGONER: Sure.

15 COMMISSIONER BARROW: -- just to get clarity on.

16 JUDGE WAGONER: Okay.

17 MS. GUICE SMITH: Commissioners, before we close
18 the Commission's evidence, I wanted to give everyone an
19 opportunity for additional questions of Ms. Matoian. Also,
20 just wanted to remind you that if you have any questions
21 about what has been heard and what has not been heard, those
22 are appropriate questions to ask Ms. Matoian before
23 deliberations.

24 Also, if you feel like we haven't provided you a
25 document or some other material that we may have, if you'd

1 I like to review that, then you need to do that before
2 deliberations.

3 If during deliberations, you ask for something
4 that hasn't already been provided, we will need to come out
5 of deliberations, reopen the hearing, and put that on the
6 record. So if you know of anything now that you want, now
7 is the time to ask for it. I will ask Ms. Matoian to step
8 back up to the witness stand so that commissioners can ask
9 questions that they have that have that are outstanding.

10 CATHERINE MATOIAN,
11 having been re-called as a witness for the Commission and
12 having been previously sworn by Judge Wagoner, testified as
13 follows:

14 JUDGE WAGONER: We'll start with Ms. Thompson.
15 We'll just go around the room. Does anybody -- can anybody
16 think of anything right now?

17 COMMISSIONER BARROW: Was there blood on the
18 jumper cables, and was it tested?

19 THE WITNESS: The crime scene report does not
20 actually indicate that anything was done to the jumper
21 cables. They were not part of the items that were
22 collected.

23 COMMISSIONER BOSWELL: Were Maurice Wilkins'
24 prints found on the door -- sliding door for Sonja Day?

25 THE WITNESS: No. That was JoJo McNair. We had

1 put in your brief that Mr. McNair was a suspect during the
2 initial investigation of the Sonja Day crime, and it was his
3 fingerprint that was found on the sliding glass door.

4 COMMISSIONER BOSWELL: There was no DNA test done
5 to see whether Maurice was actually BoJack's son, was there?

6 THE WITNESS: No, not by the Commission.

7 COMMISSIONER BOSWELL: That was -- we determined
8 that they were not related just simply based on what they
9 said. Is that right?

10 THE WITNESS: Based on Mr. Clagon's deposition,
11 yes.

12 COMMISSIONER BOSWELL: All right. And Mr. Jones's
13 statements and -- and there were several people's names who
14 were mentioned at the bar. And we -- we went through a
15 whole lot of people. Did -- did the Commission try to track
16 down everybody who was named at the bar to see if they had
17 any information about what their -- you know, what happened
18 that night?

19 THE WITNESS: The Commission tracked down people
20 who had been interviewed before as being at the bar, which
21 included a large number of those names, including -- and we
22 also tracked down a few people who had been named later on.
23 I don't know that I can say we tracked down every single
24 person who said they were at the bar, or who was named as
25 being at the bar.

1 COMMISSIONER BOSWELL: The -- prior to today, did
2 Mr. Jones say in any of his statements that the night of the
3 murder that -- that he had beer that had dropped out of a
4 six-pack?

5 THE WITNESS: Yes.

6 COMMISSIONER BOSWELL: He had said that?

7 THE WITNESS: Yes.

8 COMMISSIONER BOSWELL: I know that the bartender
9 had --

10 JUDGE WAGONER: I read it.

11 COMMISSIONER BOSWELL: -- said that.

12 COMMISSIONER FRYE: I remember the bartender
13 saying that, but I don't remember --

14 THE WITNESS: I believe Mr. Jones had said that,
15 and I think Ms. Maybin may have said it as well, but we can
16 double-check it as well.

17 COMMISSIONER BRITT: It's in the brief.

18 JUDGE WAGONER: It's in the brief, yeah.

19 COMMISSIONER BOSWELL: That was -- that was my
20 memory, too, but we -- we weren't sure that we --

21 COMMISSIONER FRYE: Yeah, I was going to ask that.

22 COMMISSIONER BOSWELL: Okay. Those are my
23 questions. Thank you.

24 COMMISSIONER FRYE: Do we know how much
25 information about the murder was in press releases?

1 JUDGE WAGONER: Or newspapers, I think we --

2 THE WITNESS: I looked at the newspaper articles
3 the commission had received from other files, and those
4 newspaper articles were limited to articles from the time of
5 the trial, which we would be happy to provide you if you'd
6 like them, but we did not have any from the time the crime
7 was actually committed.

8 There was some indication in a letter from Jim
9 Vosburgh to one of Ms. Maybin's attorneys that she had been
10 shown photographs of the crime scene. Ms. Maybin did not
11 recall that in my deposition with her. Mr. Jones today, I
12 believe, and Margie Perry, when I interviewed her, indicated
13 she had also been shown photographs of the crime scene by
14 Janice Spruiell.

15 COMMISSIONER GRACE: We had two people, though,
16 that went to the crime scene before the police got there.

17 JUDGE WAGONER: Yep.

18 THE WITNESS: Correct. Wyatt Spruiell and Tim
19 Swain were both at the crime scene.

20 JUDGE WAGONER: So let me make sure. Neither --
21 neither one of the claimants were matches for DNA, correct?

22 THE WITNESS: Correct.

23 JUDGE WAGONER: And Wyatt wasn't either.

24 THE WITNESS: Correct. Well, with the exception
25 of that hair from the jacket.

1 JUDGE WAGONER: Mr. Britt?

2 COMMISSIONER BRITT: I don't have any questions.

3 JUDGE WAGONER: I guess that's it.

4 MS. GUICE SMITH: Okay. Commissioners, does
5 anybody want any additional documents that haven't been
6 provided to you?

7 COMMISSIONER GRACE: No. I think you've about
8 documented us pretty good.

9 COMMISSIONER BRITT: I'll take some Advil. Do you
10 have some?

11 THE WITNESS: I have Excedrin Migraine.

12 COMMISSIONER BOSWELL: I can't take Excedrin.

13 MS. GUICE SMITH: I have Tylenol.

14 COMMISSIONER BOSWELL: I'll take that, but that's
15 like drinking water.

16 MS. GUICE SMITH: All right. Thank you for your
17 patience and attention during this hearing. This concludes
18 the Commission --

19 JUDGE WAGONER: Oh, do we have a question?

20 COMMISSIONER COVER: Well, I'd just like to take a
21 moment. I think that we need to take a moment to thank the
22 staff, which just churned out remarkable documents and not
23 in terms -- merely in terms of the documents they churn out
24 but your nice tabs, et cetera.

25 JUDGE WAGONER: And witnesses they go tape and --

1 COMMISSIONER COVER: All the -- all the things
2 that they do to support this, and I think we just need to
3 pause and say thank you before we are leaving out of here
4 tomorrow.

5 COMMISSIONER GRACE: Thank you. I will join -- I
6 will join -- join in that.

7 JUDGE WAGONER: Thank you, thank you.

8 COMMISSIONER BOSWELL: Here, here.

9 MS. GUICE SMITH: This concludes the Commission
10 Staff's presentation of this case. You are now asked to
11 decide whether you conclude that there is sufficient
12 evidence of factual innocence to merit judicial review.

13 Because Mr. Spruiell's conviction resulted from a
14 plea, your vote will need to be unanimous.

15 You have three options: You may decide that there
16 is sufficient evidence, and the case will be referred to a
17 three-judge panel.

18 You may decide that there is not sufficient
19 evidence, and the case will be closed.

20 Or you may instruct the Commission staff to
21 continue the investigation and reconvene the hearing at a
22 later date. I will remind you that Mr. Britt retires in a
23 few short weeks so we will need to reconvene prior to his
24 retirement should you wish to do that.

25 JUDGE WAGONER: If necessary, yeah.

1 MS. GUICE SMITH: Because Mr. Jones' conviction
2 resulted after -- after -- a conviction resulted after a --
3 after -- a conviction resulted after a trial, your vote will
4 need to be by majority. You have three options there as
5 well: You may decide that there is sufficient evidence and
6 refer the case to a three-judge panel. You may decide that
7 there is not sufficient evidence and the case will be
8 closed. And you may instruct the Commission staff to
9 continue the investigation and reconvene the hearing at a
10 later date.

11 Commissioners, your decision is final, and there
12 is no right to appeal that decision.

13 At this time, I would ask that Judge Wagoner close
14 the hearing to the public for deliberations if you wish to
15 get started this evening, or close it until tomorrow. We
16 can reconvene in the morning.

17 COMMISSIONER BOSWELL: Can I ask a question? Can
18 you give an explanation of what happens at the three-judge
19 panel from here? What's the next step? Just -- I'll leave
20 that an open-ended question. Just explain it as best you
21 can.

22 MS. GUICE SMITH: Sure. At the three-judge panel,
23 this has obviously been a non-adversarial, mutual process.
24 At the three-judge panel that becomes an adversarial
25 process. Mr. Spruiell and Mr. Jones will be represented by

1 counsel, and the State will be represented by the Attorney
2 General's Office. They -- the parties will decide how that
3 hearing is to play out in terms of whether it is contested
4 or uncontested.

5 The parties will present evidence to the
6 three-judge panel. The burden is on the Defendant at the
7 three-judge panel, in this case the Defendants if both were
8 to move forward, to prove by clear and convincing evidence
9 that they are, in fact, innocent of the crimes for which
10 they have been convicted. The Commission staff may or may
11 not be subpoenaed to testify at that hearing. And what
12 materials and what information is presented at that hearing
13 is up to the parties. So they don't necessarily hear what
14 you have heard.

15 COMMISSIONER GRACE: I have a question.

16 MS. GUICE SMITH: Yes, sir.

17 COMMISSIONER GRACE: Why is -- why -- why does the
18 number change with a no contest plea? My understanding is
19 that he pled pursuant to Alford --

20 MS. GUICE SMITH: The Commission --

21 COMMISSIONER GRACE: -- which means he -- he -- he
22 denied his -- his guilt.

23 MS. GUICE SMITH: The statute states --

24 COMMISSIONER BOSWELL: That's what the statute
25 says.

1 COMMISSIONER GRACE: And the statute says that?

2 MS. MATOIAN: Yes.

3 COMMISSIONER GRACE: Well, you don't have to read
4 it, if that's what it says.

5 JUDGE WAGONER: As you say, he'll be treated as --

6 COMMISSIONER BRITT: Do we have a copy of his plea
7 transcript?

8 MS. GUICE SMITH: I'm going to -- yes, that's --
9 that's actually in the brief.

10 COMMISSIONER BRITT: In the brief?

11 MS. MATOIAN: I'll find the page number for you.

12 COMMISSIONER GRACE: You have to read it.

13 MS. GUICE SMITH: I want to get -- I want to give
14 you the correct information, Mr. Grace.

15 COMMISSIONER GRACE: I often have a contest with
16 what the statute says, but I understand exactly what they
17 say. There's no rhyme or reason for a change if he did an
18 Alford plea.

19 MS. GUICE SMITH: So the statute, 15A-1468(c)
20 states:

21 "After hearing the evidence, the full
22 Commission shall vote to establish further case
23 disposition as provided in this subsection. All
24 eight voting members of the Commission shall
25 participate in that vote. Except in cases where

1 the convicted person entered and was convicted on
2 a plea of guilty, if five or more of the eight
3 voting members of the Commission conclude there is
4 sufficient evidence of factual innocence to merit
5 judicial review, the case shall be referred to the
6 Senior Resident Superior Court Judge in the
7 district of original jurisdiction by filing with
8 the Clerk of Court the opinion of the Commission
9 with supporting findings of fact, as well as the
10 record in support of such opinion."

11 And I'm going to stop there.

12 "If less than -- "In cases where the convicted
13 person entered and was convicted on a plea of
14 guilty, if all eight of the voting members of the
15 Commission conclude there is sufficient evidence
16 of factual innocence to merit judicial review, the
17 case shall be referred to the Senior Resident
18 Superior Court Judge in the district of original
19 jurisdiction."

20 The Commission's rules state that, Article 2,
21 Subsection C -- Subsection B refers to guilty pleas.

22 Subsection C says, "Other types of pleas. All
23 rules relating to guilty pleas will also apply to pleas
24 entered pursuant to North Carolina versus Alford, 400 U.S.
25 25 (1970), or pleas of no contest and nolo contendere. So

1 that is pursuant to the Commission's rules and procedures,
2 which were adopted by the commissioners earlier.

3 COMMISSIONER BRITT: That's before I came.

4 JUDGE WAGONER: Before I came.

5 COMMISSIONER GRACE: We need to revisit that at
6 some point.

7 MS. GUICE SMITH: I believe that was written in
8 the rules. I -- I can double-check, but I believe that's
9 actually in the very original set of rules that were adopted
10 in May of 2007, when the Commission first adopted rules.

11 JUDGE WAGONER: And there are a lot more Alford
12 pleas now than there were back then.

13 COMMISSIONER GRACE: That -- that's -- there's a
14 big distinction --

15 JUDGE WAGONER: Yeah.

16 COMMISSIONER GRACE: -- to be made between an
17 Alford plea and a nolo plea, and certainly a guilty plea.

18 JUDGE WAGONER: Yeah.

19 MS. GUICE SMITH: You-all are always welcome to
20 call a meeting of the Commission to discuss the rules and
21 procedures and change those.

22 COMMISSIONER GRACE: Thank you.

23 COMMISSIONER BRITT: And can I correct one thing
24 in your -- in the brief that I just saw?

25 MS. GUICE SMITH: Yes, sir.

1 JUDGE WAGONER: Were you in the big book?

2 COMMISSIONER BRITT: I was in the big book, page
3 5, the footnote. If we happen to reconvene, I don't retire
4 until December 31st.

5 MS. GUICE SMITH: Oh.

6 COMMISSIONER BRITT: It's not December 3rd.

7 MS. TANNER: I'm sorry. I asked you --

8 MS. GUICE SMITH: We should definitely correct
9 that.

10 COMMISSIONER GRACE: Trying to slip you on out of
11 here, Mr. D.A.

12 MS. TANNER: -- and you said December 3rd.

13 (Laughter.)

14 COMMISSIONER BRITT: They're going to try to kick
15 me to the curb. I know.

16 MS. TANNER: Yeah. You -- you might have done
17 that to yourself.

18 MS. GUICE SMITH: Mr. Britt just gave you all some
19 additional time.

20 JUDGE WAGONER: He just loves it so much.

21 MS. GUICE SMITH: So at this time, I would just
22 ask that we go off the record, go into closed session.

23 JUDGE WAGONER: Okay. We will go into --

24 (Ms. Matoian conferred with Ms. Guice Smith.)

25 MS. GUICE SMITH: Oh, I'm sorry. Mr. Britt did

1 request Mr. Spruiell's plea transcript. It will be Handout
2 Number 104 --

3 JUDGE WAGONER: Okay.

4 MS. GUICE SMITH: -- and it's going to be provided
5 to you.

6 (Handout Number 104 was identified for the
7 record.)

8 COMMISSIONER BOSWELL: Is it not in the brief
9 already?

10 MS. GUICE SMITH: It is not.

11 COMMISSIONER GRACE: Whose plea transcript are we
12 looking for?

13 COMMISSIONER BRITT: Leroy's.

14 MS. GUICE SMITH: Leroy Spruiell's

15 MS. TANNER: Mr. Spruiell's.

16 MS. GUICE SMITH: Yes.

17 JUDGE WAGONER: But they're -- you're going to
18 bring it today

19 MS. GUICE SMITH: Yes.

20 MS. TANNER: They're doing it right now.

21 N.C.I.I.C. STAFF: In the next 30 seconds.

22 JUDGE WAGONER: Okay.

23 COMMISSIONER BRITT: If you've got a copier that's
24 that quick, I need to take it back to my courthouse.

25 (Off the record at 4:53 p.m.)

1 (Discussion off record.)

2 (Back on the record at 4:56 p.m.)

3 MS. GUICE SMITH: All right, Commissioners, you
4 have been handed Handout 104, which is the Transcript of
5 Plea for Leroy Spruiell. If there are no further questions
6 or requests, then we will go off the record into closed
7 deliberations.

8 COMMISSIONER GRACE: For factual clarity, it's the
9 Transcript of Plea, and it's also the judgment.

10 JUDGE WAGONER: And commitment.

11 COMMISSIONER GRACE: And commitment.

12 MS. GUICE SMITH: That is correct.

13 JUDGE WAGONER: I have no objection, so what I
14 would propose is that we will go off the record. We will
15 have a closed session tomorrow morning for deliberations at
16 9 a.m.

17 MS. GUICE SMITH: Okay.

18 COMMISSIONER BOSWELL: Okay.

19 MS. GUICE SMITH: thank you.

20 JUDGE WAGONER: Thank you. All right. Y'all have
21 a good night.

22 (An overnight recess was taken at 4:56 p.m.)

23

24 (CONTINUED IN VOLUME V, PAGE 1145.)

25

NORTH CAROLINA GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA	)	COUNTY OF WASHINGTON
)	
v.	)	94 CRS 1984
	)	94 CRS 1566
LEROY SPRUIELL,)	
)	
Defendant.)	
_____)	

STATE OF NORTH CAROLINA	)	COUNTY OF WASHINGTON
)	
v.	)	94 CRS 1973
	)	94 CRS 1565
WALLACE BRANDON JONES,)	
)	
Defendant.)	
_____)	

HEARING BEFORE THE
NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

VOLUME V OF V

(Pages 1145 - 1151)

Thursday, October 4, 2018

Wanda B. Constantino, CVR-CM-M
AOC-Approved Per Diem Reporter
1102 Driftwood Drive
Siler City, North Carolina 27344
919.548.4914
wanda@mywordservices.com

APPEARANCES

Commi ssi oners Present and Servi ng:

The Honorable Anna Mi l l s Wagoner, Chai r

Ni gl e "Tex" Barrow, Esq. , Commi ssi oner

John Boswel l , Esq. , (Al ternate servi ng as Commi ssi oner)

Johnson Bri tt, Esq. , Commi ssi oner

Ms. Cami l l a Cover (Al ternate servi ng as Commi ssi oner)

Sheri ff Kevi n Frye, Commi ssi oner

Mi chael Grace, Esq. , Commi ssi oner

Ms. Jenni fer Thompson (Al ternate servi ng as
Commi ssi oner)

Li ndsey Gui ce Smi th, Esq.

North Caroli na Innocence Inqui ry Commi ssi on

Admi ni strati ve Offi ce of the Courts

Post Offi ce Box 2448

Ralei gh, North Caroli na 27602

TABLE OF CONTENTS

	<u>PAGE</u>
In Re: Rules	1148
Conclusions of Commission	1149
Certification of Reporter	1151

1 PROCEEDINGS OF FRIDAY, OCTOBER 5, 2018:

2 (The Commissioners opened the proceedings
3 in closed session with no court reporter
4 present.)

5 (Proceedings resumed at 10:16 a.m.)

6 (All commissioners were present except for
7 Commissioner Grace.)

8 JUDGE WAGONER: We have amended our rules to
9 reflect that Alford pleas, for the purposes of voting, would
10 be treated the same as not --

11 COMMISSIONER BOSWELL: No.

12 COMMISSIONER FRYE: No. Guilty.

13 MS. GUICE SMITH: Do you want -- do you want --

14 JUDGE WAGONER: Yes. Just say it.

15 MS. GUICE SMITH: Okay. The Commission met this
16 morning and voted, for purposes of Commission votes, the
17 rules have been amended to indicate pleas entered pursuant
18 to North Carolina versus Alford, 400 US 25 (1970), shall
19 also require five votes.

20 Commissioners, that amendment is effective
21 immediately, and --

22 JUDGE WAGONER: The vote was 7 to 1 for the
23 record.

24 MS. GUICE SMITH: The vote was 7 to 1.

25 Judge Wagoner, at this time, I would ask that we

1 go into a closed session again to begin deliberations in the
2 cases --

3 JUDGE WAGONER: If somebody can find Mr. Grace --

4 MS. GUI CE SMITH: -- of State versus --

5 JUDGE WAGONER: -- and I asso him into here.

6 MS. GUI CE SMITH: -- Leroy Sprui ll and --

7 JUDGE WAGONER: So I guess the court reporter --

8 MS. SMITH: -- State versus --

9 JUDGE WAGONER: -- can I leave now.

10 MS. GUI CE SMITH: -- Wallace Brandon Jones.

11 JUDGE WAGONER: We'll call you back in a minute.

12 (Off the record at 10:18 a.m.)

13 (Back on the record at 11:46 a.m.)

14 JUDGE WAGONER: In the matter of Wallace Brandon
15 Jones, the Commi ssi on, with eight commi ssi oners present, has
16 unanimously concluded that there is sufficient evidence of
17 factual innocence to merit judicial review by a three-judge
18 panel; respectfully requesting that the Chief Justice of the
19 Supreme Court appoint a three-judge panel and issue
20 commissions to its members to convene a special session of
21 Superior Court in Washington County to hear evidence
22 relevant to our recommendation.

23 As to the matter of Leroy Sprui ll, which is 94 CRS
24 1566 and 94 CRS 1984, the Commi ssi on, after considering the
25 evidence, has unanimously concluded that there is sufficient

1 evidence of factual innocence to merit judicial review.
2 Wherefore, the undersigned is requesting that the Chief
3 Justice of the North Carolina Supreme Court appoint a
4 three-judge panel and issue commissions to its members to
5 convene a special session of Superior Court in Washington
6 County to hear evidence relevant to the Commission's
7 recommendation.

8 Anything further?

9 MS. GUI CE SMITH: Nothing from Commission staff.

10 JUDGE WAGONER: All right. The order will be
11 entered as I sign it.

12 Okay. Anything further that the Commission needs
13 to take care of now? I don't believe so.

14 (No response.)

15 JUDGE WAGONER: All right. Then we will adjourn.

16 COMMISSIONER GRACE: Sine die.

17 JUDGE WAGONER: Not sine die. I'm going to leave
18 it open.

19 (Proceedings concluded at 11:49 a.m.)

20

21 (END OF TRANSCRIPT.)

22

23

24

25

NORTH CAROLINA

CHATHAM COUNTY

C E R T I F I C A T E

I, Wanda B. Constantino, CVR-CM-M, the officer before whom the foregoing proceeding was taken, do hereby certify that said transcript is a true, correct, and verbatim transcript of said proceeding.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was heard; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, and am not financially or otherwise interested in the outcome of the action.

This the 31st day of December, 2018.

Wanda B. Constantino, CVR-CM-M
AOC-Approved Per Diem Reporter
Federal Per Diem Reporter

NORTH CAROLINA GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA	)	COUNTY OF WASHINGTON
)	
v.	)	94 CRS 1984
	)	94 CRS 1566
LEROY SPRUILL,)	
)	
Defendant.)	
_____)	

STATE OF NORTH CAROLINA	)	COUNTY OF WASHINGTON
)	
v.	)	94 CRS 1973
	)	94 CRS 1565
WALLACE BRANDON JONES,)	
)	
Defendant.)	
_____)	

HEARING BEFORE THE
NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

MASTER TABLE OF CONTENTS

(Pages 1152 - 1165)

October 1-5, 2018

Wanda B. Constantino, CVR-CM-M
AOC-Approved Per Diem Reporter
1102 Driftwood Drive
Siler City, North Carolina 27344
919.548.4914
wanda@mywordservices.com

Volume I:	Pages 1 - 237
Volume II:	Pages 238 - 539
Volume III:	Pages 540 - 858
Volume IV:	Pages 859 - 1144
Volume V:	Pages 1145 - 1151
Table of Contents:	Pages 1152 - 1165

TABLE OF CONTENTS

	<u>PAGE</u>
<u>VOLUME I, PAGES 1-237</u>	
Colloquy	5
Opening Comments by Ms. Guice Smith	8
<u>COMMISSION'S WITNESSES</u>	
Catherine Matoian Examination by Ms. Guice Smith	14
Beth Tanner Examination by Ms. Guice Smith	105
Colloquy	106
<u>COMMISSION'S WITNESSES (Cont'd.)</u>	
Catherine Matoian (re-called) Examination by Ms. Guice Smith	108
Joseph M. Ludas Examination by Ms. Guice Smith	133
Catherine Matoian (re-called) Examination by Ms. Guice Smith	156
Comments by Ms. Guice Smith	157
<u>COMMISSION'S WITNESSES (Cont'd.)</u>	
Meghan Clement Examination by Ms. Guice Smith	159

TABLE OF CONTENTS (Cont' d.)

	<u>PAGE</u>
Colloquy	237
<u>VOL. II, PAGES 238-539</u>	
Colloquy	244
<u>COMMISSION' S WITNESSES (Cont' d.)</u>	
Maynard Harrell	
Examination by Commissioner Barrow	248
Examination by Commissioner Boswell	251
Examination by Commissioner Britt	252
Examination by Alt. Comm. Newton	253
Colloquy	255
<u>COMMISSION' S WITNESSES (Cont' d.)</u>	
Catherine Matoian (re-called)	
Examination by Ms. Guice Smith	258
Seth Edwards	
Examination by Ms. Guice Smith	317
Examination by Commissioner Britt	319
Examination by Judge Wagoner	322, 332, 334
Examination by Commissioner Grace	324, 333
Examination by Commissioner Boswell	326
Examination by Commissioner Barrow	327
Examination by Alt. Comm. Newton	329
Colloquy	336
<u>COMMISSION' S WITNESSES (Cont' d.)</u>	
Catherine Matoian (re-called)	
Examination by Ms. Guice Smith	339
Beth Tanner	
Examination by Ms. Guice Smith	380

TABLE OF CONTENTS (Cont' d.)

	<u>PAGE</u>
<u>COMMISSION' S WITNESSES (Cont' d.)</u>	
Lindsey Guice Smith Direct testimony	391
Colloquy	394
<u>COMMISSION' S WITNESSES (Cont' d.)</u>	
Beth Tanner (re-called) Examination by Ms. Guice Smith	400
Catherine Matoian (re-called) Examination by Ms. Guice Smith	401
Edward Hudson	
Examination by Ms. Guice Smith	444, 522
Examination by Commissioner Britt	465, 499
Examination by Judge Wagoner	473, 492
	525
Examination by Commissioner Thompson	474
Examination by Commissioner Boswell	476, 492
	518, 521
Examination by Commissioner Frye	479, 493
	508
Examination by Commissioner Grace	483, 500
Examination by Commissioner Barrow	494, 509
	523
Examination by Alt. Comm. Newton	513
Colloquy	527
<u>COMMISSION' S WITNESSES (Cont' d.)</u>	
Catherine Matoian (re-called) Examination by Commissioners	531
Colloquy	537

TABLE OF CONTENTS (Cont' d.)

VOLUME III, PAGES 540-858

	<u>PAGE</u>
Colloquy	546

COMMISSIONER'S WITNESSES (Cont' d.)

Catherine Matoian	
Direct examination by Ms. Guice Smith	550
Wyatt Spruiell	
Examination by Ms. Guice Smith	580
Examination by Judge Wagoner	619, 718
Examination by Alt. Comm. Newton	626, 709
Examination by Commissioner Boswell	639
Examination by Commissioner Thompson	642
Examination by Commissioner Frye	643
Examination by Commissioner Grace	651
Examination by Commissioner Barrow	667
Examination by Commissioner Britt	672
Colloquy	722

COMMISSIONER'S WITNESSES (Cont' d.)

Beth Tanner (re-called)	
Examination by Ms. Guice Smith	724
Meghan Clement (re-called)	
Examination by Ms. Guice Smith	726
Catherine Matoian (re-called)	
Examination by Ms. Guice Smith	732, 756 763, 774 788
Examination by Commissioners	752, 760 773, 785
Marguerite Lynn Spruiell	
Colloquy	793
Examination by Commissioner Boswell	794, 800 807

TABLE OF CONTENTS (Cont'd.)PAGECOMMISSION' S WITNESSES (Cont'd.)

Marguerite Lynn Spruiell (Cont'd.)

Examination by Judge Wagoner 798, 809
813

Examination by Commissioner Frye 802, 808

Examination by Commissioner Britt 803

Examination by Alt. Comm. Newton 805

Examination by Commissioner Thompson 806

Examination by Ms. Guice Smith 810, 815

Examination by Commissioner Grace 811, 813

Colloquy 816

COMMISSION' S WITNESSES (Cont'd.)

Catherine Matoian (re-called)

Examination by Commissioner Boswell 819

Examination by Alt. Comm. Newton 820

Examination by Commissioner Britt 822

Examination by commissioners 823

Audio-videotaped interview of Dana Maybin
played 827

Catherine Matoian (re-called)

Examination by Ms. Guice Smith 828

Colloquy 846

TABLE OF CONTENTS (Cont'd.)

	<u>PAGE</u>
<u>VOLUME IV, PAGES 859-1144</u>	
Colloquy	864
<u>COMMISSIONERS' WITNESSES (Cont'd.)</u>	
Catherine Matoian (re-called)	
Direct exam. by Ms. Guice Smith	864, 874 896, 928
Examination by Commissioners	867, 890 910, 946
Examination by Alt. Comm. Newton	886
Brian Ziegler	
Examination by Ms. Guice Smith	949
Catherine Matoian (re-called)	
Examination by Alt. Comm. Newton	956
Examination by Ms. Guice Smith	957
Colloquy	958
Clips of Dana Maybin's videotaped deposition were played	959
Colloquy	959
<u>COMMISSIONERS' WITNESSES (Cont'd.)</u>	
Wallace Brandon Jones	
Examination by Ms. Guice Smith	962
Examination by Commissioner Grace	973
Examination by Commissioner Thompson	974, 1029
Examination by Commissioner Boswell	976, 1025
Examination by Commissioner Frye	978, 1023 1030, 1036
Examination by Judge Wagoner	982, 1031 1034, 1036
Examination by Commissioner Britt	986, 1034
Examination by Alt. Comm. Newton	1007
Examination by Commissioner Barrow	1018

TABLE OF CONTENTS (Cont' d.)

	<u>PAGE</u>
Colloquy	1038
<u>COMMISSION'S WITNESSES (Cont' d.)</u>	
Catherine Matoian (re-called)	
Examination by Ms. Guice Smith	1040
Leroy Spruiell	
Examination by Ms. Guice Smith	1050, 1123
Examination by Commissioner Frye	1063, 1110
Examination by Judge Wagoner	1068, 1109
	1113, 1125
Examination by Commissioner Cover	1072
Examination by Commissioner Grace	1072, 1099
Examination by Alt. Comm. Thompson	1073
Examination by Commissioner Boswell	1076, 1108
	1121, 1125
Examination by Commissioner Britt	1081, 1100
Examination by Commissioner Barrow	1114
Commissioners and Guice Smith	1127
Colloquy	1129
<u>COMMISSION'S WITNESSES (Cont' d.)</u>	
Catherine Matoian (re-called)	
Examination by Commissioners	1131
<hr/>	
<u>VOLUME V, PAGES 1145-1151</u>	
In Re: Rules	1148
Conclusions of Commission	1149
Certification of Reporter	1151

<u>HANDOUTS</u>		
<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE IDENTIFIED</u>
1	Map	18
2	Portion of John Skinner Interview	72
3	Affidavit of John Skinner	72
4	Affidavit of Maynard Harrell	84
5	Affidavit of Seth Edwards	88
6	Affidavit of Connie Widenhouse	92
7	Affidavit of Leticia Echols	95
8	Portion of Marcus Jimison Interview	97
9	Affidavit of Marcus Jimison	98
10	Portion of Amos Tyndall Interview	99
11	Affidavit of Amos Tyndall	100
12	Affidavit of Cart Stewart	101
13	Affidavit of David Irvine	103
14	Affidavit of Chris Mumma	104
15	NCSCCL 2015 Latent Print Report	122
16	Marty Ludas CV	134
17	Ludas Report #1	138
18	Ludas Report #2	149
19	Ludas Report #3	149
20*	N. C. I. I. C. Fingerprint Analysis Request Form	---
21	Comparison List	159
22	Meghan Clement CV	160
23	DNA Testing Chart	167
24	Davis Mixon, Sr., Criminal Record	348
25	Edward "Beaver" Fields Criminal record	350

TABLE OF CONTENTS (Cont'd.)HANDOUTS

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE IDENTIFIED</u>
26	Ray Hurst Criminal Record	354
27	Tommy Garrett Criminal Record	356
28	Curtis Furlough Criminal Record	360
29	Russell Knowles Criminal Record	363
30	New Jersey Arrest Records - Knowles and Victim	366
31	Alfred Armstrong Criminal Record	369
32	Michael Lassiter Criminal Record	373
33	Alton "BoJack" Clagon Criminal Record	406
34	Joseph Lynn Criminal Record	422
35	Maurice Wilkins Criminal Record	422
36	Lee McPhatter Criminal Record	422
37	Avis Arnold Criminal Record	429
38	Edward Hudson Criminal Record	432
39	Joseph McNair Criminal Record	438
40	Wyatt Spruiell Criminal Record	561
41	Wyatt Spruiell SBI Interview	563
42	Wyatt Spruiell Partial Transcript - Commission Interview	563
43	Tim Swain Criminal Record	569
44	Lynn Rogers Criminal Record	734
45	Leroy Spruiell Partial Transcript - Commission Interview	735
46	Lynn Rogers Commission Deposition Transcript	734
47	Margie Perry Criminal Record	741

TABLE OF CONTENTS (Cont'd.)HANDOUTS

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE IDENTIFIED</u>
47	Margie Perry Criminal Record	741
48	Margie Perry Partial Transcript - Commission Interview	743
49	Tony Calloway Criminal Record	748
50	Tony Calloway Partial Transcript 1 - Commission Interview	750
51	Tony Calloway Partial Transcript 2 - Commission Interview	750
52	Tommy Barber Criminal Record	756
53	Cottie Oliver Record	774
54	Cottie Oliver Transcript - Commission Interview	776
55	Map: 31 Folly Road	777
56	Rob Samson Criminal Record	779
57	Terri Bullock Criminal Record	780
58	Ed Champ, Sr. Criminal Record	782
59	Ed Champ, Jr. Criminal Record	788
60	Sherry Honea Criminal Record	834
61	Sherry Honea S. B. I. Interview Report	837
62	Sherry Honea Partial Transcript - Commission Interview	839
63	Nichole Mills Criminal Record	844
64	Nichole Mills Partial Transcript - Commission Interview	845
65	Jackie Craddock Criminal Record	865
66	Dana Maybin Criminal Record	871

TABLE OF CONTENTS (Cont' d.)HANDOUTS

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE IDENTIFIED</u>
67	Dana Maybin Statement Chart	871
68	Wallace Jones Criminal Record	939
69	Wallace Jones' Previous Statements	530
70	Wallace Jones Transcript - Commission interview	528
71*	Cathy Campbell Transcript -- Commission Interview	---
72	Jones W.C.S.O. Polygraph Notes	970
73	Leroy Spruiell Criminal Record	1044
74	Leroy Spruiell's Previous Statements	530
75	Leroy Spruiell's Transcript - Commission Interview - 2/9/2011	528
76	Leroy Spruiell's Transcript - Commission Interview - 8/4/2011	528
77	Leroy Spruiell - 1994 S.B.I. Interview	1055
78	A.G.'s Statement	528
79	S.B.I. report of meeting between Assistant D.A. Hensley and Dana Maybin, February 8th, 1995	381
80	E-mails - Mumma and Coman	301
81	Photograph (sealed)	338
82	Photograph (sealed)	338
83	Photograph (sealed)	338
84	Letter from Hudson to Coman; subsequent S.B.I. report of interview between S.B.I. and Hudson	527
85	Movement records of Edward Hudson from Hudson's D.P.S. file	527

TABLE OF CONTENTS (Cont'd.)HANDOUTS

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE IDENTIFIED</u>
86	Photograph of envelope containing tire iron	546
87	Photograph of tire iron in a clear bag	547
88	Photograph of tire iron in a clear bag	547
89	Photograph of tire iron in a clear bag	548
90	Photograph of tire iron in a clear bag	548
91	Closeup photograph of tire iron in a clear bag	548
92	Photograph of tire iron	549
93	Closeup photograph of tire iron	549
94	Enlargement of portion of photograph of tire iron	549
95	Autopsy photo of victim	549
96	D. P. S. Housing Overlap Comparisons	554
97	James Earl "Duke" Carter Criminal Record	618
98	Wyatt Spruiell's Trial Testimony	618
99*	Sonja Spruiell Day Criminal History	---
100	Statements Regarding Birth of Victoria Furlough	960
101	N. C. State Bureau of Investigation Polygraph Report of Wallace Brandon Jones	1039
102*	N. C. State Bureau of Investigation Polygraph Report of Leroy Spruiell	----

TABLE OF CONTENTS (Cont'd.)HANDOUTS

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE IDENTIFIED</u>
103	Letter to the North Carolina Innocence Inquiry Commission from "The Swain Family"	1130
104	Transcript of Plea of Leroy Spruiell	1143
105*	Dana Maybin Trial Testimony	----
106*	M. A. R. Transcript	----
107*	Jani ce Spruiell Interview with Commission	----

*Exhibi ts were made avai lable to the Commi ssi oners but not referred to by number during the hearing.